

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12273 OF 2023

**DR. VIKHE PATIL FOUNDATION, THROUGH ITS AUTHORIZED
LIAISON OFFICER MR. RAJENDRA VISHWANATH PATHARE AND
OTHERS
VERSUS**

MR. BABASAHEB RAMRAO AHER AND OTHERS

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Mr. Ajeet B. Kale, Advocate for Petitioners
Mr. V.D. Hon, Sr. Advocate i/b Mr. A.V. Hon, Advocate for
Respondent Nos.1 and 2

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 12th OCTOBER, 2023

PER COURT :

1. Petitioners are aggrieved by order dated 21/04/2023, passed by learned 3rd Joint Civil Judge, Junior Division, Rahata, below Exhibit-25 in Regular Civil Suit No.225/2019, thereby rejecting application filed by petitioners under Order 26 Rule 9 of the Code of Civil Procedure.

2. Admittedly, application for appointment of Court Commissioner is filed at preliminary stage. Issues are not yet framed by trial Court. Parties have not led their evidence. This Court has consistently taken a view that application for appointment of Court Commissioner shall not be entertained at preliminary stage and such application can be considered after recording of evidence of the parties is concluded.

3. In that view of the matter, no fault can be found with the order impugned in present petition. Writ petition being devoid of merits is dismissed.

4. Parties are at liberty to move application under Order 26 Rule 9 of the Code of Civil Procedure after conclusion of recording of evidence. If such application is filed, the same shall be considered by Trial Court on its own merits without being influenced by order impugned in present petition.

5. At this stage, learned advocate for petitioners submits that small children/students taking education in petitioners' school are required to take detour and approach school by covering longer distance. He, therefore, requests that hearing of suit may be expedited. The request deserves to be allowed. Hearing of suit is expedited. Trial Court shall decide suit within a period of six months from the date of receipt of writ of this order. Parties shall cooperate.

(NITIN B. SURYAWANSHI, J.)