

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

WRIT PETITION NO. 2853 OF 2016

Mumtaz Hanif Tumbi

..PETITIONER

VERSUS

Sunanda Kachrual Bora and Another

..RESPONDENTS

....

Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for petitioner.

Mr. D.S. Bharuka, Advocate for Respondent No.1.

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CORAM : T.V. NALAWADE, J.

DATED : 04th OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by Civil Judge, Junior Division, Aurangabad in Regular Civil Suit No. 1082 of 2013. The application filed at Exhibit 42 by the plaintiff for appointment of Court Commissioner for recording the cross-examination of the plaintiff is allowed by the Court. Both sides heard.

2. On the date of the filing of the suit in the year 2013, the plaintiff was about 75 years of age. She has filed evidence on affidavit as provided under Order 18 Rule 4 of the Code of Civil Procedure. The application was then moved for appointment of Court Commissioner for

recording the evidence in the house of the plaintiff and it was submitted that she was not in a position to walk or speak properly due to her old age. This application was opposed by the other side and after hearing both the sides, the application is allowed.

3. The learned Counsel for petitioner took this Court through some observations made by Full Bench of this Court in case **2010(1) All M.R. 661 (Harish Vs. Pradeep)**. This Court has observed that the provision of Order 18 Rule 4(2) gives discretion of the Court and the discretion needs to be used in view of the facts and circumstances of that Court. The relevant facts of the present case are already quoted. There is discretionary power to the Court and there are aforesaid facts like old age of the plaintiff, she had crossed the age of 75 years. The plaintiff is living in Aurangabad and the case is pending in Aurangabad.

4. In view of these circumstances, no inconvenience will be caused to the other side. This Court sees no reason to interfere in the order made by the Trial Court. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

SSD