



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

WRIT PETITION NO. 7829 OF 2023

Prakash Kashinath Wadekar & ors.

.Petitioners

Vs.

Harshal Ramkrushna Patil & ors.

.Respondents

Mr. Sameer Singh, Advocate, for the Petitioners

Mr. Drupad S. Patil, Advocate, for the Respondents

CORAM : ANUJA PRABHUDESSAI, J.

DATE : 22.08.2023

P. C.

. The Petition challenges the order dated 05.01.2023, whereby the learned Judge dismissed his Application for appointment of the Court Commissioner under Order XVI, Rule 16 of the Code of Civil Procedure, 1908.

2. Heard learned counsel for the Petitioners and learned counsel for the Respondents.

3. I have perused the record and considered the submissions advanced by learned counsel for the respective parties.

4. The Respondent herein is the Landlord. He has filed a suit against the Petitioner/Tenant for eviction from the suit premises on the ground of non-user and bonafide requirements. In the affidavit in evidence, the Respondents stated that the Petitioners had committed further encroachment in the property. On the basis of this statement made in the affidavit in evidence, the Petitioners/Tenants filed an Application for appointment of Court Commissioner. The Application for appointment of Court Commissioner has been filed to prove that the Petitioners are in possession of the suit premises. Learned Judge has considered several decisions of the Apex Court as well as this Court and has held that the Court Commissioner cannot be appointed to collect evidence. Even otherwise, onus would be on the Respondent/Landlord to prove that the Petitioner herein has not committed further encroachment. As rightly held by the learned trial Judge that the Court Commissioner cannot be appointed either to prove possession of the Petitioner or to prove that he has not committed any further encroachment. There is no merit in the Petition. Hence, the Petition stands dismissed.

(ANUJA PRABHUDESSAI, J.)