

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1403 OF 2026**

Kolhapur Central Prison Kalamba
Through Its Superintendent Nagnath G. Sawant

VERSUS

The Commissioner Kolhapur Municipal Corporation And Ors.

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Ms. Suchitradevi S. Ghorpade, Advocate for Petitioner.

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CORAM : **SACHIN S. DESHMUKH, J.**

DATE : **2nd APRIL, 2026**

P. C. :

1. The Petitioner has raised an exception to the order dated 02.03.2026 rendered by the learned Joint Civil Judge Senior Division, Kolhapur in R.C.S. No.577 of 2014 below Exhibit – 292 rejecting the application of appointment of Court Commissioner.
2. The Petitioner herein is the original plaintiff while the respondent herein are the defendants respectively. Hereafter, the parties shall be referred to as per their original status in the suit.
3. The Plaintiff - Kolhapur Central Prison had filed the said suit against the defendants seeking injunction in relation to the suit property. In the interregnum, the plaintiff preferred the application below Exhibit-292 seeking re-appointment of the Court commissioner contending that there is diversion in the report

submitted by the earlier Court Commissioner below Exhibits-243 and 245, respectively. However, the same was rejected by the order under challenge. Aggrieved by the same the Petitioner is before this Court.

4. Learned counsel for the petitioner/Plaintiff submits that the order under challenge is unsustainable in law. The trial Court has failed to appreciate that there are two terrace in the suit property i.e. one on the 5th floor and the other above the 5th floor. The Court Commissioner has failed to disclose this important fact which is necessary for proper adjudication of the suit. As such, prayed to allow the Petition.

5. Having heard the submissions and upon perusal of the record indicates that the Petitioner/Plaintiff is the Kolhapur Central Prison while the Respondent No.1 is the Kolhapur Municipal Corporation, who had granted permission for construction on the suit property and the respondent No.2 has developed the same at the instance of respondent No.3. That due to the said development, the prison security is in danger and accordingly the suit came to be instituted by the plaintiff.

6. Perusal of record further indicates that during the cross

examination of the Court Commissioner as well as the photographer, who inspected the site have made certain inconsistent statements with regard to the structure of the suit property. In order to further substantiate the said lacuna, it appears that the Petitioner has sought the reappointment of the Court Commissioner.

7. It is a settled position of law that the appointment of Court Commissioner is undertaken to assist the trial Court to ensure proper adjudication of the matter and not to gather evidence or fill lacuna to support the party contesting the suit.

8. Therefore, the re-appointment of Court Commissioner, in my considered view is not necessary. So far as the inconsistencies or contradictions are concerned regarding the Court Commissioner's report and eventual evidence, all those aspects can appropriately dealt with by the trial Court during the final arguments.

9. All these aspects are already appreciated and considered by the trial Court. Hence, no prejudice is caused to the Petitioner/Plaintiff and accordingly, I am not persuaded to cause interference in the well reasoned order under challenge.

10. Resultantly, the Petition stands dismissed.

[SACHIN S. DESHMUKH, J.]