



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5498 OF 2026

Rajendra Kumar Mohatta and Ors.

...Petitioners

V/s.

Nargis Majid Oomerbhoy and Ors.

...Respondents

Mr. P. K. Dhakephalkar, *Senior Advocate* (Through VC) i/b Mr. Jaydeep Deo and Mr. Onkar Gawade for the Petitioners.

Mr. Pradeep Thorat with Mr. Ganesh Ambekar i/b Jariwala Associates, for Respondent Nos. 1 to 3

CORAM: SANDEEP V. MARNE, J.
RESERVED ON : 23 APRIL 2026.

PRONOUNCED ON : 7 May 2026

Judgment.:

1) The Petition is filed by Defendant Nos. 8 to 12 challenging orders passed by the Court of Small Causes at Mumbai on Applications at Exhibits-368, 292, 359, 326 and 392 filed in R.A.E Suit No. 8/10 of 2012. All the impugned orders relate to the manner of implementation of order dated 15 March 2025 by which Court Commissioner was appointed to visit the suit building for inspection and for performing various other acts alongwith sanctioned plan of the building. Since sanctioned plan of the building is not made available to the Court Commissioner, series of applications are filed at Exhibits-368, 292, 359, 326 and 392, and ultimately the Trial Court has directed Court Commissioner to carry out the Commission Work in absence of sanctioned plan of the building.

2) The details of the impugned orders as under:

Exh-292	The Application was filed by Plaintiff No. 2 for issuance of writ to the Court commissioner as per order dated 15 March 2025. The Application is allowed by order dated 13 October 2025 directing Court Commissioner to comply with the order dated 15 March 2025.
Exh-326	Application filed by Plaintiff for seeking presence of Court Commissioner before the Court. Disposed of vide order dated 4 December 2025 as infructuous.
Exh-359	Application filed for the purpose of issuance of writ to the Court Commissioner. Disposed of by order dated 28 November 2025
Exh-368	Application filed by Defendant Nos. 8 to 12 seeking review of orders dated 13 October 2025, 28 November 2025 and 4 December 2025 passed below Exhibits 292, 359 and 326. Rejected vide order dated 04 April 2026.
Exh-392	Application filed by Plaintiffs for issuing show cause notice to the Court Commissioner for not implementing the order dated 15 March 2025. Disposed of by order dated 4 April 2026 directing the Court Commissioner to complete commission work in absence of sanctioned plan of the building.

3) Thus, the main grievance of the Petitioners/Defendant Nos. 8 to 12 is that though order dated 15 March 2025 directed appointment of the Court Commissioner for the purpose of carrying out inspection with reference to sanctioned plan of the building, once it has transpired that the sanctioned plan of the building is not available, the very purpose of appointment of the Court Commissioner got frustrated and the Court could not have directed him to complete the Commission Work in absence of the Building Plan.

4) The case has a chequered history, and it is not necessary to narrate the same considering the narrow issue involved in the Petition. Suffice it to observe that open Plot of land bearing Nos. 12, 13 and 14 admeasuring 1843.89 square yards situated at Queen's Patton Road, Mumbai is the '**suit property**'. It is the case of the Plaintiffs that Defendant Nos. 1 to 7 are the lessees/tenants in respect of the suit property, being the heirs of late Rahim Karim Mistry. By Agreement dated 27 July 1950, late Rahim Karim Mistry assigned his right, title and interest in the suit property to late Shivratan G. Mohatta, who is the predecessor in title of the Defendant Nos. 8 to 12. A building of ground plus mezzanine plus 5 storeys is constructed on the suit property consisting of shops and other premises known as "Mohatta Cloth Market". Defendant Nos. 8 to 12 have apparently inducted several persons in the units of the building being Defendant Nos. 13 to 279. Plaintiffs/Respondent Nos. 1 to 3 has filed R.A.E. Suit No. 8/10 of 2012 before the Small Causes Court, Mumbai seeking eviction of the Defendants.

5) Plaintiffs had filed application for inspection of the suit premises under provisions of Section 28 of the Maharashtra Rent Control Act, 1999 (**Rent Act**), which was partly allowed by the Trial Court by order dated 23 August 2017, which was reversed in Revision by Appellate Bench by order dated 10 October 2019. By order dated 24 September 2024, this Court dismissed Writ Petition No. 1406 of 2020 challenging order dated 10 October 2019 passed by the Appellate Bench. This is how inspection of the suit building was denied to the Plaintiffs. Plaintiffs filed Special Leave to Appeal (C) No. 2257 of 2025 before the Hon'ble Supreme Court,

which did not interfere with this Court's order dated 24 September 2024. However, it granted liberty to either of the parties to move an application for appointment of local commissioner to be decided on its own merits.

