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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4273 OF 2020

Sanjay Sureshchandra Agrawal

PETITIONER

VERSUS

Nikita Construction Nandurbar

RESPONDENT

.....
Mr. B. R. Warma h/f Mr. M. G. Kochar, Advocate for petitioner
Mr. J. R. Shah, Advocate for the respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th FEBRUARY, 2022

ORDER :

1. The petitioner / plaintiff is aggrieved by the order rejecting his application Exhibit-34 in Regular Civil Suit No. 44 of 2018, filed under Order XXXIX, Rule 7 of the Code of Civil Procedure.
2. It emerges from the record that the suit is filed for permanent injunction that the defendant should not carry out illegal construction on the suit property of the plaintiff. Admittedly, the plaintiff has not filed the mandatory sketch showing extent of the alleged encroachment along with the plaint. The exact nature and extent of encroachment is, therefore, not clear on the record. Interim relief, in the nature of *status quo*, is therefore, refused to the plaintiff. The temporary

injunction application of the plaintiff is pending for adjudication. The plaintiff will have to prove *prima facie* case, balance of convenience and irreparable loss, at the time of hearing of temporary injunction application. At this stage, appointment of the commissioner is not necessary.

3. The Trial Court was justified in rejecting the application, by observing that as far as the encroachment is concerned, the court commissioner can be appointed, if necessary to adjudicate the issue in dispute. It is, therefore, clear that the trial court has kept the option of appointment of the commissioner open at a subsequent stage. No perversity or illegality is found in the impugned order. No case is made out to exercise extraordinary writ jurisdiction. The writ petition is, therefore, dismissed.

4. Parties are at liberty to file application for appointment of the court commissioner, at subsequent stage, which the trial court may decide on its own merits, without being influenced by this order.

[NITIN B. SURYAWANSHI]
JUDGE