

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3634 OF 2018

JANARDHAN GANPATI GARAD AND OTHERS
VERSUS
CHANDRAKANT SURYABHAN GARAD AND OTHERS

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Advocate for the Petitioners : Shri N. B. Jadhav
Advocate for Respondent No. 1 : Shri A. P. Gawad
Advocate for Respondent No. 11 : Ms. Pooja Tayde h/f.
Shri S. G. Chapalgaonkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th FEBRUARY, 2020

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PER COURT :

1. The Petitioners, original defendant Nos. 7, 10 and 11 are aggrieved by the order dated 08/12/2017 passed by the Trial Court, by which, application Exhibit 30 seeking appointment of a court commissioner in Regular Civil Suit No. 346/2016, has been allowed. Grievance is that, the said court commissioner has been appointed pre-emptorily at a stage before recording of oral evidence is concluded.

2. The learned Advocate for the original plaintiff has strenuously opposed this petition. Contention is that

these Petitioners had consented in the written statement filed in September 2016 in paragraph 6 and hence, the plaintiff had sought appointment of the court commissioner.

3. This Court has consistently held in the following orders that a court commissioner should normally be appointed after 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. In view of the above, this petition is partly allowed. The impugned order dated 08/12/2017 below Exhibit Nos. 30 and 38 is quashed and set aside. The litigating parties are granted the liberty to move an application for seeking appointment of a court commissioner after the recording of oral evidence is concluded and if such an application is filed, the Trial Court would consider the said application on its own merits.

(RAVINDRA V. GHUGE, J.)

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