

MHKO090000852020



ORDER BELOW EXH. 56 IN REG. CIVIL SUIT NO. 37/2020

1. Perused the application and say. The application is filed for local inspection under Order XVI Rule 9 of the Code of Civil Procedure.
2. Before deciding application, it is useful to see material pleadings in the plaint and what prayer is made by the plaintiffs. The suit is filed for declaration and injunction with regard to the disputed public toilet. It appears that defendant No. 2 has issued one notice to defendant No. 6 for demolition of it. This notice is challenged by the plaintiffs and further they pray that the toilet shall not be demolished.
3. Further it appears from the rival pleadings that the notice was issued on the complaints made by defendant No. 6 and others on the ground of nuisance. Therefore, now by way of this application, the plaintiffs are praying that to ascertain nuisance and other existing situation of the toilet, it is very necessary to make local inspection. In the absence of it, the actual situation on the spot will not come on record. It will also not possible to adduce evidence in this regard.
4. A person, who has made several complaints about this toilet, is made party in this suit, as defendant No. 7.

Importantly, he has given no objection for the local inspection. After considering application, I find that nuisance is such a kind of fact, which is caused by several reasons. There will not be a single reason for it. The day to day sanitization, hygiene and cleanliness are such reasons and if there are lapses in it, the nuisance can be caused to the persons residing nearby. Other reasons are also relevant like construction condition of the toilet, etc., which may cause nuisance. These facts can better be brought on record by local inspection.

5. It is held by the Hon'ble Bombay High Court that when nature of the fact is such that it can only be brought on record by local inspection, then court commissioner can be ordered. Similarly, in the cases where oral evidence cannot be adduced properly, the local inspection can be ordered. Hence I find that, here such order can be passed and most importantly, when defendant No. 6 has given no objection, there is no legal hurdle to pass it. Accordingly, I pass the following order -

ORDER

1. Application Exh. 56 is allowed.
2. The court commissioner be appointed with consent of both the sides, who shall inspect the disputed toilet (as described in plaint paragraph No. 1), in the light of pleadings made in paragraph No. 3 of the application Exh. 56.

3. The detail report with topographical situation and map be placed on record with specific observations regarding the alleged nuisance.
4. The court commissioner shall cause local inspection after serving notice to both the sides and file its report as early as possible.
5. Necessary commission charges shall be borne by the plaintiffs.
6. In case the parties do not agree on the name of court commissioner, the court will appoint it.
7. Issue letter accordingly.

Date : 24.07.2023

(G. V. Deshpande)
Civil Judge Senior Division,
Gadhinglaj