6) Accordingly, Plaintiffs filed Application at Exh-118 under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (**Code**) seeking appointment of Court Commissioner for local investigation/inspection of the suit premises / suit building. By order dated 15 March 2025, the Small Causes Court allowed the Application and appointed an architect and valuer as Court Commissioner with directions to visit the suit building to take inspection and for performance of other enumerated acts by carrying the sanctioned plan of the building with him. Plaintiffs were directed to obtain certified copy of the sanctioned plan of the suit building from Municipal Corporation and file the same in the Court after procurement of sanctioned plan. Writ was thereafter directed to be issued to the Court Commissioner for conducting inspection. The order dated 15 March 2025 passed on Application at Exhibit 118 was confirmed in Revision by the Appellate Bench of the Small Causes Court vide order 9 June 2025. This Court dismissed Writ Petition No. 9546 of 2025 vide order dated 17 December 2025. This is how order dated 15 March 2025 passed below Exhibit 118 appointing Court Commissioner has attained finality.

7) Since Plaintiff was unable to procure copy of sanctioned plan from MCGM, Plaintiffs filed application at Exhibit 229 seeking direction for production of original sanctioned plan. The Application was allowed issuing direction to the Municipal Corporation to produce the

original sanctioned plan by order dated 9 September 2025. MCGM, however, communicated that the sanctioned plans of the building are not available. Plaintiffs therefore filed Application at Exhibit-292 for issuance of Writ of Summons to the Court Commissioner, who was not conducting inspection for implementation of order dated 15 March 2025. The Application at Exhibit-292 is allowed by Order dated 13 October 2025 directing the Court Commissioner to comply with the order dated 15 March 2025. The Applications filed by Plaintiffs at Exhibits-359 and 326 for the purpose of issuance of Writs to the Court Commissioner were disposed of by order dated 28 November 2025 and 4 December 2025 after recording presence of the Court Commissioner.

8) Petitioners/Defendant Nos. 8 to 12 filed Application at Exhibit-368 seeking Review of orders dated 13 October 2025, 28 November 2025 and 4 December 2025 passed on Applications at Exhibits 292, 359 and 326 respectively, which was rejected by order dated 4 April 2026.

9) In the above background, since Municipal Corporation was not making available the sanctioned plans of the building, the Plaintiffs filed Application at Exhibit-392 for issuance of Show Cause Notice to Court Commissioner for non-compliance with order dated 15 March 2025. By order dated 4 April 2026, the Trial Court has disposed of the Application with direction to the Court Commissioner to carry out commission work without the sanctioned plans.

10) Petitioners/Defendant Nos. 8 to 12 were aggrieved by various orders passed by the Trial Court as indicated above and have filed the present Petition.

11) I have heard Mr. Dhakephalkar, the learned Senior Advocate appearing for Petitioners and Mr. Thorat, the learned counsel appearing for Respondent Nos. 1 to 3/Plaintiffs. I have considered the submissions canvassed by them. I have gone through the findings recorded by the Trial and Appellate Courts. I have also perused the records of the case filed alongwith the Petition.

12) The main contention of the Petitioners/Defendant Nos. 8 to 12 is that the Court Commissioner cannot conduct inspection in the light of non-availability of the sanctioned plans with the MCGM. It is contended that the Court Commissioner was supposed to carry out inspection of the premises in the suit building with reference to the sanctioned plans of the building and since the plans are not available, conduct of inspection by Court Commissioner is an exercise in futility.

13) Defendant Nos. 8 to 12 have been opposing inspection of the suit building. This is the third round of litigation which has reached this Court on the aspect of inspection of suit building/suit premises. Initially, Plaintiffs' Application for inspection of suit premises under Section 28 of the Rent Act by the landlords was allowed by the Trial Court by order dated 23 August 2017. The Appellate Bench set aside the said order and this Court confirmed the order of the Appellate Bench by order dated 24 September 2024 passed in Writ Petition No. 1406 of 2020. The Hon'ble

Supreme Court has confirmed the order passed by this Court by passing order dated 3 February 2025 in Special Leave to Appeal (C) No. 2257 of 2025 but has expedited the trial of the suit. However, in para 1(f) of the order, the Hon'ble Supreme Court has made following observations:

(f) It shall be open for either of the parties to move an application for appointment of a Local Commissioner, which shall be considered and decided on its own merits uninfluenced by the outcome of the application filed by the petitioner herein, for his personal inspection, subject matter of instant petition.

