

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8989 OF 2014**

DHAIRYSING NARSINGRAO MOHITE ..PETITIONER

VERSUS

SANTOSH NATHA BIDE AND OTHERS ..RESPONDENTS

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Mr. S. A. Gaikwad, Advocate for the Petitioner.
Mr. S. B. Ghute, Advocate for Respondent Nos.1 to 5.

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**CORAM : S. V. GANGAPURWALA, J.
DATED : 14th JANUARY, 2022.**

PER COURT:-

1. Mr. Gaikwad, learned counsel for the petitioner submits that, the impugned order appointing the Court Commissioner is illegal. The Court Commissioner cannot be appointed to collect the evidence. The plaintiff's application under Order XXXIX Rule 1 and 2 is not yet decided and prior to that Court Commissioner is appointed. According to the learned counsel, it is the settled position of law that, the Commissioner cannot be appointed to collect the evidence.

2. Mr. Ghute, learned counsel for respondents submits that, the Commission is already effectuated and the Commissioner has submitted his report.

3. The report of the Court Commissioner submitted pursuant to the orders of the Court appointing Court Commissioner under Order XXVI Rule 9 read with Section 75 of the Code of Civil

Procedure is not directly admissible in evidence. The said report has to be read in evidence by examination of the Commissioner. The petitioner would have every right to cross-examine Commissioner on all available grounds.

4. As the Commission is already executed and the report is submitted, the impugned order is not interfered with.

5. Writ Petition is disposed of with the aforesaid observations. No costs.

(S. V. GANGAPURWALA)
JUDGE