

MHLA170032942023



R. C. S. No.510/2023
Old R. C. S. No.518/2016
Rushikesh Deshmukh Vs.
The Secretary Ministry of Road
Transport and Highway and others.

ORDER BELOW EXH.102
(Order Passed on the Day of 30th April, 2026)

The plaintiff has filed application under Order XLVII Rule 1 (B) of the Code of Civil Procedure submitting that, the application (Exh.95) filed by the plaintiff for appointment of Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure for the joint measurement of the suit property and property of defendant No. 4 and previous application filed by the plaintiff have been rejected by this Court. The previous application was rejected by giving second opportunity for filing the application for Court Commissioner after commencement of trial.

The plaintiff further submits that, defendant No. 4 objected the application on the ground of its maintainability by applying provision of *Res-judicata*. The order passed by this Court below Exh. 77 rejecting the application of the plaintiff was challenged by filing Writ Petition No. 6321/2022 before the Honourable High Court, Bench at Aurangabad. Wherein the Honourable High Court has given an opportunity to the plaintiff to file fresh application after leading evidence and the Honourable High Court has directed to this Court to decide application

independently without influencing the observation of previous application. Hence, the provision of *Res-judicata* is not applicable to this application. Therefore, the order passed by the Court below Exh. 95 may be review and application below Exh. 95 may be entertain and be decided according to the directions of the Honourable High Court.

While hearing of the application the concerned advocate has not conveyed the order in Writ Petition No. 6321/2022 dated 10/12/2025 to the plaintiff. Therefore, this review application is filed by the plaintiff. Hence, the plaintiff prayed to allow his application by setting aside order passed below Exh. 95 in view of order passed by the Honourable High Court in Writ Petition No.6321/2022.

2. Perused the say (Exh.106) of defendant No. 4. He has objected the application on the grounds that, the application is legally misconceived and untenable in the law. The order below Exh. 95 has not been challenged on merits and has attained finality. Therefore, the said order passed below Exh. 95 cannot be reviewed as per the contentions raised in the application which are beyond the scope of provisions of Order 47 Rule 1 of the Code of Civil Procedure. Similarly the application is not in the form as provided under Order 47 Rule 3 of the Code of Civil Procedure. Therefore, there are no sufficient grounds for review order passed below Exh.95.

Already order passed below Exh. 77 has been confirmed by the Honourable High Court while dismissing the Writ Petition of the plaintiff. Therefore, order passed below Exh. 77 has become final and conclusive. The plaintiff has filed this application only to cause delay in the proceedings. The suit is 10 years old and defendant No. 4 is deprived from getting the amount of compensation awarded to him since then. The plaintiff by abuse of process of law is trying to protract the trial. The application is not filed according to the directions of the Honourable High Court. Therefore, defendant No. 4 prayed to reject the application with costs.

3. Heard learned counsels for both the parties. Perused the record. The application filed by the plaintiff below Exh. 77 for appointment of Court Commissioner was rejected in view of order passed on 30/03/2022. The Honourable High Court has considered in the order passed in Writ Petition No. 6321/2022 that, the Court Commissioner cannot be appointed for the purpose of correction of evidence before the party has led its evidence. Therefore, the trial Court has rejected the application filed by the plaintiff. Hence, the Writ Petition is dismissed by the Honourable High Court with granting liberty to the plaintiff to file fresh application after he has led his evidence.

It is further directed by the Honourable High Court that, the trial Court has to decide the said application independently in accordance with law. The trial Court shall

not be influenced by the observations made by it while rejecting the earlier application. Accordingly, the application below Exh. 95 is decided on merits by this Court considering all the aspects, direction issued by the Honourable High Court and by hearing both the parties to the suit.

Therefore, the provisions under Order 47 Rule 1(B) of the Code of Civil Procedure are not applicable to the present application. Hence, the order passed below Exh. 95 cannot be set aside and reviewed. Therefore, the application of the plaintiff is liable to be rejected. Hence, I pass following order:-

ORDER

The application is rejected.

Date:-30.04.2026.

(P. I. Mokashi)
Civil Judge Senior Division, AUSA.