

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10920 OF 2018

BABRUWAN PAPNASH GAIKWAD
VERSUS
UDHAV BALIRAM ADAWALE

Advocate for Petitioner : Mr. V.G. Sakolkar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 29th September, 2018.

PER COURT :

1. Learned counsel for the petitioner submits that the petitioner is aggrieved by the order dated 05/09/2018, by which , the Trial Court has rejected application Exhibit 50 which was filed by the petitioner/defendant seeking appointment of a Court Commissioner in S.C.S. No. 25/2013.

2. Learned counsel for the petitioner has strenuously criticized the impugned order. He draws my attention to the grounds formulated by him in the memo of the petition. It is contended that the plaintiff has concluded the recording of his oral evidence and hence, the petitioner has rightly filed Exhibit 50 seeking appointment of Court Commissioner.

3. I have perused the prayer put forth by this petitioner in Exhibit 50, by which, appointment of a Court Commissioner was sought for the following purposes :

“1. The Court Commissioner to see and visit the suit building situated at Pakharsangvi Tq. & Dist. Latur bearing House No.7178.

2. The Court commissioner to take the measurement of constructed R.C.C. building from construction to in ground level up to Tower Level.

3. The Court Commissioner to measure the plaster of the building.

4. The Court Commissioner to measure the constructed building in to Square feet since basement up to Tower. The such report of the Court Commissioner may kindly be called.”

4. It is, therefore, obvious from the above that this petitioner/defendant desires to collect evidence before he could step into the witness box. Making a roving enquiry or collecting of evidence by the Court Commissioner is impermissible in law. So also, this Court has consistently held in the following matters that a Court Commissioner should not be appointed till the conclusion of the recording of the oral evidence :

1. Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334 .

2. Dnyandeo Vithal Salke and others Vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.

3. Chandrakant Kashinath Dike and others Vs. Smt. Satyabhama Vishwanath Dike and another, Writ Petition No. 8877/2013 (Aurangabad Bench) decided on 17.01.2014.

4. Dhondiba Bapu Zaware Vs. Santosh Paraji Zaware and others, Writ Petition No. 4756/2014 (Aurangabad Bench) decided on 08/12/2014.

5. In view of the above, I do not find that the impugned order rejecting Exhibit 50 could be branded as being perverse or erroneous. This petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)