14) In view of the liberty granted by the Hon'ble Supreme Court by order dated 3 February 2025, the Plaintiffs filed Application under Order XXVI Rule 9 of the Code for appointment of Court Commissioner. While allowing the Application at Exhibit-118, appointing the Court Commissioner, the Small Causes Court issued following directions:-

1. The application is partly allowed in following terms:
2. Mr. Pradeep N. Kushawar, Architect and Valuer is appointed as court commissioner.
3. The court commissioner is directed to visit the suit building, to take inspection of the suit building, to take note of actual and factual position of the suit building, total number of premises/units floor wise, their monthly rents/compensation/licence fees, additions and alterations and encroachments in the common areas and compulsory open space of the suit building if any, **as per sanctioned plan** and to take photographs, if required.
4. **The Commissioner shall carry the sanction plan of the building with him and file his detailed report with photographs, if required within 20 days from the date of issuance of commissioner's writ.**
5. Plaintiffs shall deposit Rs.30,000/- (Rs. Thirty Thousand only) towards commission fees within 03 working days from today i.e. on or before 19/03/2025.

6. Plaintiffs shall obtain certified copy of the sanctioned plan of the suit building from BMC Office and file the same before this court on or before 21/03/2025 for commission work and same shall be given to commissioner alongwith writ.

7. After filing true copy of sanction plan and payment of fees, writ be issued to court commissioner (architect) for conducting inspection.

8. The commissioner shall give five days advance notice of the proposed date of commission to plaintiffs and defendant Nos. 8 to 12 and 61.

9. The commissioner shall file his final report within 20 days from the date of issuance of writ.

10. The commissioner is entitled for commission fees on his filing the commission report.

(emphasis and underlining added)

15) The order of the Small Causes Court dated 15 March 2025 has been confirmed by the Appellate Bench of the Small Causes Court and by this Court.

16) Thus, as per order dated 15 March 2025, the Court Commissioner was directed to perform acts of inspection of building, take notes of the actual and factual position thereof, total number of premises/units floor wise, their monthly rents/compensation/license fees, additions and alterations as well as encroachment in the common areas/compulsory open spaces. These acts were required to be performed by comparing the structure with the sanctioned plan. A specific direction was issued to the Court Commissioner to carry with him sanctioned plan of the building while conducting the inspection. For that purpose, Plaintiffs were directed to obtain certified copy of the sanctioned plan of the suit building from MCGM. The registry was directed to issue Writ to

the Court Commissioner only after filing of true copy of sanctioned plan by the Plaintiffs. Thus, availability of sanctioned plan was the *sine qua non* for conduct of inspection by Court Commissioner as per order dated 15 March 2025.

17) Availability of sanctioned plan was necessary because the main purpose for which appointment of Court Commissioner was sought was to establish the ground of unauthorized additions and alterations in the suit property/suit building. However, it has finally transpired that the sanctioned plan is not available in the office of MCGM. Since copy of sanctioned plan was not filed with the Trial Court, initially writ was not issued to the Court Commissioner. The Trial Court ensured presence of Court Commissioner before itself and directed him to comply with order dated 15 March 2025 by passing orders on Applications at Exh-292, 359 and 326. Petitioners got aggrieved by the Trial Court summoning the Court Commissioner and directing him to comply with order dated 15 March 2025 as they believed that absence of sanctioned plan with MCGM rendered the order dated 15 March 2025 futile. Accordingly, they sought review of the orders dated 13 October 2025, 28 November 2025 and 4 December 2025. However, the Review Application was rejected by the Trial Court by order dated 4 April 2026. On the same day, the Trial Court has decided Plaintiffs' Application at Exhibit 392, which was filed for issuance of Show Cause Notice to the Court Commissioner, who was not carrying out inspection in pursuance of order dated 15 March 2025. By order dated 4 April 2026, the Trial Court has issued following directions:

1. The application filed for issuance of show cause notice is disposed off with the following directions to court commissioner.
2. **Court commissioner is directed to carry out commission work without sanctioned plan as it is not available in office of MCGM as per the written submission of concerned officer of MCGM at Exhibit 286.**
3. Learned advocate for defendant to furnish their address details as requested by court commissioner immediately.
4. Plaintiff is directed to bear the expenses of service of professional photographer subject to placing on record receipt of expenses of photographer by the court commissioner.
5. Court commissioner can place on record documents regarding additional fees required for commission work as stated by him in the application.
6. Court commissioner is directed as a last chance to carry out court commission work forthwith and to submit report as per order passed below Exh. 118.
7. If the court commissioner fails to carry out commission work, plaintiff is at liberty to take action against him in accordance with law.

