

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5166 OF 2019

Ashok Savlaram Hargude ... Petitioner

Vs.

Kisan Savlaram Hargude & Ors. ... Respondents

.....

Mr. Sandeep M. Phatak for the Petitioner.

.....

CORAM : M. S. KARNIK, J.

DATE : 16th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The order under challenge in this petition is dated 19.11.2018 passed by the Trial Court below Exhibit 52. Learned counsel for the petitioner submitted that the Trial Court has misconstrued the application made by the petitioner in as much as according to him Trial Court proceeded on the footing that the same is filed under Order XXVI Rule 9 of the Code of Civil Procedure. According to him, the said application was made under Order XXXIX Rule 7 of the Code of Civil Procedure.
3. I have gone through the order passed by the Trial Court and so also the application made by the petitioner. The Trial Court has found that Court Commissioner can not be appointed

for collecting evidence. The application Exhibit 52 was rejected. It is pointed out that even the application Exhibit 5 filed by the petitioner is rejected.

4. As can be seen from the frame of the application Exhibit 52, the reliefs prayed therein are for the purpose of appointing the Court Commissioner. In these circumstances, I see no reason to interfere with the order passed by the Trial Court.

5. However, it is clarified that in the event an appropriate application is made by the petitioner under Order XXXIX Rule 7 of the Code of Civil Procedure, the same will be considered by the Trial Court on its own merits without being influenced by any of the observations made in the impugned order. Learned counsel for petitioner says that petitioner would make application under Order XXXIX Rule 7 of the Code of Civil Procedure within a period of two weeks from today. If the same is made within a period of two weeks, the Trial Court is requested to decide the same expeditiously.

6. Subject to the above observations, the petition is rejected.

(M. S. KARNIK, J.)