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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8375 OF 2020

Saibaba Foundation through Secretary & Others PETITIONERS

VERSUS

Addanki Venkata Sivarama Satyanarayana
and Another RESPONDENTS

Mr. Vikram S. Kadam, Advocate for the petitioners
Mr. Shailesh S. Chapalgaonkar, Advocate for respondent No.1

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th OCTOBER, 2023

ORDER :

1. This petition challenges order passed by learned Third Joint Civil Judge, Junior Division, Rahata below Exhibit-32 in Regular Civil Suit No. 436 of 2019, thereby allowing application filed by plaintiff under Order 26 Rule 9 of the Civil Procedure Code for appointment of Court Commissioner, for local investigation.

2. Having heard learned advocate for petitioners and learned advocate for respondent No.1 and on perusal of the record and the impugned order, it is clear that application for appointment of Court Commissioner is filed by plaintiff at premature stage. The application is filed even before framing of issues and the

same is allowed by the Trial Court.

3. This Court has consistently taken a view that application for appointment of Court Commissioner should not be entertained at premature stage and such application is to be considered after conclusion of recording of evidence of the parties.

4. In that view of the matter, the writ petition is allowed. Impugned order dated 30th November, 2020 passed by learned 3rd Joint Civil Judge, Junior Division, Rahata below Exhibit-32 in Regular Civil Suit No. 436 of 2019 is hereby quashed and set aside.

5. Parties are at liberty to file application for appointment of Court Commissioner after conclusion of recording of evidence. If such application is filed by either of the parties, it shall be considered on its own merits and without being influenced by order impugned in the present petition.

[NITIN B. SURYAWANSHI]
JUDGE