

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1841/2023

Anil v Wasudeo

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. A.R. Deshpande, Adv for petitioner.

Mr. S.V. Sohoni, Adv for respondent.

CORAM : AVINASH G GHAROTE, J.

DATE : 05-06-2023

On 23-03-2023, while issuing notice, the
following order was passed. (paras 1 and 2)

"1] *Mr. Deshpande, learned counsel for the petitioner upon instructions submits that the petitioner, who is the original defendant, is ready to pay the entire costs of measurement of the suit properties and the adjacent plots for determining the claim of encroachment made by the plaintiff/respondent.*

2] *It is contended that though the earlier application for appointment of Commissioner was allowed by the order dated 2.9.2013, the measurement could not be carried out on account of failure of the petitioner to deposit the measurement fee. He submits that such failure cannot come in the way of the petitioner to get the property measured, as the need for such measurement was accepted by the learned Trial Court, by the order dated 2.9.2013."*

2. Mr. Sohoni, learned Counsel for the respondent does not dispute the position that the earlier order dated 02-09-13 which permitted measurement to be carried out was not implemented on account failure to deposit the cost. He however does not dispute that in view of the order dated 02-09-13, there is a need of measurement, considering which merely because cost was not deposited on earlier occasion that cannot be a ground to refuse the measurement of the property, in respect of which encroachment has been claimed, considering which the impugned order dated 14-02-23 is hereby quashed and set aside and the application Exh-31 is allowed on the condition that the entire cost of measurement in respect of the suit property as well as the adjacent plot/s shall be borne by the petitioner.

3. The entire cost of measurement as indicted above shall be deposited by the petitioner with TILR by 12-06-2023 and the TILR shall conduct the measurement on 24-06-2023 at 11.00 am in the presence of the parties for which no separate notice shall be required to be given to the respective parties and the learned counsel of both the parties, upon instructions state that parties shall remain present on 24-06-2023 at 11.00 am for the purpose of measurement at the spot.

4. Petition is accordingly allowed in above terms.
No costs.

JUDGE

Deshmukh