

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12711 OF 2016

ARJUN DHONDIBA RASKAR
VERSUS
RAMDAS DHONDIBA RASKAR AND ANOTHER

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Advocate for Petitioner : Shri Thigale Girish K. (Naik)

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 12, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 16.3.2016, by which, application Exhibit 73 filed by the petitioner for seeking appointment of a Court Commissioner under Order XXVI Rule 9 of the CPC has been rejected.

2. Shri Thigale, learned Advocate for the petitioner has strenuously criticized the impugned order.

3. Considering the above and the grounds set out in the memo of the petition, I am not entertaining this petition only for the reason that application Exhibit 70 was filed before the trial Court prior to the commencement of the trial. The issues were yet to be cast. This Court (Coram : S.V.Gangapurawala, J.) has concluded in Writ Petition No.9089 of 2011 (Ayyaz Shoukatali Sayyed Versus Mohd. Moid @

Ajamatali) dated 17.1.2012 and Writ Petition No. 8877 of 2013
(Chandrakant Kashinath Dike Vs. Smt. Satyabhama Vishwanath Dike)
dated 17.1.2014, that a Court Commissioner ought not to be appointed prior to commencement of the trial since the purpose of such appointment is not for collecting evidence.

4. It is settled law that notwithstanding whether any application filed by any litigating side seeking appointment of Court Commissioner has been rejected prior to the commencement of the trial, it would not be an impediment to the litigating sides from moving such an application after the trial has commenced. Such application can be decided on its own merits.

5. With the above observations, this petition is disposed off.

(RAVINDRA V. GHUGE, J.)

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