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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12071 OF 2021

Kisan Sadhu Tipale

PETITIONER

VERSUS

Maharudra Ambadas Dash

RESPONDENT

.....

Mr. Nanabhau R. Thorat, Advocate for the petitioner

Mr. Hrishikesh V. Tungar, Advocate for the respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by order dated 17th February, 2021 passed by learned 5th Joint Civil Judge, Senior Division, Beed below Exhibit-37 in Regular Civil Suit No.347 of 2016, thereby rejecting the application filed by the petitioner – plaintiff for appointment of Court Commissioner.

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

3. Learned advocate for the respondent has placed reliance

on unreported decision of learned Single Judge of this Court dated 12th December, 2019 rendered in writ petition No. 14551 of 2019.

4. Admittedly, the application is filed at the initial stage, when recording of evidence of the petitioner – plaintiff was commenced. In the judgment relied on by the learned advocate for the respondent, the learned Single Judge, on the basis of decisions given by this Court in similar facts and circumstances, has held that the Court Commissioner can be appointed after recording of oral evidence is concluded.

5. The citation relied on by the learned advocate for the respondent is squarely applicable to the facts of the present case.

6. In view of aforesaid, writ petition is dismissed with liberty to the parties to file application seeking appointment of Court Commissioner after recording of evidence is concluded. If such application is filed, the Trial Court shall consider the same on its own merits, without being influenced by the order impugned in this petition.

[NITIN B. SURYAWANSHI]
JUDGE