



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

923 WRIT PETITION NO. 2418 OF 2023

MURTIDEVI SUMERCHANDRA AGRAWAL THROUGH SPECIAL POWER
OF ATTORNEY SUMENCHANDRA BHARASIDAS AGRAWAL

VERSUS

SHRI SAMARTH GURAH NIRMAN SAHAKARI SANTHA LTD.

...

Advocate for the Petitioner : Mr. Thombre Chandrakant V.

Advocate for Respondent : Mr. S. A. Deshmukh

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CORAM : R. M. JOSHI, J.

Dated : June 25, 2024

PER COURT :-

1. This petition takes exception to order dated 05/11/2022, passed below Exhibit 76 in Regular Darkhast No.18/2007 whereby the application filed by the petitioners/ decree holder under Order 26 Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner for local investigation was rejected.

2. Learned Counsel for petitioner submits that the petitioner is the successful plaintiff in Co-operative Dispute No.94/1985. The said order is confirmed up to the Hon'ble Supreme Court. The present darkhast is filed for execution of the said order. It is his contention that an application is moved by the decree holder for appointment of Court Commissioner, and in peculiar facts and circumstances of the case, such application ought to have been allowed by the learned execution Court.

3. Perusal of the record indicates that an application is filed for local inspection to inspect of the matter wherein dispute is sought to be made with regard to the allotments made of the plots by the judgment debtor Co-operative Housing Society. In the light of the issue before the execution Court, question arises as to whether the appointment of Court Commissioner is justified.

4. Order 26 of the Code of Civil Procedure provides for the appointment of Court Commissioner and the relevant provisions mentions that the Court Commissioner can be appointed for the purpose of making local investigation, recording of the depositions in evidence, for scientific investigation, for performance of ministerial act, commission for sale of movable and immovable property, commissioner can be appointed for the purpose of examination and adjustment of the accounts. Perusal of the application filed by the present petitioner before the execution Court and the facts of the case do not show that any one of the above purposes are involved in this case. As such, no fault can be found in rejection of the application Exhibit 76 by the execution Court.

5. It is however clarified that it is open for the decree holder to take all necessary steps for the execution of the decree in accordance with law.

6. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)

vj gawade/-.