

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12192 OF 2021
(Bharat Vithalrao Bhikane Vs. Uttamrao Vithalrao Bhikane and others)

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Mr. Dhananjay P. Deshpande, Advocate for the petitioner
Mr. N.P. Patil-Jamalpurkar, Advocate for respondent No.1
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CORAM : MANGESH S. PATIL, J.

DATE : 10.12.2021

PER COURT :

Heard both the sides finally at their request.

2. The petitioner, who is the original plaintiff, is aggrieved and dissatisfied by the rejection of his application (Exh-26) for appointment of the court commissioner by the trial court by order dated 04.08.2021, firstly on the ground that the application was premature, and secondly, on the ground that the appointment of court commissioner, in the facts and circumstances of the case, was not necessary.

3. Suffice for the purpose to observe that this court has consistently taken a view in catena of cases that the appropriate stage for appointment of a court commissioner could be after a party makes an initial attempt to establish his case which can happen only during the course of recording of evidence. Admittedly, that was not the case when the application was filed by the petitioner for appointment of court

commissioner. One can gainfully refer to the decision in the case of *Sitaram Suklal Patil and another Vs. Vasudeo Suklal Patil; Writ Petition No.9626/2016*, decided on *31.07.2017* and the cases referred to therein.

4. In view of this very ground, the writ petition is liable to be dismissed. However, since some observations touching the merits of the case have been made by the learned Judge of the trial court while passing the order under challenge in paragraph No.12, to my mind, it would be prejudging the issue. If the learned Judge was firm in observing that the application was premature, such observations touching the merits of the case are in fact redundant. He could have very well rejected the application for the sole reason of it being premature one. That being not the case, the writ petition can be disposed of keeping open the avenues for the petitioner to move an application for appointment of court commissioner at an appropriate stage.

5. The Writ Petition is dismissed. However, it shall be open for the petitioner to make a request for appointment of court commissioner once again at an appropriate stage and the trial court shall be obliged to decide it on its own merits without being influenced by its observations made in the order under challenge in this writ petition.

[MANGESH S. PATIL]
JUDGE