

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4809 OF 2023

Mr. Tushar Suresh Wadhe
and another

.... Petitioners

Versus

Chief Officer,
Faizpur Municipal council
and another

.... Respondents

.....
Mr. S.S. Kazi, Advocate for the Petitioners

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th APRIL, 2023

ORDER :

1. Heard.

2. The petitioners have challenged the order passed by learned Civil Judge, Junior Division, Yawal, below Exhibit 40 in Regular Civil Suit No.6 of 2007, thereby rejecting the application filed by the petitioners under Order XXVI Rule 9 of the Code of Civil Procedure.

3. Having heard the learned advocate for the petitioners, and on perusal of memo of writ petition, annexures thereto, and the impugned order, this Court is of the considered view that no interference is called for in the order impugned in the present petition.

4. Admittedly, the application was filed at premature stage, even before the decision on temporary injunction application Exhibit-5. The parties are yet to lead their evidence.

5. In that view of the matter, and the settled legal position that appointment of Court Commissioner should not be made at premature stage before recording of evidence of the parties, no fault can be found with the order impugned in the present petition.

6. The writ petition being devoid merit is dismissed.

7. It is made clear that after recording of evidence commences, if either party makes such application for appointment of Court Commissioner, the Trial Court shall consider the same on its own merits, without being influenced by the order impugned in the present petition.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane