

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4492 OF 2022

SUSHILABAI MADANLAL DESARDA AND ANOTHER
VERSUS
SAMTABAI ARUNCHANDRA MALANI AND ANOTHER

...
Advocate for Petitioners : Mr. S.S. Randive
....

[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 22nd April, 2022

ORDER :

1. It is the case of the petitioners that, as per order passed below Exh.42, the Trial Court directed appointment of City Survey Officer as a Court Commissioner. He was directed to carry out measurement and submit the report along with map, within a period of one month. According to the petitioners City Survey Officer instead of carrying out measurement himself, directed his Sub-ordinate Officer to carry out the measurement and prepare report. The report so prepared is filed in the Court under the signature of the City Survey Officer.

2. The petitioners filed application (Exh.51) pointing out

that, the said report is not as per the order of the Trial Court passed below Exh.42 and the petitioners requested that the Court Commissioner be directed to submit the report as per order passed below Exh.42.

3. By the impugned order, the Trial Court held that the report is as per the order. Its validity and genuineness will be subject to the evidence, hence parties to lead evidence. The petitioners are aggrieved by this order.

4. The Commissioner is yet to be examined. During the course of evidence the petitioners are entitled to bring it to the notice of Trial Court that, the report is not as per the order passed by the Court below Exh.42.

5. After recording of evidence of the Commissioner, the petitioners are entitled to renew their prayer. If the Trial Court is convinced, it may consider the prayer and may direct further inquiry in terms of Sub-rule 3 of Rule 10 of Order XXVI of Code of Civil Procedure.

6. At this stage, this Court is not inclined to interfere in the impugned order in exercise of extraordinary writ

jurisdiction.

7. The writ petition is, therefore, dismissed with liberty to the petitioners to adopt aforesaid course.

[NITIN B. SURYAWANSHI]
JUDGE