IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2216 OF 2019
(Sukhdeo Dashrath Kuldharan Vs. Shantaram Laxman Kuldharan and another)

Mr.Y.S.Choudhari, Advocate for the petitioner.
Mr.K.N.Shermale, Advocate for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/07/2019

PER COURT :

1. The petitioner/original plaintiff in RCS No.68/2018 is aggrieved by the order of the Trial Court dated 10/10/2018, by which his application Exh.27, seeking appointment of Court Commissioner, has been rejected.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order. He draws my attention to the grounds formulated in the memo of the petition. He further submits that the Trial Court has granted temporary injunction in his favour.

3. This Court has consistently taken a view that a Court Commissioner can be appointed after the recording of the oral

evidence is concluded. Some of the orders passed by this Court, taking such a view 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.

(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.*

4. In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being

devoid of merit, is therefore, dismissed.

5. It shall however be noted that after the recording of oral evidence has concluded, if an application for seeking an appointment of Court Commissioner is filed by any of the litigating sides, the Trial Court would consider the said application on its own merits and without being influenced by the observations set out in the impugned order dated 10/10/2018.

(Ravindra V.Ghuge, J.)