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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.4598 OF 2019

WITH

WRIT PETITION (ST) NO.4260 OF 2019

Milind V.Kulkarni

..Petitioner.

V/s.

The State of Maharashtra & Ors.

..Respondents.

Mr.Ajay A.Joshit for the petitioner.

Mr.R.P.Kadam, AGP for respondent-State.

Mr. Vijay D.Patil for respondent No.4.

CORAM: M.S.SONAK, J.

DATE : MARCH 12, 2019

P.C.:-

Mr.Joshi, learned counsel for the petitioner points out that the application for appointment of Court Commissioner is pending before the learned trial Judge. However, he submits that the petitioner had an apprehension that this application will not be considered in accordance with law and on its own merits because on the earlier occasion, learned trial Judge had rejected the application for appointment of Court Commissioner below Exhibit-29.

2. According to me, such an apprehension as expressed by

Mr.Joshi is quite misconceived. This is because, the petitioner has challenged the order made below Exhibit-5 before the District Court by instituting Miscellaneous Civil Appeal No.50/2018 which was disposed of by the District Court by making following order :-

- “1. Appeal is disposed off in the following terms.*
- 2. The prayer for order of injunction is hereby rejected.*
- 3. Plaintiffs are at liberty to file application for appointment of Court Commissioner for fixing boundaries of the suit lands and boundary of suit road. The Trial Court will consider the application if made for appointment of Court Commissioner for fixing the boundaries of the suit lands and the suit road on its own merit.”*

3. The operative clause 3 of the aforesaid order of the District Court makes it clear that the petitioner is granted opportunity to file an application for appointment of Court Commissioner and the trial Court will have to consider such an application on its own merits.

4. In the light of aforesaid categorical directions, it is clear that learned trial Judge is bound to consider the application for appointment of Court Commissioner now made by the petitioner on its own merits and without being influenced by the earlier orders made by the trial Court on the issue of appointment of Court Commissioner.

5. Accordingly, there is absolutely no reason to entertain the

present petition now that the matter has been clarified as aforesaid.

6. In view of the aforesaid clarification, learned counsel for the petitioner does not press both the Petitions. However, he submits that some directions be issued to the learned trial Judge to decide the application for appointment of Court Commissioner expeditiously.

7. Learned trial Judge is directed to decide the application for appointment of Court Commissioner as expeditiously as possible and in any case within a period of six weeks from today.

8. Both these writ petitions are disposed of with clarification as aforesaid.

(M.S.SONAK, J.)