

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8338 OF 2025

The General Tubes Pvt. Ltd. ...Petitioner
Versus
The Bombay Society for The Prevention of
Cruelty to Animals (Including) The Bai Sakarbai
Dinshaw Petit Hospital For Animals & Ors. ...Respondents

Mr. Pradeep Thorat a/w. Mr. Reyden L. Gonsalves i/b. Ms. Eventa
A. Gonsalves, for the Petitioner.
Mr. Jamil Khan a/w. Ms. Vibha Mishra, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATED : 4th FEBRUARY 2026

PC:-

1. Heard Mr. Thorat, learned Counsel appearing for the
Petitioner and Mr. Khan, learned Counsel appearing for the
Respondents.

2. By the present Writ Petition filed under Article 227 of the
Constitution of India, the Petitioner who is the original Defendant
has challenged the order dated 15th February 2025 passed by the
learned Judge of the Small Causes Court, Mumbai below Exhibit-
24 in T.E. Suit No.19 of 2019, which has been confirmed by the

learned Appellate Bench of the Small Causes Court by order dated 3rd May 2025 passed in Revision Application No.80 of 2025. The said application bearing Exhibit-24 has been filed for appointment of Court Commissioner to visit the suit premises with a photographer to take photographs as well as measurements of the suit premises as also appointment of Court Receiver is prayed. The said application has been allowed partly by appointment of Court Commissioner, however, the prayer for appointment of Court Receiver is rejected. The Court Receiver is sought to be appointed as it was the contention of the Respondents i.e. original Plaintiffs that the Petitioner i.e. Defendant is trying to create third party interest.

3. Mr. Thorat, learned Counsel appearing for the Petitioner tenders undertaking dated 3rd February 2026, wherein the Petitioner i.e. the Defendant has undertaken that the Defendant shall not create any third party rights in respect of the suit premises and shall not carry out any unauthorized construction on the said property during the pendency of the said T.E. Suit No.19 Of 2019. The said undertaking is taken on record and marked 'X' for identification.

4. Mr. Thorat, learned Counsel appearing for the Petitioner, on instructions of the Petitioner, submits that the Petitioner (original Defendant) is in the possession of the suit property. He submits that the Petitioner will only carry out tenantable repairs as per the provisions of law.

5. Mr. Thorat, learned Counsel submits that as far as the order appointing Court Commissioner is concerned, as per the settled legal position the Court Commissioner cannot be appointed to collect the evidence.

6. In view of the above contention raised by Mr. Thorat, learned Counsel appearing for the Petitioner, Mr. Khan, learned Counsel appearing for the Respondents submits that even if the Respondents are allowed to take inspection of the suit premises and allowed to take photographs and video shooting as well as allowed to measure the suit premises and for that purpose, an Architect, if allowed to visit the suit premises, then in that case, he has instructions not to press the prayers as sought in Exhibit-24 application.

7. Accordingly, by consent of the parties, the following order is passed:

ORDER

- (a) The order dated 15th February 2025 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-24 in T.E. Suit No.19 of 2019 as confirmed by the impugned order dated 3rd May 2025 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Revision Application No.80 of 2025 is set aside and the said Exhibit-24 application is disposed of in terms of this order.
- (b) The undertaking given by the Petitioner/Defendant that the Petitioner/Defendant shall not create any third party interest with respect to the suit property and shall not carry out any authorized construction on the said property is accepted as undertaking given to this Court.
- (c) The statement of Mr. Thorat, learned Counsel appearing for the Petitioner, made on instructions,

that the Petitioner is in possession of the suit property and except tenantable repairs they will not carry out any other repairs is accepted as undertaking given to this Court.

- (d) The Respondents/original Plaintiffs are allowed to visit the suit property along with Photographer, Architect, two staff members of Architect and one representative of the Respondents/original Plaintiffs for taking inspection of the suit premises, for taking measurement of the suit premises and also photographs and video shooting of the suit premises.
- (e) The Respondents shall give three days advance notice of such inspection to the Defendants and or their Advocates who are appearing before the learned Trial Court.

8. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

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[MADHAV J. JAMDAR, J.]