

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17119 OF 2025

Nadeem Majid Oomerbhoy	...Petitioner
<i>Versus</i>	
Dilip Kumar Parkar & Ors.	...Respondents

Mr. Ganesh Ambekar i/b Jariwala Associates, for the Petitioner.

CORAM: MADHAV J. JAMDAR, J.

DATED : 16th DECEMBER 2025

PC:-

1. Heard Mr. Ambekar, learned Counsel appearing for the Petitioner.
2. The challenge in the Writ Petition filed under Article 227 of the Constitution of India is to the legality and validity of the order dated 24th November 2025 passed by a learned Judge of the Small Causes Court, Mumbai by which Application dated 24th November 2025 filed in RAE & R Suit No.1614/4893 of 1985 bearing Exhibit-56 has been rejected. By the said Exhibit-56 Application it is the prayer of the present Petitioner i.e. Plaintiff that the Plaintiffs evidence be deferred until the Court Commissioner completes the inspection and submits the Commissioner's Report and the Plaintiff

be granted liberty to enter the witness box only after the Commissioner's report is on record.

3. The learned Trial Court by impugned order dated 24th November 2025 has recorded various reasons including that the Suit is of the year 1985, the Suit is 40 years old Suit and the Supreme Court has directed expeditious disposal of the Suit.

4. It is further observed by the learned Trial Court that appointment of Court Commissioner and completion of his commission work, is totally different than the Plaintiff's evidence. It has been held that the Commissioner is an independent witness and Plaintiff need to examine the Commissioner as Plaintiff's witness, once evidence of Plaintiff is over. Therefore, the Trial Court has held that during the pendency of the commission work and completion of inspection and submission of the Commissioner's Reports, it is not necessary to differ the evidence of the Plaintiff.

5. A plausible view of the matter has been taken. Accordingly, no interference under Article 227 of the Constitution of India in

the impugned order is warranted. The Writ Petition is dismissed, however with no order as to cost.

[MADHAV J. JAMDAR, J.]