

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4720 OF 2019

Uttam Ambadas Kilbile,
Age: 53 years, Occu:Agri,
R/o Aurangpur, Tq. Pathardi
Dist. Ahmednagar

Petitioner

versus

Baban Bansi Deshmukh,
Age: 58 years, occu: Agri,
R/o Aurangpur, Tq. Pathardi,
Dist. Ahmednagar

Respondent

Mr. P.R. Nangre advocate for the petitioners
Mr.P.K. Palve advocate for respondents.

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CORAM : **RAVINDRA V. GHUGE, J.**

Date: August 1st, 2019

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ORAL JUDGMENT

1 Rule. Rule is made returnable forthwith and heard finally by the consent of the parties.

2 The petitioner, original plaintiff, is aggrieved by the impugned order dated 12.11.2018, passed by the Appellate Court, by which application Exhibit 7 filed by the petitioner - plaintiff, seeking appointment of a Court Commissioner in RCA No.302/2013 has been rejected.

3 I have heard learned Advocates for the respective sides, at length.

4 This Court has consistently held that a Court Commissioner can be appointed, only after the recording of oral evidence is

concluded, in the event the Court is of the view that, the Court Commissioner can assist the Court in eliciting some information. 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) ALLMR 80 : 2011 (6) Mh.L.J. 334,**

(b) **Dnyandeo Vithal Salke & 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,**

(e) **Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017,**

(f) **Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane, Writ Petition No. 832/2018 (Aurangabad Bench), decided on 04/06/2018,**

(g) **Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others, Writ Petition No. 1196/2017, (Bombay Bench), decided on 23/01/2018,**

(h) **Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another, Writ Petition No. 4958/2018, (Aurangabad Bench), decided on 29/01/2018.**

5 The learned First Appellate Court has observed in the impugned order, relying on the Judgment of this Court in the matter of **Jamir Khan versus Darmachand Savala (2018 (1)**

Mh. L.J. 174) that an application, seeking appointment of a Court Commissioner in a RCA can be considered while deciding the appeal. The appellate Court has also recorded that, it can consider the request of the petitioner, while deciding the appeal. However, as the petitioner probably insisted on an order, that the appellate Court rejected application Exhibit 7.

6 In view of the above, this petition is partly allowed.

7 The impugned order dated 12.11.2018 is set aside only for the reason that Exhibit 7 could have been decided by the appellate Court, along with the appeal and though the appellant made haste, the Court could have declined to entertain such a request.

8 Consequentially, Exhibit 7 shall stand restored and the appellate Court would decide Application Exhibit 7 along with RCA No.302/2013. All the contentions of the litigating sides are kept open, including the contention of the respondent that, a Court Commissioner was already appointed before the Trial Court at the instance of the plaintiff and there is no need to appoint the Court commissioner for the second time.

9 Rule is made partly absolute, in the above terms.

(RAVINDRA V. GHUGE,J)