

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13244 OF 2017

POPAT DINKAR GHULE AND OTHERS
VERSUS
DEEPAK GORAKSH SANAP AND OTHERS

Mr.K.D.Bade Patil, Advocate for the petitioners.
Mr.G.P.Darandale and Mr.D.R.Markad h/f Mr.N.K.Kakade, Advocate
for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/09/2019

PER COURT :

1. The petitioners, who are original defendant Nos. 1 to 3 in RCS No.401/2014, are aggrieved by the order dated 10/08/2017 passed by the Trial Court, by which application Exh.43 filed by the petitioners seeking appointment of a Court Commissioner, has been rejected.

2. I have considered the submissions of the learned Advocate for the petitioners and have gone through the 8 grounds formulated in the memo of the petition. It is not in dispute that the recording of oral evidence had not commenced when Exh.43 was filed.

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

Some orders passed by this Court, read 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.
- (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.

4. In view of the above, I do not find that the impugned order can be interfered with at the stage at which it was passed. This petition, being devoid of merit, is therefore dismissed.

5. Needless to state, after the recording of oral evidence has concluded, if any litigant files an application for seeking appointment of a Court Commissioner, the Trial Court would consider the same on its own merits without being influenced by the observations appearing in the impugned order dated 10/08/2017.

(Ravindra V.Ghuge, J.)