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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6347 OF 2023**

Shruti Co-Operative Housing
Society Limited

...Petitioner

Versus

Bharat R. Karmarkar and Ors.

...Respondents

Adv. Ankit Lohia a/w Adv. Varun Nathani i/b Adv. Avadhesh Nathani for the Petitioner.

Mr. Mayur K. i/b Abhishek Walwaikar and Sandeep Mahadik for Respondent Nos. 2 to 4.

Mr. R.Y. Sirsikar for Respondent Nos. 5 to 7.

CORAM : N.R. BORKAR, J.

DATED : 8 JUNE 2023

P.C. :-

1. By the impugned order, the trial Court rejected the notice of motion filed by the petitioner/plaintiff for appointment of Court commissioner.

2. The suit is *inter alia* for removal of encroachment. According to the petitioner, respondent Nos.2 to 4 constructed a gate and compound wall by encroaching upon the common pathway/internal road which was there between the premises owned by them. To ascertain the said position, the appointment of Court commissioner was sought.

3. The construction of the gate and compound wall is not in dispute. The trial Court was, therefore, justified in rejecting

the notice of motion as the Court commissioner can not be appointed to collect the evidence i.e. to ascertain whether the disputed gate is constructed in violation of sanction plan or by encroaching upon the common internal road as alleged by the petitioner. No interference is called for in the impugned order, passed by the trial Court.

4. The Writ Petition is dismissed.

5. The trial Court shall endeavour to decide L.C. Suit No. 1816 of 2011, as early as possible.

(N.R. BORKAR, J.)