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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1125 OF 2022

Karbhari Dhondiba Rahane through
Power of Attorney Holder Ajay Karbhari Rahane PETITIONER
VERSUS

Divisional Forest Conservator RESPONDENT

.....
Mr. Satyajeet S.Dixit, Advocate for the petitioner
Mr. S. W. Munde, AGP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th SEPTEMBER, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Civil Judge, Senior Division, Sangamner below Exhibit-47 in Regular Civil Suit No. 773 of 2014, thereby rejecting the application of the petitioner for appointment of Court Commissioner.
2. I have given due consideration to the submissions advanced by the learned advocate for the petitioner and the learned Assistant Government Pleader for the State.
3. Admittedly, the suit is filed by the petitioner for perpetual injunction that the defendant should not obstruct peaceful

possession of the plaintiff and the plaintiff should not be dispossessed without following due process of law.

4. The parties have led their respective evidence in the trial Court and thereafter the petitioner has filed application Exhibit-47 for appointment of Court Commissioner, which is rejected by the Trial Court on the ground that the application is filed after conclusion of oral evidence and when the suit is fixed for arguments. The Trial Court, therefore, held that appointment of the Court Commissioner cannot be made for collection of evidence.

5. This Court has consistently taken a view that appointment of Court Commissioner can be sought for after conclusion of oral evidence. Taking into consideration the pleadings in the plaint and the written statement and the evidence led, this Court is of the opinion that appointment of the Court Commissioner would help the Trial Court to adjudicate the controversy between the parties effectively.

6. In view of the settled principles of appointment of Court Commissioner and the consistent view taken by this Court, the impugned order passed by the Trial Court, cannot be sustained.

7. In the result, the writ petition is allowed in terms of prayer clause "A". Application Exhibit-47 is allowed. There shall be no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE

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