

MHBU070006642016



Order Below Application (Ex.82).

(Passed on 20.04.2022)

1. Present application is moved by the defendant U/o. 26 Rule 9 r/w O.39 R.7 of C.P.C. for appointment of commissioner for verifying factual situation.
2. In the application the defendant has claimed that the plaintiff has started demolition of upper floor of the building and on the ground floor his shop is situated. It is claimed the demolition of upper floor may also result in to demolition of his shop. The defendant has further claimed that considering such peculiar situation, it is necessary that commissioner be appointed to verify the factual position and it would be helpful for the Court to decide whether the injunction order can be passed or not. It is further claimed that no prejudice will be caused to the plaintiff if this application is allowed and commissioner is appointed. With such submission, the defendant has prayed to allow the application and appoint commissioner to verify factual situation.
3. The plaintiff has filed its say vide Exh. 83 and contested the application. In the say, the plaintiff has claimed that the defendant has moved this application on false and baseless grounds and he is interested in prolonging the suit for indefinite period. In the say, the plaintiff has pointed out that similar applications were moved by the defendant previously and they were rejected by the court on merit. The plaintiff has further pointed out the by moving such application the defendant is trying collect evidence with assistance of the Court and such thing is not permissible in law. With such submission, the plaintiff has prayed to reject the application.

4. Heard both sides.

5. Here, the defendant is claiming that the plaintiff has undertaken demolition work of the first floor of the building and since his shop is situated in the ground floor, there is strong possibility that during demolition of first floor, his shop will also collapse. However, such claim of defendant do not seems to be reasonable. Record shows that present application was moved in the month of November, 2021 and since then, nearabout 5 months have been passed. If the plaintiff was really intending to ouster the defendant by demolishing the first floor and the suit shop, it was possible for it to do such thing till date. However, till date the defendant has not made such allegation against the plaintiff and this fact shows that the fear/anticipation of the defendant is vague and baseless.

6. Further, on perusal of application, it can be seen that the defendant has not specifically mentioned for what purpose he is seeking appointment of commissioner. The defendant has just narrated that after appointment of commissioner true facts will come to the knowledge of Court. Since, the defendant is seeking appointment of commissioner under U/o. 26 Rule 9 r/w O.39 R.7 of C.P.C., it was necessary for the defendant to mention the specific purpose of such appointment. However, the application do not show any such specific purpose and this fact itself shows that the defendant is interested in delaying the trial and keep the suit pending on this and that count.

7. Further, in support of the application, the defendant has relied upon *Yesabrao s/o Rangrao Lokhande -vs- Maroti s/o Late Nagan Bitewar* reported in *2003 BCI 259, Madhukar R. Javle -vs- Baskar*

Ramnath Shibad reported in **1996(2) Bom. C.R. 408** and *Yeshawant Bahduji Ghuse -vs- Vithobaji Laxmanb Ladeakr* reported in **2010(3) Bom. C.R. 373**. However, with due respect, above case laws are not applicable to facts of this suit. In *Yesabrao Rangrao Lokhande's* case there was dispute regarding encroachment and therefore, commissioner form TILR Office was appointed for carrying out joint measurement. Further, *Madhukar R. Javle's* case there was dispute regarding determination of standard rent and therefore, commission was appointed for inspection of another flat which was similar to the suit flat. Further, in *Yeshawant Bahduji Ghuse's* case there was dispute regarding boundary and therefore, Hon'ble Bombay High Court was pleased to appoint commission to obtain evidence which by its peculiar nature can be had on the spot. However, here, the defendant has not specifically narrated the purpose for which he seeks appointment of commissioner. He has just claimed that the plaintiff has started demolition work and by appointing commissioner, factual position will be before the Court. Hence, though the defendant has relied upon above case laws in support of the application, with due respect, Court cannot grant the relief sought by the defendant. The application appears to be devoid of merit and it deserves to be rejected. Therefore I am passing following order-

Order

Application (Exh. 82) is hereby rejected.

Place : Shegaon.
Date : 20.04.2022.

Sd/-
(J.R Ghadge)
Civil Judge Junior Division
Shegaon, Dist. Buldana.

I, *K.S. Deshmukh*, Stenographer of C.J.J.D. & J.M.F.C. Court No.1, Shegaon affirm that the contents of this P.D.F. file order is correct word to word as per the Original Order.