

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5472 OF 2023

Imtiaz Meboob Mujawar

...Petitioner.

Versus

Shalini Vinayak Tamhankar & Ors.

..Respondents.

Mr. V. B. Rajure for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : June 19, 2023.

P. C. :

1. Heard.

2. The petitioner questions the order dated 18th January 2023 passed by the 5th Joint Civil Judge, Senior Division, Sangli in Special Civil Suit No.78 of 2014 whereby the petitioner's application to set aside the orders passed below Exhibits-77 and 79 came to be rejected.

3. Mr. Rajure, learned counsel for the petitioner submits that the suit was filed by respondent No.1 seeking demolition of the construction of the petitioner. In the said suit, an application came to be filed by the plaintiff-respondent No.1 under Order-26 Rule-9 of the Code of Civil Procedure, 1908 for appointment of Court Commissioner. The same was

rejected. Mr. Rajunre contends that considering the rejection of the said application for appointment of Court Commissioner, it was not open for the plaintiff to thereafter appoint his surveyor and produce the documents on record. He points out that vide the order passed below Exhibit-77, the report of surveyor is taken on record and by the order below Exhibit-79, summons has been issued to the said surveyor as a witness in the suit.

4. Considered the submissions of learned counsel for the petitioner. Although the application for appointment of Court Commissioner came to be rejected, it is always open for the plaintiff-respondent no.1 to examine the independent witness in support of his case. There is no bar under the provisions of law denying the plaintiff-respondent no.1, a right to prove his case by examining his witness. It is always open to the defendant-petitioner to cross-examine the said witness of plaintiff, i.e., the surveyor, and to question the report which is produced on record, during the cross-examination. As such, there is no infirmity in the impugned order and no case for interference is made out.

5. In view of the above, writ petition stands dismissed.

[Sharmila U. Deshmukh, J.]