

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

WRIT PETITION NO. 2057 OF 2009

**DHAONDIBA RAM MANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioners : Ms. Anjali Bajpai Dube
AGP for Respondent No.1 : Shri S. K. Tambe
Advocate for Respondent No.2 : Shri Ajinkya Deshmukh h/f.
Shri A.V.Hon

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 26th JUNE, 2018.**

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PER COURT :

1. The petitioner - original plaintiffs are aggrieved by the order dated 26/06/2008 passed by the Trial Court, by which, the application Exhibit 46 filed by the plaintiffs seeking appointment of a Court Commissioner in Regular Civil Suit No. 107/2006, has been rejected.

2. While issuing notices in this matter on 09/04/2009, this Court has stayed proceedings.

3. I have heard the strenuous submissions of the learned advocates for the respective sides and the learned AGP.

4. This Court has consistently held in series of orders/judgments that though the Court Commissioner can be

appointed when a dispute about the boundaries is raised and for fixation of the boundaries, such appointment is not permissible before recording of oral evidence.

5. It is not in dispute that the issues were cast in the suit and the plaintiffs have moved an application for appointment of a Court Commissioner.

6. Considering the above, this petition is disposed of by granting liberty to either of the litigating sides to apply afresh for seeking appointment of a Court Commissioner after the recording of the oral evidence in R.C.S. No. 107/2006. If such an application is filed, the Trial Court would consider the same on its merits and the impugned order dated 26/06/2008 would not be an impediment.

7. Since the suit is instituted in 2006, on the request of the learned advocates for the litigating sides, the same is expedited and the Trial Court shall endeavour to decide the same as expeditiously as possible and on/or before 31/03/2019.

(RAVINDRA V. GHUGE, J.)

shp/-