

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 5084 OF 2021

Jaykrishna Ramkishor Dixit
thr. its constituted attorney
Adv. Pankaj Jaykishan Dixit
V/s.

... Petitioner

Baliram Shinwar Patil & Ors.

... Respondents

Mr. Pankaj J Dixit, Constituted Attorney of Petitioner.

CORAM : NITIN W. SAMBRE, J.

DATED : 25th JULY, 2022

P.C.:

1. Heard.
2. I am informed that the suit of the petitioner/plaintiff for eviction is decreed, in execution of which application bearing Exhibit-19 was taken out for appointment of Court Commissioner under provisions of Order XXXIX Rule 7 of CPC so as to have inspection.
3. It is further claimed that alongwith the aforesaid application, an independent application for grant of interim relief was also moved wherein prayer was for an order of restraint against the respondents/defendants from creating third party interest in the suit property.

4. The order of rejection of the such interim prayer of injunction is informed to be a subject matter of challenge in the independent revision which of course be decided in accordance with law.

5. However, the plea under Order XXXIX Rule 7 i.e. claim of the petitioner is entitled for an order of appointment of Court Commissioner is concerned, the power of attorney holder of the petitioner has drawn support from the judgment of the Apex Court in the matter between *Rahul S. Shah vs. Jitendra Kumar Gandhi & Ors.* reported in 2021 (3) SCC 001.

6. According to him, it is mandatory to follow and grant a prayer for appointment of the Court Commissioner.

7. I have appreciated the said submissions in the backdrop of the observation and the reasons given by the Trial Court.

8. In wake of the above, submissions made by the power of attorney holder of the petitioner, the observations in paragraph no. 9 of the order impugned which begin with "The plaintiffs have moved forged application even after the filing of the interim application" stands deleted.

9. As regards the prayer of appointment of Court Commissioner is concerned rightly so observed by the Trial Court, the said prayer is moved at pre-mature stage.

10. As the petitioner's option to move the prayer at later stage is kept open, in view of the said observations having regard to the reasons furnished by the Trial Court, in my opinion, no case for interference in extra ordinary jurisdiction is made out.

11. The petition fails, as such stands dismissed with the aforesaid observations.

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(NITIN W. SAMBRE, J.)