

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

928 WRIT PETITION NO. 11639 OF 2014

PANDIT NIVRUTTI JAGTAP AND ANOTHER
VERSUS
THE MAHARASHTRA STATE FARMING CORPORATION, PUNE

...

Advocate for Petitioners : Mr. Rahul R. Karpe.

Advocate for Respondent : Mr. Parag Vijay Barde.

...

CORAM : **V. K. JADHAV, J.**

DATE : 05th December, 2017.

ORDER:

. The Petitioners / original Defendants have challenged the order passed by the Trial Court below Exhibit 18 filed by the Respondent / original Plaintiff seeking appointment of Court Commissioner.

2 The Respondent / Plaintiff has also filed an application Exhibit 5 for issuance of temporary injunction to protect his possession over the suit property. The learned Judge of the Trial Court has decided both the applications i.e. Exhibit 5 and Exhibit 18 by the impugned common order dated 28th November, 2014. So far as application Exhibit 5 is concerned, the Trial Court has allowed the application restraining the Petitioners / Defendants from carrying out any construction over the suit plot till the disposal of the suit and also

allowed the application Exhibit 18 seeking appointment of Court Commissioner. Being aggrieved by the order passed below Exhibit 18 to the extent of appointment of Court Commissioner, the Petitioners / Defendants have filed the present writ petition.

3 There is no dispute that the Trial Court has allowed the application Exhibit 18 at premature stage and even prior to filing of the written statement by the Petitioners / Defendants. This Court in catena of cases held that before filing of the written statement and even before deciding the application seeking temporary injunction, the application seeking appointment of Court Commissioner should not be decided. However, the Respondent / Plaintiff has liberty to file the application seeking appointment of Court Commissioner at the later stage when the trial of the suit commences. Hence, the following order:

ORDER

- I. The writ petition is hereby partly allowed.
- II. The impugned order dated 28th November, 2017 passed by the Civil Judge Junior Division, Rahata below Exhibit 18 in Regular Civil Suit No.406 of 2014, is hereby quashed and set aside.

III. The Application Exhibit 18 is hereby rejected with a liberty to the Respondent / Plaintiff to file such an application for appointment of the Court Commissioner after trial of the suit commences.

IV. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]

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