

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

WRIT PETITION NO. 9585 OF 2017

BLOCK DEVELOPMENT OFFICER AURANGABAD AND ANOTHER
VERSUS
NADIM MASTAN MOHAMMAD HUSSAIN BABA MASTAN

...

Advocate for the Petitioners : Shri Nangare Prashant R..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th June, 2018

Per Court:

1 The Petitioners are the original Defendants in RCS No.621/2016. The application Exhibit 37 filed by the Petitioners for seeking an appointment of a court commissioner has been rejected by the impugned order dated 13.01.2017.

2 I have considered the strenuous submissions of the learned Advocate for the Petitioner, who prays that the impugned order deserves to be quashed and set aside.

3 This Court, in Sanjay Namdeo Khandare v. Sahebrao Kachru. Khandare & others, (2001(1) Bom.C.R. 800) and Ayyaz Shoukatali Sayyed & another v. Mohd.Moid @ Ajamatali Mohd.Yasin Shaikh & others in Writ Petition No.9089/2011 decided on 17.1.2012, held that the Court Commissioner cannot be appointed for the purpose of collecting evidence

for the parties and it would be premature to appoint a Court Commissioner before the trial has commenced and the parties have led their evidence.

4 Thus, this Court has consistently held that the court commissioner is not to be appointed for collecting evidence. If the Court is convinced that the court commissioner would assist it, then the Court Commissioner can be appointed only after recording of oral and documentary evidence.

5 In the light of the above, I do not find that the impugned order could be faulted since the application Exhibit 37 was filed at a premature stage.

6 This Writ Petition is, therefore, dismissed.

7 However, it is clarified that after the recording of oral evidence, in the event, any of the litigating sides desire an appointment of a court commissioner, it may move an application and the Trial Court would consider such an application on its own merits.