(emphasis added)

18) Thus, the Court Commissioner is now directed to conduct the Commission in absence of sanctioned plan. As observed above, availability of sanction plan of the building is *sine qua non* for implementation of order dated 15 March 2025, as the said order had made it explicitly clear that the inspection was to be conducted only after availability of sanctioned plan of the building. Though some of the particulars such as total number of premises, amount of monthly rent, etc can be gathered without availability of sanctioned plan of the building, details relating to additions and alterations in the units and encroachment in common area / compulsory open space of the building cannot be ascertained without availability of the sanctioned plan. This is

the reason why the registry was directed to issue writ to the Court Commissioner only after filing of true copy of sanctioned plan by the Plaintiffs. Direction Nos. 4, 6 and 7 of order dated 15 March 2025 make it explicitly clear that conduct of inspection by the Court Commissioner in absence of copy of sanctioned plan of the building would be an exercise in futility. This position is not appreciated by the Trial Court while passing order dated 4 April 2026 on Exhibit-392 because while appointing the Court Commissioner by order dated 15 March 2025, the Trial Court has apparently found it mandatory to ensure that the Court Commissioner must carry out work in the manner envisaged in that order.

19) Another factor taken into consideration by the Trial Court while passing order dated 4 April 2026 is direction issued by the Hon'ble Supreme Court for expeditious decision of the suit. Because there is direction for expeditious decision of the suit, the Trial Court has apparently felt pressurized to complete the work of Commission, without realizing that the Commissioner cannot complete the work contemplated in the Order dated 15 March 2025 without a sanctioned building plan. The Trial Court has not conducted any inquiry nor has recorded any finding as to how the Court Commissioner can complete the task envisaged in the order dated 15 March 2025 in absence of sanctioned plan of the building. The findings recorded by the Trial Court in paragraph Nos. 8 and 9 of the order dated 4 April 2026 are as under:

8. By this application, Plaintiff is seeking relief to issue show cause notice to court commissioner for failing and neglect to carry out

commission work as per order passed below Exhibits 118 & 292. On perusal of record, it appears that court commissioner by filing application at Exhibit 372 and another application on 18.10.2025 requested court to furnish the copy of sanction plan, address of advocate for defendants, services from professional photographer etc. It is admitted fact that officer of the MCGM filed written application at Exh. 286 and submitted that sanctioned plan is not available in the office. Therefore, court has passed order below Exhibit 292 and directed commissioner to carry out commission work without sanction plan as it is not available in the office of MCGM as per the written submission made by concerned officer of MCGM at Exhibit 286. Till today neither Plaintiffs nor defendants have produced sanctioned plan on record. Concerned officer of MCGM submitted that sanction plan is not available in their office. In such circumstance, as the matter is made time bound by Hon'ble Apex Court and already extension of one year is sought by this court, it is the duty of both parties and Learned advocates for both sides as well as court commissioner to assist the court for concluding trial of the matter.

9. Instead of co-operating the court for concluding the trial, Learned advocate for defendants and commissioner is submitting that without sanctioned plan court commission work cannot be done or carried out. However, when the officers of MCGM has submitted that sanctioned plan is not available in their office, court has to proceed ahead and to implement the order of commission work. So far as the address of advocate of the defendant and utilization of service of professional photographer is concerned Learned advocate for defendant can provide the details thereof and plaintiff is directed to bear the cost of professional photographer. So far as the fee of court commissioner is concerned, he can place necessary document and claim his additional fees and for this reason court commissioner cannot any more delay the commission work. With this, I am of the view that instead of issuing show cause notice to court commissioner, it would be proper to give certain directions to court commissioner.

20) Thus, there is no discussion as to why Court Commissioner must conduct inspection even in absence of sanctioned plan of the building.

21) As observed above, the Court Commissioner is an architect and valuer. He would not be in a position to record any finding as to whether any additions and alterations are carried out by Defendant Nos. 13 to 279 in respect of units in their occupation. The Court Commissioner would also not be in a position to find out whether there is any encroachment in the common areas and open spaces of the building in absence of availability of sanctioned building plan. These two vital details cannot be noticed or reported by the Court Commissioner. Thus, the main purpose for which appointment of Court Commissioner was sought is rendered futile on account of non-availability of sanctioned building plan.

