

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO. 4527/2019**

Abdul Rahim Sheikh Annu

..VS..

Ramesh F. Bharsakale

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri S.D. Chopde, Advocate for the petitioner  
Shri A.M. Tirukh, Advocate for the respondent  
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**CORAM : Z.A.HAQ, J.**

**DATED : 05/07/2019**

Heard.

By the impugned order, the learned trial Judge has allowed the application (Exh. 42) filed by the plaintiff under Order 26 Rule 9 of the Code of Civil Procedure. The order is challenged by the defendant on two grounds i.e. (i) The application seeking appointment of Court Commissioner is moved at a belated stage, after recording of evidence of two witnesses of the plaintiff is over and (ii) The prayer in the application (Exh. 42) shows that the plaintiff is seeking to collect evidence through the Court Commissioner.

After going through the impugned order, I find that both the grounds raised by the petitioner – defendant to challenge the impugned order, cannot be considered. After exhaustively examining the necessity of appointment of Court Commissioner, the learned trial Judge has recorded that looking to the nature of dispute, the report of Court

Commissioner will be of assistance to the Court for adjudicating the controversy.

I find that the learned trial Judge has judiciously exercised the jurisdiction vested in him by Order 26 Rule 9 of the Code of Civil Procedure. It cannot be said that the learned trial Judge has exceeded his jurisdiction or has committed any illegality which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

**JUDGE**

*Ansari*