

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

WRIT PETITION NO. 1403 OF 2018

ATMARAM KASHINATH SANAP
VERSUS
NARAYAN SAKHARAM SANAP AND ANOTHER

...
Advocate for the Petitioner : Shri Gore Ravindra Vitthal.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th March, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 14.11.2017 passed by the Trial Court in RCS No.300/2015 by which, the application Exhibit-23 filed by the Petitioner/ Plaintiff seeking appointment of a Court Commissioner has been rejected.

2 The Petitioner has strenuously criticized the impugned order. The learned Advocate has drawn my attention to the nine grounds formulated by him in the memo of the petition. Reliance is placed upon the judgment of this Court in the matter of Kolhapuri Bandu Lakade vs. Yallappa Chinappa Lakade, 2011 (3) Mh.L.J. 348.

3 It is informed that though the Trial Court has framed the issues, the recording of oral evidence has still not commenced.

4 This Court has, in a series of orders/ judgments, concluded

that a Court Commissioner is not to be appointed before the recording of oral and documentary evidence. The litigating sides have to lead their oral and documentary evidence and thereafter, a Court Commissioner may be appointed in the event the Trial Court is convinced that further information needs to be gathered through the Court Commissioner.

5 Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

5 It is, however, made clear that after recording of oral evidence, in the event any of the litigating side moves an application for seeking appointment of a Court Commissioner, the Trial Court would consider the same on its own merits and without being influenced by the impugned order dated 14.11.2017 rejecting Exhibit-23.