

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

WRIT PETITION NO.11517 OF 2019

**MOHAN BHANUDAS JADHAVAR
VERSUS
ANKUSH RAMBHAU SATHE AND OTHERS**

...
Advocate for the Petitioner : Shri Manoj D. Shinde h/f.
Shri R. V. Naiknavare

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th SEPTEMBER, 2019.

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PER COURT :

1. The petitioner / original plaintiff is seriously aggrieved by the impugned order dated 21/06/2019, by which, the Trial Court has rejected application Exhibit 22 filed by the plaintiff seeking appointment of a court commissioner under Order XXVI Rule 9 of the Code of Civil Procedure in Regular Civil Suit No. 1473/2018.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner and have gone through the six grounds formulated in the memo of the petition. It is conceded that issues are yet to be cast in the suit and

the temporary injunction application is also pending.

3. The learned Advocate for the petitioner has led a heavy stress on the say offered by defendant Nos. 4, 8 and 9 consenting for appointment of a court commissioner. He, therefore, submits that there was no difficulty for the Trial Court to appoint a court commissioner.

4. This Court has consistently held that a court commissioner can be appointed after the recording of oral evidence has concluded. Some of such orders 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 & 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. In view of the above, this petition, being devoid of merit is, therefore, dismissed.

6. Nevertheless, after the recording of oral evidence has concluded in the suit, if an application for seeking appointment of a court commissioner is filed by any litigating side, the Trial Court would consider the same on its own merits, without

being influenced by its observations set out in the impugned order dated 21/06/2019.

(RAVINDRA V. GHUGE, J.)

shp/-