

VRJ

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

**INTERIM APPLICATION NO.8560 OF 2025
IN
WRIT PETITION NO.5537 OF 2014**

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Mohammed Hussain Yusufali
Calcuttawalla & Ors. ... Applicants

V/s.

Siddivinayak Mittal Projects,
through Mr. Naresh Rao & Ors. ... Respondents

Ms. iman K. Calcuttawala for the applicants.

Mr. Narayan G. Rokade i/by Siddharth Agrawal,
Ramchandra Wagh and Abhang Suryawanshi for the
respondents.

CORAM : AMIT BORKAR, J.

DATED : JUNE 19, 2025

P.C.:

1. This is an interim application preferred by the applicants seeking recall of the order dated 28th November 2024. It is the contention of the applicants that the said order came to be passed without affording an opportunity of hearing to the learned advocate representing the petitioners. Considering the said grievance, I have heard the learned advocate appearing for the applicants in support of the interim application.

2. Learned advocate for the applicants submits that the suit is filed for declaration and injunction. It is the case of the plaintiffs

that during the pendency of the said suit, their possession over the suit property has been illegally taken away. In view thereof, the applicants contend that it is just and necessary to appoint a Court Commissioner to verify the possession and report the factual situation on record, which will assist the Court in considering the prayer for interim injunction.

3. However, in law, it is well settled that the appointment of a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure is permissible primarily in matters where there is a dispute regarding identification, demarcation, or measurement of land, or where the issue pertains to encroachment or boundary dispute. The limited scope of appointment of Commissioner is to assist the Court in understanding physical features or site conditions when such dispute is involved.

4. It is equally well established that a Court Commissioner cannot be appointed for the purpose of collecting evidence to support the case of either party. The Commissioner's role is not to substitute the evidence of the parties. The plaintiffs and defendants are free to adduce oral and documentary evidence during the course of trial to establish their respective claims regarding possession and title. Merely because the plaintiffs allege that possession was taken during pendency of the suit, cannot be a ground by itself to appoint a Court Commissioner in absence of a boundary or encroachment dispute.

5. In this view of the matter, and applying the settled principles of law, I do not find any exceptional circumstances warranting

interference with the earlier order dated 28th November 2024.

6. Hence, the interim application for recalling the order dated 28th November 2024 stands disposed of with the above observations. The parties are at liberty to prove their respective cases before the Civil Court by leading appropriate evidence.

(AMIT BORKAR, J.)