



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.245 OF 2025**

M/s. R.M.N. Infrastructures Ltd. ... Petitioner
versus
Arunkumar s/o Ranglal Agarwal and Ors. ... Respondents

Mr. Nilesh Wable, for Petitioner.
Smt. Vrishali Raje, AGP for State.

CORAM: N.J.JAMADAR, J.

DATE : 5 MARCH 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 10 June 2024 passed by the learned Civil Judge, Sr.Division, Solapur, appointing the Court Commissioner to inspect the soil and submit a report.
3. Respondent Nos.1 and 2 instituted a suit with the assertion that the Defendant Nos.2 and 3 had carried out unauthorized excavation of the soil from the land of the Plaintiffs while laying railway track on Vijaypur-Solapur Section and the Defendant No.3 had agreed to refill the entire excavated material into the suit land. As the Defendants did not refill the suit land with the excavated soil, the suit for an order and direction to the Defendants to refill the entire excavated material, at their cost, and make the land of the Plaintiffs fertile. In addition, damages of Rs.1,26,00,000/- were also sought from the Defendants.

4. In the said suit, the Plaintiffs preferred an application seeking an order to appoint an expert to ascertain the quality of the soil in the suit land. The application was resisted by filing a reply. By the impugned order 10 June 2024, the learned Civil Judge was persuaded to allow the application.

5. From the perusal of the impugned order, it appears that the Advocate for the Defendants were absent and the Court proceeded to hear and decide the said application. Moreover, the impugned order contains the following reasoning :

“5. Appointment of Court commissioner in the case in hand is sought for scientific investigation of soil through expert. Appointment of expert will be of assistance for final adjudication of the matter. Hence, I pass the following order.”

6. Evidently, the learned Civil Judge has not ascribed adequate reasons which justify the appointment of the Court commissioner to investigate, analyse and report on the quality of the soil from the suit land. Nor the aforesaid reasoning indicates as to how the said report would assist the Court in granting either the principal relief of refilling the suit land with the excavated soil or the relief of damages.

7. Moreover, the Court finds that in the operative portion of the impugned order, the learned Civil Judge has simply observed that “an expert is appointed on payment of fees”. Neither the expert is named. Nor any officer

or person is appointed by designation.

8. The aforesaid being the nature of the impugned order, in the opinion of this Court, the impugned order deserves to be quashed and set aside and the application (Exh.33) is required to be remitted back to the learned Civil Judge for afresh decision.

9. In this view of the matter, this Court does not consider it necessary to issue notice to the Respondents-Plaintiffs as the impugned order is ex-facie sans consideration and reasons.

10. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned order dated 10 June 2024 stands quashed and set aside.

(iii) The application (Exhibit 33) is remitted back to the Court of Civil Judge, Sr. Division, Solapur for afresh decision by recording reasons and after providing an opportunity of hearing to the parties.

(iv) The Defendants shall not seek any adjournment at the time of hearing of the application.

(v) The Writ Petition stands disposed.

(N.J.JAMADAR, J.)