

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6601 OF 2014

1. Executive Engineer,
Maharashtra State Electricity
Distribution Company Ltd., Beed,
Tal. Beed, Dist. Beed.
 2. Assistant Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Sub Division Office, Ashti,
Tal. Ashti, Dist. Beed.
 3. Junior Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Sub Division Office, Dhanora,
Tal. Ashti, Dist. Beed.
- ...Petitioners

versus

1. Babasaheb S/o. Nanasaheb Pisore,
Age: 57 yrs., Occ. : Agri.,
R/o Daula Wadgoan,
Tal. Ashti, Dist. Beed.
 2. Sonabai W/o Babasaheb Pisore,
Age: 52 yrs., Occ.: Agri.,
R/o. As above.
 3. Ravindra S/o Babasaheb Pisore,
Age: 33 yrs., Occ.: Agri.,
R/o. As above.
 4. Kiran S/o Babasaheb Pisore,
Age: 37 yrs., Occ.: Agri.,
R/o. As above.
- ...Respondents

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Mr. P. B. Paithankar, Advocate for petitioners.
Mr. S. J. Salunke, Advocate for respondents.

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CORAM : N.W. SAMBRE, J.

DATE : 25TH FEBRUARY, 2015

ORAL ORDER :

. This petition is by the defendants to Regular Civil Suit No. 13 of 2013 filed by farmers claiming compensation against the petitioners-Board for causing loss to their Mango trees which they have planted in their agricultural farm. It is the case of plaintiffs before the trial Court that, because of negligent act of the officials of petitioners-Board, fire has caused the damage to their mango trees and as such, suit.

2. In the suit, the plaintiffs moved an application-Exhibit-16 under Order 26 Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner. The said application came to be granted by learned trial Court by an order dated 25/03/2014. As such, present writ petition.

3. Mr. Paithankar, learned Counsel for the petitioners-Board has sought to urge that, once there is enough documentary evidence on record, such as panchanama etc., the appointment of Court Commissioner is not need of situation and he further urged that, by granting such application, the learned trial Court has granted

premium to the plaintiffs of collection of evidence. He further urged that, the impugned order does not stand to the scrutiny of the requirements of Order 26 Rule 9 of the Code of Civil Procedure.

3. While contesting the above referred contentions, Mr. Salunke, learned Counsel for the respondents would urge that, the reasons cited in the application-Exhibit-16 would very much substantiate the requirement of the appointment of the Court Commissioner. He would urge that a clear case is made out by the plaintiffs-respondents for appointment of Court Commissioner. The point that is sought to be urged before this Court was at all not argued before learned trial Court at the time of objecting the application for appointment of Court Commissioner and for the said, he has invited my attention to Exhibit-19-reply given by the petitioners-Board to the application-Exhibit-16 for appointment of Court Commissioner. He would further urge that, appointment of Court Commissioner is sought for the purpose of preparing report so as that same can be considered in the aid of the parties for reaching to an appropriate conclusion in the matter of adjudicating the issue involved. He submits that, learned trial Court has rightly exercised discretion and sought dismissal of the present writ petition.

4. After giving thoughtful consideration to the issues

canvassed before this Court, it is noticed that, the plaintiffs have filed a suit for recovery of the damages based on the damages caused to their mango trees because of alleged negligent act on the part of the officials of the defendants.

5. In the application for appointment of Court Commissioner i. e. Exhibit-16, the plaintiffs have narrated in detail the cause for invoking the provisions of Order 26 Rule 9 of the Code of Civil Procedure. Perusal of cause cited therein, *prima facie*, does not show that if the said application is granted for appointment of Court Commissioner, same would amount to collection of evidence. It is the case of defendants themselves that, there is sufficient iota of documentary evidence on record and would hardly remains anything for Court Commissioner to verify once the trees in question were already destroyed because of fire.

6. So far as the above referred contention is concerned, the same can be gone into and evaluated by learned trial Court at the time of appreciating evidence in the line with the pleadings of the parties. However, learned trial Court in its discretion, in my opinion, has noticed that though appointment of Court Commissioner was made out, the order passed by learned trial Court is based upon the legal principles, which are squarely made applicable to facts of the

present case. In my opinion, learned trial Court has rightly exercised jurisdiction. No case for interference is made out. As such, writ petition fails, same stands dismissed.

[N.W. SAMBRE, J.]