22) So far as other details relating to number of premises/units on each floor, names of tenants, rent/compensation/license fees paid by them and area of each premises are concerned, Mr. Dhakephalkar has fairly submitted that Defendant Nos. 8 to 12 are willing to offer those details to the Plaintiffs. In that view of the matter, it is not necessary to send the Court Commissioner to record details relating to total number of premises/units floor wise, monthly rent/compensation/license fees, names of tenants/licensees and areas of each premises/units.

23) Conduct of Commission Work, submission of report and its consideration would also involve substantial time. Parties to the suit are exceedingly litigious. They have litigated on the issue of inspection for the last nine long years. The initial application for inspection under Section 28 of the Rent Act was filed by Plaintiff in the year 2017, which was allowed on 23 August 2017. The Revision against that order was

allowed on 10 October 2019, and this Court confirmed the order of the Appellate Court on 24 September 2024. The Hon'ble Supreme Court confirmed the order of this Court by order dated 3 February 2025. Thus, time during the years 2017 to 2025 was spent while deciding request for inspection of suit premises by the landlords under Section 28 of the Rent Act. Thereafter, time from 15 March 2025 to 17 December 2025 was spent on the issue of appointment of Court Commissioner. After series of litigation on the issue of inspection, finally it has transpired that sanctioned plan itself is not available with MCGM. The Suit has already been expedited by the Hon'ble Apex Court by order dated 3 February 2025. In that view of the matter, it would not be in the interest of parties to spend time on conduct of inspection of the suit building which comprises of as many as 267 units especially when the building plan itself is not available.

24) In fact, non-conduct of inspection of the suit premises and suit building would enure to the benefit of Plaintiffs, who are complaining of Defendants delaying the suit. Parties are at acrimonious relations with each other, and it is seen from records that Plaintiffs had sought police protection for conduct of inspection by the Court Commissioner. This shows that conduct of inspection by Court Commissioner does not appear to be an easy task. Plaintiffs themselves had expressed apprehension of creation of law and order situation while conducting inspection by the Court Commissioner. The suit building is situated in one of the busiest and crowded areas of Mumbai city, close to Crawford Market. Thus, conduct of inspection by Court Commissioner, which is now rendered futile on account of non-availability of

sanctioned building plan, might be an arduous task for the Commission which is likely to result in filing of several applications and passing of numerous interlocutory orders, further delaying the progress of the suit. This is yet another reason why this Court is of the view that the conduct of inspection through Court Commissioner is not necessary, both in the light of non-availability of sanctioned building plan and willingness shown on the part of Defendant Nos. 8 to 12 to share various details.

25) Mr. Thorat has contended that inspection was also sought for the purpose of raising claim for *mesne* profits for which details of number of premises, their respective areas, names of occupants etc. are necessary. However, this is taken care of on account of statement made on behalf of the Defendant Nos. 8 to 12 as they are willing to make available those details to the Plaintiffs. Thus, the main purpose behind directing inspection is already fulfilled on account of readiness shown by Defendant Nos. 8 to 12 to share the necessary details with Plaintiffs. Therefore, instead of spending any further time on conduct of inspection, it is better that the trial of the suit progresses.

26) This Court is conscious of the fact that order dated 15 March 2025 appointing Court Commissioner has attained finality, and by interfering with the order dated 4 April 2026, the order dated 15 March 2025 would be rendered meaningless. However, this is necessary on account of recording of subsequent finding where the building plan itself is not available. If the Trial Court was made aware of the fact that the sanctioned building plan itself is not available, it is doubtful as to

whether it would have passed the order dated 15 March 2025 directing inspection for additions, alterations, encroachment etc.

27) At this stage, Mr. Thorat complains that Defendant Nos. 8 to 12 are wasting judicial time by conducting the unending cross-examination of the Plaintiffs. He has complained that witness(s) of Plaintiffs are being cross-examined for over 84 dates by the Defendants for delaying the decision of the suit. If this is the case, I am sure that the Trial Court would take necessary measures for ensuring that cross-examination is restricted only to the relevant issues to the suit and the Defendants in the suit do not protract the trial unnecessarily.

28) In the light of the above discussion, I proceed to pass the following Order:

(i) Order dated 4 April 2026 passed by Small Causes Court on Application at Exhibit-392 is set aside.

(ii) Defendant Nos. 8 to 12 are directed to share with Plaintiffs the details relating to number of premises/units in the suit building floor wise, their respective areas, names of tenants / occupants / licensees and monthly rent / compensation / license fees within a period of two weeks by filing affidavit before the Trial Court to that effect.

26) With the above directions the Writ Petition is partly allowed and **disposed of.**

[SANDEEP V. MARNE, J.]