

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

64 WRIT PETITION NO.14043 OF 2023

DASHRATH BALU THORAT DIED THROUGH ITS LRS SAKHARAM
DASHRATH THORAT AND OTHERS
VERSUS
BHAUSAHEB LIMBA THORAT AND OTHERS

...
Advocate for Petitioners (Online) : Mr. Arvind Gopalrao Ambetkar
...

CORAM : SHAILESH P. BRAHME, J.

DATE : 06th NOVEMBER, 2023

PER COURT :

Heard learned counsel for the petitioner.

2. The petitioner is original plaintiff whose application for appointment of Commissioner is rejected by the impugned order. It reveals that application for appointment of Commissioner is filed before commencement of the Trial. It is settled position of law that recourse of Order XXVI Rule 9 of the Code of Civil Procedure (for short 'CPC'), cannot be heard before commencement of trial.

3. No interference is called for in the impugned order. The writ petition is disposed of. However, the petitioner is at liberty to take recourse to order XXVI Rule 9 of CPC, at the appropriate stage of the proceedings.

[SHAILESH P. BRAHME, J.]