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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4425/2017

Pratap Ramrao Patil & another.

...Petitioners..

Versus

Dnyanoba Naghnath Suryawanshi & others.

...Respondents...

.....

Smt.Mate, Advocate h/f Lex Aquila, Advocate for
petitioners.

.....

CORAM: M.S. SANKLECHA, J.

DATE: 17.04.2017

ORDER :

1] This petition challenges the order dated 21.4.2016 passed by the learned Civil Judge (S.D.), Nilanga. By the impugned order dated 21.4.2016, the learned Judge rejected the petitioners' application for appointment of Court Commissioner as the plaintiffs' right of way on the road is being obstructed by the defendants resulting in the plaintiffs not being able to carry goods and animals to their property being Survey No.47. The rejection was on the ground that the Court Commissioner cannot be

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appointed to collect the evidence for the parties and it is for the parties to lead evidence in support of their case.

2] Smt.Mate, learned counsel for the petitioners, seeks to withdraw this petition with liberty to file a fresh application for the appointment of Court Commissioner after completion of evidence, if necessary.

3] The writ petition is dismissed as withdrawn with aforesaid liberty. It is clarified that if the application for appointment of Court Commissioner is made by the petitioners, the same would be decided by the learned Civil Judge (S.D.) on its own merits. The mere grant of liberty by this Court to make such an application should not be construed as grant of an application for appointment of Court Commissioner.

(M.S. SANKLECHA, J.)