

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3814 OF 2020

JAYSHRI JAWAHARLAL MAHAJAN THROUGH GPA ATMARAM
NAMDEO PATIL
VERSUS
KADUBA MISHRILAL TELI AND OTHERS

Mr.A.M.Gholap, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 09/03/2020

PER COURT :

1. The petitioner/original plaintiff in RCS No.107/2015, is aggrieved by the order dated 08/01/2020 passed by the Trial Court vide which, her application Exh.52, seeking appointment of a Court Commissioner, has been rejected.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order. He relies upon the 6 grounds formulated in the memo of the petition and submits that the Trial Court should have allowed Exh.52.

3. The record reveals that a similar application Exh.26 was filed

by the same petitioner and the Trial Court had rejected it. She had approached this Court in WP No.3423/2016, which was rejected by this Court by order dated 28/03/2016, terming Exh.26 to be prematurely filed.

4. This Court has consistently held that a Court Commissioner, normally should not be appointed until the recording of oral evidence is concluded, in the following matters :-

(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.

(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.

5. In view of the above, as the petitioner has filed Exh.53 at a premature stage, the impugned order cannot be faulted and this petition is, therefore, dismissed.

6. After the recording of oral evidence is concluded, if any litigating side files an application for appointment of a Court Commissioner, such application would be considered on its own merits, without being influenced by the dismissal of the earlier two applications Exh.26 and 52.

(Ravindra V.Ghuge, J.)