

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

WRIT PETITION NO. 3813 OF 2016

**MAHESH DATTATRAYA PADWAL AND ANOTHER
VERSUS
BHARAT BHIMRAO PADWAL**

...
Advocate for the Petitioners : Shri S. S. Choudhary

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 04th APRIL, 2019.

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PER COURT :

1. This matter was not on board. A motion was moved at 10.30 a.m. stating that the appointment of the court commissioner is at issue. Hence, taken on the production board.
2. Leave to correct ground 3 to mention "petitioner No.2" in place of "respondent No.2".
3. I have heard the learned Advocate for the petitioners.
4. The petitioner is aggrieved by the impugned order dated 31/10/2015 passed by the Trial Court in RCS No. 530/2014,

by which, an application Exhibit 38 filed by the petitioner – defendant seeking appointment of a court commissioner, has been rejected.

5. Shri Choudhari, learned Advocate for the petitioners has strenuously criticized the impugned order. He has drawn my attention to the grounds formulated in the memo of the petition and I have gone through the paper book with his assistance.

6. This Court has consistently held that a court commissioner should not be appointed until the recording of oral evidence is concluded before the Trial Court. Admittedly, in the present case, the recording of oral evidence is yet to be concluded. Some of the orders passed by this Court are as under :-

(a) *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.*

(b) *Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.*

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

(d) Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.

7. In view of the above, this petition is disposed off. It is, however, made clear that after the recording of oral evidence is concluded before the Trial Court, if any of the litigating sides moves an application for appointment of a court commissioner, the said application would be considered by the Trial Court on its own merits and without being influenced by the impugned order dated 31/10/2015.

(RAVINDRA V. GHUGE, J.)

shp/-