

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

WRIT PETITION NO. 13978 OF 2019

MUMTAZ KHAN AMIN KHAN
VERSUS
SYED IFTEQUAR AHMED ABEDI AND OTHERS

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Advocate for the Petitioner : Shri S. S. Thombre

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th NOVEMBER, 2019.

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PER COURT :

1. The petitioner / original plaintiff in Special Civil Suit No. 226/2018 is aggrieved by the order dated 06/06/2019 passed by the Trial Court, by which, application Exhibit 16 seeking appointment of a court commissioner by the plaintiff, has been rejected.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order and prays that the said order be quashed and set aside and a court commissioner be appointed. He relies upon the seven grounds formulated in the memo of the petition.

3. This Court has consistently held in the following

orders/judgments that a court commissioner should not be appointed until the recording of oral evidence is concluded :-

(1) *Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar* [2011 (6) Mh.L.J. 334 = 2012 (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.

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

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

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

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

(10) *Bhika Mahadu Katkar and another Vs. Arjun Bhimraj Ghode, WP No.1890/2019 (Aurangabad*

Bench) decided on 09/07/2019.

(11) Sitaram Suklal Patil and another Vs. Vasudeo Suklal Patil, WP No.9626/2016 (Aurangabad Bench), decided on 31/07/2017.

(12) Sarjerao Nathu Bangar and others Vs. Namdeo Keru Bangar and others, WP No.13441/2019 (Aurangabad Bench), decided on 07/11/2019.

4. In view of the above, this petition, being devoid of merit, is dismissed.

5. However, after the recording of oral evidence, if any application for appointment of a court commissioner is filed by any of these parties, the Trial Court would consider the same on its own merits in the light of the evidence recorded without being influenced by the impugned order dated 06/06/2019.

(RAVINDRA V. GHUGE, J.)

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