

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

WRIT PETITION NO. 7264 OF 2015

MANOJ EKNATH KOMATWAR AND OTHERS
VERSUS
NAMDEO RAMBHAU SAKHARE

...
Advocate for Petitioners : Shri Kudale Bhagwan S..
Advocate for Respondent : Shri Shingare Chandrasen A..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th September, 2017

Per Court:

1 The Petitioners are aggrieved by the order dated 24.03.2015 by which the Trial Court has allowed the application Exhibit-34 and directed the appointment of a Court Commissioner even prior to the decision on the application Exhibit-5 seeking temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

2 The learned Advocate for the Respondent has strenuously defended the impugned order and submits that if the effect of Section 75 r/w Order 39 of the Code of Civil Procedure is to be considered, a court commissioner can be appointed at any stage in the matter. In this regard, he relies upon the judgment delivered by this Court (Coram : S.T.Kharche, J.) in the matter of Kashinath Ramkrishna Chopade vs. Purushottam

Tulshiram Tekade and others, 2005 (4) Mh.L.J. 471, by which it is held that a court commissioner can be appointed at any stage.

3 This Court has consistently taken a view that a court commissioner cannot be appointed prior to the recording of evidence since it would practically amount to collecting of evidence. The litigating sides have to step into the witness box. The purpose for appointment of a court commissioner is to elicit further information which may not have come before the Court or which may be required in the backdrop of the oral and documentary evidence available, for a more advantageous adjudication of the suit.

4 This Court (Coram : S.V.Gangapurwala, J.), by the judgment dated 12.06.2013 in Writ Petition No.6700/2011 (Gangaram Baban Tagad and others vs. Sarubai Yashwant Tagad and others), has concluded that the court commissioner should normally be appointed only after the recording of evidence has commenced.

5 The learned Advocates confirm that the Trial Court is yet to decide the application Exhibit-5.

6 It is only in the above fact situation that this Writ Petition is partly allowed. The impugned order dated 24.03.2015 is quashed and set aside and Exhibit-34 is disposed of.

7 For the benefit of the litigating sides, it needs mention that after the commencement of the recording of evidence, if either of the

litigating side makes an application for appointment of a court commissioner, the Trial Court shall consider the same on it's own merits.

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(RAVINDRA V. GHUGE, J.)