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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13523 OF 2021

Sandeep Changanrao Kadam

PETITIONER

VERSUS

Trimbak Vishwanath Kadam and Another

RESPONDENTS

.....
Mr. Rajhans P. Survase, Advocate for the petitioner
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd AUGUST, 2022

ORDER :

1. Challenge in this petition is to the order dated 5th October, 2021 passed below Exhibit-23 in Regular Civil Suit No. 95 of 2021 by the learned Joint Civil Judge, Junior Division, Sailu, thereby rejecting the application filed by the petitioner for appointment of Court Commissioner under Order XXVI, Rule 9 of the Civil Procedure Code.

2. It is a matter of record that the application Exhibit-23 is filed by the petitioner even before application Exhibit-5 is decided and issues are framed. Thus, obviously, the application filed by the petitioner is premature.

The Trial Court has rejected the application on erroneous

ground that by appointment of Court Commissioner, the petitioner is trying to collect evidence.

It is a settled legal position that in a suit for removal of encroachment, it is desirable to appoint Court Commissioner.

3. However, since the application filed by the petitioner is premature, this Court, at this stage, is not inclined to interfere in the impugned order.

4. Writ petition is, therefore, dismissed with liberty to the petitioner to apply for appointment of Court Commissioner after evidence is adduced before the Trial Court. If such application is filed, the Trial Court shall consider the same in accordance with law.

[NITIN B. SURYAWANSHI]
JUDGE