

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4465 OF 2018

SAWATA PANDURANG LABADE
VERSUS
BABAN DASHRATH AAMTE AND OTHERS

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Advocate for Petitioners : Smt. Dube Anjali (Bajpai)

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 29, 2019
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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the impugned order dated 10.4.2018 passed by the trial Court, by which, the request of the plaintiff vide Exhibit 5 seeking appointment of the Court Commissioner in RCS No.29 of 2015, has been rejected.
2. I have considered the submissions of the learned Advocate for the plaintiff and have gone through the grounds formulated in the memo of the petition.
3. It is not disputed that the application for temporary injunction filed by the plaintiff is still pending before the trial Court.
4. Despite service of court notice, the respondents have not entered an appearance.

5. This Court has consistently held that the Court Commissioner can be appointed after the recording of the oral evidence is concluded.

Some of such orders passed are as under:-

(1) Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar [2011 (6) Mh.L.J. 334 = 212 (2) Bom. C.R. 790],

(2) Nalubai Shinde and others Vs. Gopinath Shinde [2011(2) Mh.L.J.991],

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

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

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

(6) Kalyan Santram Kawade and others Vs. Khanderao @ Khandu Ganpati Kawade - Writ Petition No.3600 of 2014, dated 20.8.2014.

6. In view of the above, this petition is disposed off with a direction to the trial Court to decide the application filed by the plaintiff for

temporary injunction, on its own merits and in any case, on/or before 31.3.2019. Moreover, after the recording of oral evidence is concluded in the pending suit, if either of the litigating sides makes an application for appointment of Court Commissioner, the same would be considered on its own merits.

(RAVINDRA V. GHUGE, J.)

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