**An application for appointment of a court commissioner**

IN THE COURT OF THE SMALL CAUSES JUDGE,

Civil Suit No.

Shri P\_\_S\_\_D\_\_ \_ Plaintiff

Versus
Shri S M P \_ Defendant

AN APPLICATION ON BEHALF OF THE DEFENDANT FOR APPOINTMENT OF A COURT COMMISSIONER

The defendant above-named submits this application, praying to state as follows:

1. That the plaintiff has filed the present suit against this defendant for fixation of standard rent and recovery of possession.

2. That this defendant has accordingly filed his written statement
separately and also an application for the grant of stay.

3. That this defendant respectfully submits for the kind perusal and sympathetic consideration of this Hon'ble Court that the plaintiff says that the area occupied by and in possession of this defendant is 280 sqft, while the actual area is 480 sqft approximately.

4. That this defendant also submits that with a view to confirming the actual area occupied by and in possession of this defendant and also taking the measurements of the suit premises, it is indispensable that this Hon'ble Court be pleased to appoint a court commissioner.

5. That this defendant submits that the plaintiff has tried to mislead this Hon'ble Court by purposely mentioning the wrong area of 280 sqft instead of the actual area of 480. sqft.

6. That this defendant submits that if this Hon'ble Court is not pleased to grant this application for the appointment of a court commissioner, this defendant will suffer irreparable loss and damages.

7. That this defendant also submits that unless the plaintiff amends the plaint itself by mentioning the area of the suit area to be 480 sqft approximately, no facts will come before the Hon'ble Court.

8. That this defendant furthermore submits that if the plaintiff on his own does not amend the plaint and rectify the mistake in respect of the actual area, the appointment of a court commissioner is but a must, and hence, this application.

9. That this defendant also respectfully submits for the kind consideration of this Hon'ble Court that the plaintiff through his agents on at 9.00 a.m. tried to demolish a part of the suit premises so as to reduce the same to the area from 480 sqft to 280 sqft.

10. That this defendant furthermore submits that unless the appointment of a court commissioner is made and the exact and actual area of the suit premises cannot be brought on record of this Hon'ble Court, and this defendant also cannot submit his say in that respect, and hence, the appointment of a court commissioner is not only essential but also in the interest of justice.

11. That this defendant submits that if no court commissioner is appointed, the defendant is afraid that the actual record and details with special reference to the area of the suit premises will never be available, and hence, for want of the facts, this defendant shall be subjected to suffer irreparable loss and damages and flagrant injustice shall also be done to this defendant for no fault on his part.

12. That this application being chargeable with a fixed rate of court-fee, the same is paid herewith.

13. That this defendant, therefore, prays that this Hon'ble Court be pleased to appoint a court commissioner in the matter.

14. That this defendant submits that he is ready and willing to pay and deposit in this Hon'ble Court the necessary amount towards the expenses on account of the appointment of a court commissioner.

15. That an affidavit in support hereof is filed herewith.

Mumbai, Sd/-SMP

 DEFENDANT
Dated:

Sd/- xXx

ADVOCATE FOR DEFENDANT

IN THE COURT OF THE SMALL CAUSES JUDGE, MUMBAI

AT MUMBAI

Civil Suit No. 500/ 2009

Shri \_\_.. P\_\_.S\_\_.D\_\_. \_ Plaintiff

 Versus
Shri \_\_.. S\_\_.M\_\_.P\_\_. \_ Defendant

**AFFIDAVIT**

I, Shri SMP, the present defendant, do hereby state on solemn affirmation as follows :

1. That the plaintiff has filed the present suit against this defendant
for fixation of standard rent and recovery of possession.

2. That this defendant has accordingly filed his written statement separately and also an application for the grant of stay.

3. That this defendant respectfully submits for the kind perusal and
sympathetic consideration of this Hon'ble Court that the plaintiff says that the area occupied by and in possession of this defendant is 280 sqft, while the actual area is 480 sqft approximately.

4. That this defendant also submits that with a view to confirming the actual area occupied by and in possession of this defendant and also taking the measurements of the suit premises, it is indispensable that this Hon'ble Court be pleased to appoint a court commissioner.

5. That this defendant submits that the plaintiff has tried to mislead this Hon'ble Court by purposely mentioning the wrong area of 280 sqft instead of the actual area of 480 sqft.

6. That this defendant submits that if this Hon'ble Court is not pleased to grant this application for the appointment of a court commissioner, this defendant will suffer irreparable loss and damages.

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8. That this defendant furthermore submits that if the plaintiff on his own does not amend the plaint and rectify the mistake in respect of the actual area, the appointment of a court commissioner is but a must, and hence, this application.

9. That this defendant also respectfully submits for the kind consideration of this Hon'ble Court that the plaintiff through his agents on at 9.00 a.m. tried to demolish a part of the suit premises so as to reduce the same to the area from 480 sqft to 280 sqft.

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11. That this defendant submits that if no court commissioner is appointed, the defendant is afraid that the actual record and details with special reference to the area of the suit premises will never be available, and hence, for want of the facts, this defendant shall be subjected to suffer irreparable loss and damages, and flagrant injustice shall also be done to this defendant for no fault on his part. WHATEVER stated above in paras 1 to 11 is true and correct to the best of my knowledge and belief, and so I have signed hereunder at Mumbai this day of 200\_

 Sd/-SMP
I know the Defendant. DEFENDANT

Sd/- xXx ADVOCATE