

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14466 OF 2019
(Sunanda w/o Ambadas Shete Vs. Yashwant s/o Uttamrao Gunjal
and others)

Mr.A.M.Nagarkar, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/12/2019

PER COURT :

1. The petitioner/original plaintiff in RCS No.657/2012, is aggrieved by the order dated 25/07/2019 passed by the Trial Court by which his application Exh.52 seeking appointment of a Court Commissioner prior to the commencement of the recording of oral evidence and in the face of an earlier application Exh.24, having been rejected, has been turned down.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner and have gone through the 8 grounds formulated in the memo of the petition.

3. I find that this Court has consistently held in the following orders 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. Considering the above, this petition stands dismissed.

5. However, after the recording of oral evidence is concluded, if any application is filed by either of the litigating sides seeking appointment of a Court Commissioner, the Trial Court would consider the same on it's own merits and without being influenced by it's observations in the orders below Exhs.24 and 52.

(Ravindra V.Ghuge, J.)