



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

3 WRIT PETITION NO. 9441 OF 2025

**PRADEEPKUMAR KESHAVLAL SHAH
VERSUS
THE COMMISSIONER LATUR MUNICIPAL CORPORATION AND ANOTHER**

WITH

WRIT PETITION NO. 10318 OF 2025

**DR. PRADEEPKUMAR KESHAVLAL SHAH
VERSUS
THE COMMISSIONER LATUR MUNICIPAL CORPORATION AND ANOTHER**

Mr. Rajendrraa Deshmukh, Senior Advocate i/b Mr. S. V. Deshmukh,
Advocate for the Petitioner

CORAM : R. M. JOSHI, J.

DATE : 18th AUGUST, 2025

PER COURT :-

1. These Petitions take exception to the order passed in R.C.S. No. 19/2018 below Exhibit 171, whereby the Trial Court has refused the production of document of list Exhibit 172 at serial No.1 and order passed below Exhibit 177 rejecting Application filed by the Plaintiff under Order 26 Rule 9 of the Code of Civil Procedure.
2. There is no dispute about the fact that the Petitioner/Plaintiff has filed suit against Defendant for removal construction carried out by Defendant No.2 which is contrary to the sanction plans. It is also claimed

by the Plaintiff that on account of the said construction, easementary right of light and air is obstructed.

3. Defendant caused appearance. Defendant No.1-Corporation filed written statement alleging that Defendant No.2 has carried out construction which is beyond sanction plan. Defendant No.2 has denied the said allegation.

4. Trial Court framed issues placing the burden upon the Plaintiff to prove that the Defendant has carried out construction of the building illegally and unauthorizedly and that it is affected the easementary right of light and air of the Plaintiff. Plaintiff led evidence. After his evidence was closed, Defendant No.2 examined himself and his evidence is also closed. At the stage when the matter was fixed for final hearing, the above mentioned Applications came to be filed.

5. Application (Exhibit 171) in R.C.S. No. 19/2018 indicates that the information obtained under the Right to Information Act was sought to be produced. The Trial Court by impugned order dated 12/06/2025 allowed the Application partly, however, refused the production of document at serial No. 1 i.e. the information given by the Corporation that the record does not indicate building permission and map. Learned Counsel for the Petitioner sought to argue that this is a relevant

document in order to prove that the construction has been carried out contrary to the sanction plan. Thus, according to him the said document being relevant could to have been refused to be allowed to be produced on record. It is his further contention that without examining any witness, this document could be proved, it being a public document.

6. This contention of the learned Counsel for the Petitioner deserves no acceptance for the reason that when the Plaintiff himself has come out with a case that construction carried out by Defendant No.2 is the contrary to the sanction plan and thus, the existence of the sanction plan has not been disputed by the Plaintiff. Even if this the information is obtained under the RTI Act is considered, at the most it can be said that when the information was given, the building permission or map was not found in record. This information be itself would not prove that no permission of construction is granted, which is a fact admitted by Plaintiff.

7. Learned Counsel for the Petitioner has drawn attention of the Court to the order passed by this Court in Writ Petition No. 247/2020, whereby the Petitioner/Plaintiff was permitted to move Application for appointment of Court Commissioner at appropriate stage. Even if it is allowed so, that cannot be construed as a permission granted to the Plaintiff to move such Application at the fag end of the trial and it can be

said that it was open for him to move such Application when his evidence was closed. Thus, as far as the refusal of the Trial Court of production of document is concerned, as observed herein above, it is Plaintiff's own case that the construction has been carried out beyond the sanction plan/permission, the the information becomes irrelevant.

8. In so far as the Application for appointment of Court commissioner for the purpose of ascertaining the obstruction of light and air is concerned, admittedly, this fact was within the knowledge of the Plaintiff and even as per the issues framed by the Court the burden was cast upon the Plaintiff to substantiate the same. Plaintiff fails to take appropriate steps at relevant time to substantiate his case. Moreover, there is no case is made out by the Plaintiff before the Trial Court that he was prevented from leading such evidence at earlier stage or on account of compelling circumstances he could not lead the said evidence.

9. Suffice it to say that the Plaintiff being fully conscious of the fact in view of the framing of the issues that the burden lies upon him to prove the obstruction to the air and light, was required to lead evidence at appropriate stage. Plaintiff on his own accord does not lead such evidence. It is only after the evidence of Defendant is over and the suit is kept for final hearing, such Application is filed. Thus, there is reason to believe that this Application is filed being order to fill up the lacunas in

the case or in evidence of Plaintiff which is not permissible.

10. In view of above discussion, this Court finds no reason to cause any interference in the impugned orders, for want of perversity therein. Hence, Petitions stand dismissed.

(R. M. JOSHI, J.)

ssp