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

WRIT PETITION NO. 7327 OF 2014

Dattatraya Rajaram Bagade

... Petitioner

V/s.

Chandso Hasan Inamdar and Ors.

... Respondents

Mr. Manoj Patil for the Petitioner

Mr. Shantanu Patil i/b. S.R. Ganbavale for the Respondents

CORAM : ALOK ARADHE, CJ.

DATE : 10 JULY 2025

P.C. :

1. In this Petition, under Article 227 of the Constitution of India, the Petitioner has assailed the validity of the order dated 21 April 2014 passed by the Trial Court by which the Trial Court has set aside the earlier order dated 7 September 2006 for appointment of the Court Commissioner.

2. Facts giving rise to filing of this Petition in nut shell are that the Petitioner had filed the Suit seeking relief of recovery of possession and permanent injunction. In the aforesaid Civil Suit, the Petitioner filed an application under Order 26 Rule 9 of the Code of Civil Procedure seeking appointment of the Court Commissioner. The Trial Court, by an order dated

7 September 2006, appointed the Commissioner. The Court Commissioner could not carry out the spot inspection due to obstructions created by the Respondents. The Commissioner visited the spot on 10 April 2014. On that day the Original Plaintiff, who was an old and infirm person, aged about 88 years old, was hospitalized. Therefore, she could not remain present. The Court Commissioner, therefore, submitted an application to the Court that due to absence of the Petitioner, the Commissioner could not visit the site.

3. The Court, thereupon, on the application of the Petitioner, by the impugned order dated 21 April 2014, has recalled the order of appointment of the Commissioner dated 7 September 2006. In the aforesaid factual background the Petition has been filed.

4. The learned Counsel for the Petitioner submitted that the Trial Court ought to have appreciated that on account of dilatory tactics adopted by the Respondents, the Commissioner could not visit the spot and therefore, the Petitioner cannot be blamed on account of non-execution of the warrant of commission. It is further submitted that the appointment of the Commissioner is necessary for fair and complete clarification of the controversy involved in the Petition. On the other hand the learned Counsel for the Respondents has supported the order passed by the Trial Court.

5. I have considered the submission made on both sides and have perused the record.

6. On perusal of the order sheet of the proceedings, it is evident that at least on ten occasions, the Respondents obstructed the Commissioner from undertaking the spot inspection. The Original Plaintiff was hospitalized from 8 April 2014 to 12 April 2014.

7. In the facts and circumstances of the case, the Original Plaintiff in no way can be held responsible for non-execution of the commission. The Commissioner's report is necessary for fair and complete clarification of the controversy involved in the petition.

8. For the above mentioned reasons, the impugned order dated 21 April 2014 is quashed and set aside. The Trial Court is directed to issue the warrant of commission afresh and to decide the Suit expeditiously.

9. The Writ Petition is disposed of accordingly.

(CHIEF JUSTICE)