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

WRIT PETITION NO.12368 OF 2018

HARIBHAU SITARAM SURWADE & ORS. ..PETITIONERS
VS.
SUBHASH BABURAO SURWADE & ORS. ..RESPONDENTS

Ms. Rukmini Khairnar for petitioners.
Mr. Sachin D. Kadam for respondents.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 8, 2021

P.C. :

Heard learned counsel for the parties.

2. Mr. Kadam, on instructions of the respondents, fairly states that the impugned order be set aside by consent as the application for appointment of the Court Commissioner was virtually made on the date of filing of the suit.

3. Presently, the trial is on going and the parties are leading evidence. It is made clear that if at an appropriate stage an application is made by the plaintiff for appointment of the Court Commissioner, the trial Court to consider the application on its own merits and in accordance with law. The application to be decided afresh without being

influenced by the order impugned in this writ petition.

4. Needless to mention that I have not considered the legality of the impugned order and all contentions are kept open.

5. The writ petition is disposed of.

6. As the impugned order is set aside obviously no reliance can be placed on the Court Commissioner's report submitted pursuant to the impugned order as the same is rendered inconsequential.

(M. S. KARNIK, J.)