

In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Mrs. U. S. Babar, Judge)

Dispute No. CCT 212/2012
CNR No. MHCO04-000019-2012

Shri. Vilas Jawale

Disputant

V/S

Rupee Co-operative Bank Ltd. and others

Opponents

Order
(Below application Exh. 54)

1. Disputant has filed present application for appointment of Court Commissioner under Order 26 Rule 1 of CPC.

Brief facts of the application are as under : -

2. It is the contention of the disputant that he has filed dispute for permanent injunction for restraining opponent no.3 for auctioning the flat no. 301 on the 3rd floor of the society in recovery proceeding initiated by Recovery Officer. Disputant has filed his evidence affidavit but during the cross, disputant was not feeling well because of giddiness. He was not feeling well for further dates also. He met an accident therefore he could not walk. He could not attend the Court because of ill health and also cannot stand properly. He is not in a physical condition to travel long distance. Therefore disputant prayed that the Court Commissioner be appointed to conduct his cross examination.

3. Opponent no. 1 and 2 have filed their say and contended that the disputant is undergoing rehabilitation and physiotherapy. His health is very much improved by the time. Therefore application be rejected. Opponent no.4 has filed their say at Exh. 59 and

contended that the health conditions of the disputant were not good. He cannot walk without support of other person. He was not in a position to answer the questions due to illness. Therefore considering the situation in the interest of justice Court may pass proper order and present opponent has no objection for appointing Court Commissioner.

4. Considering the rival contentions the following issues are raised for my consideration and I have given findings on each of them with reasons as under :-

Sr. No.	Issues	Findings
1	Whether the Court Commissioner is required to be appointed ?	In the affirmative
2	What order ?	As per final order

REASONS

5. I have perused application, say filed by the opponents. Heard both sides. Perused documents on record.

AS TO ISSUE NO. 1

6. It is the contention of the disputant that he has filed evidence affidavit and thereafter he was not feeling well during the cross examination. Thereafter he met an accident hence he could not walk. He cannot walk properly. He is suffering from various age related ailments. He is not in a physical condition to travel long distance. Therefore Court Commissioner be appointed for taking cross examination.

7. It is the contention of opponent no.1 and 2 that almost ten months have passed for the incident. Disputant was undergoing rehabilitation and physiotherapy and his health is improved.

Therefore application requires to be rejected. Opponent no.4 supported the contention of the disputant.

8. Disputant has filed present dispute for permanent injunction restraining the opponent no.3 from auctioning the flat no. 301 on the 3rd floor of the Triveni Deep society in recovery proceeding and for other reliefs. Upon considering the affidavit of the disputant as well as medical papers on record it reveals that disputant is suffering from various illness. On perusing the concession certificate filed along with list Exh. 56 it reveals that disputant cannot travel without the assistance and he is permanently disabled. Upon perusing the certificate issued by New Life Orthopaedic Rehabilitation Center it reveals that disputant is unable to stand properly and walk. Therefore considering all these medical evidence on record it appears that disputant is unable to come before the Court. Matter is pending for cross examination of the disputant. Therefore I am of the view that in the interest of justice, Court Commissioner is required to be appointed for the cross examination of the disputant. Hence I have answered issue no. 1 in the affirmative and for issue no. 2 I pass the following order.

Order

1. Application at Exh. 54 is allowed.
2. Shri. D. H. Daund is hereby appointed as a Court Commissioner to record the cross examination of the disputant and directed to submit the report.
3. Concerned clerk is directed to issue writ of Commission work to Commissioner.
4. Disputant to pay commission fee of Rs. 7000/- to the Commissioner in advance.

Place : Thane

Date : 16 / 03 / 2018

(Mrs. U. S. Babar)

Judge

Co-operative Court, Thane