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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5016 OF 2023

Abdul Kadar Gulam Jilani

PETITIONER

VERSUS

New Modern Education Society

RESPONDENT

.....
Mr. Yuvraj Vijayrao Kakde, Advocate for the petitioner
Mr. S. R. Pande, Advocate for the respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by the order dated 6th April, 2023 passed by 2nd Joint Civil Judge, Junior Division, Aurangabad below Exhibit-90 in Regular Civil Suit No. 468 of 2020.
2. The suit is filed by the respondent – plaintiff for perpetual injunction. The petitioner – defendant filed application for appointment of Court Commissioner under Order 26, Rule 9 of the Civil Procedure Code, after recording of evidence before the Trial Court is over. The application is filed with an averment that so as to ascertain as to who is in actual possession of the godown in question, the Court Commissioner be appointed.

3. The Trial Court has rejected the said application holding that it is a settled principle of law that Court Commissioner cannot be appointed to find out as to who is in possession of the property. The power of appointment of Court Commissioner for local investigation cannot be exercised by the Court to assist the party to collect evidence, where it can bring evidence.

4. Heard learned advocate for the petitioner and the learned advocate for the respondent. Perused the memo of the writ petition, documents annexed along with the same and the impugned order.

5. It is the contention of the petitioner that the plaintiff is in possession of the property in question. It will be the burden of the plaintiff to prove that he is in possession of the said property, for that purpose commissioner need not be appointed.

6. No fault can be found with the approach of the learned Trial Court, as the impugned order is passed by following the settled legal principle of law that Court Commissioner cannot be appointed to find out as to who is in possession of the suit property / property in question.

7. There is no illegality or perversity in the order impugned in the present writ petition. No case is made out by the petitioner

to exercise extraordinary writ jurisdiction to cause interference in the impugned order. The writ petition, being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

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