

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

936 WRIT PETITION NO.14316 OF 2023

SHIVAJI GUNWANT INDRALE AND OTHERS
VERSUS
SHANKAR BABURAO KAREWAD AND OTHERS

Advocate for Petitioners : Mr. Madde Shrikant B.

CORAM : SHAILESH P. BRAHME, J.

DATE : 09th NOVEMBER, 2023

PER COURT :

The petitioner is challenging an order of rejection of his application invoking appears under Order XXVI Rule 9 of Code of Civil Procedure (for short 'CPC'). Apparently, the application exhibit 26 under Order XVII Rule 9 of CPC, has been filed before commencement of trial. In view of settled legal position, the present application is not maintainable at this stage.

2. While rejecting an application exhibit 26, learned Judge has made an endeavor to comment upon the merits of the matters which are not required to be dealt with while considering application under Order XXVI Rule 9 of CPC, at the appropriate stage, the merits can be looked into. Therefore, I propose to clarify these aspects.

3. I am not inclined to interfere in the impugned order. The Writ Petition is disposed of.

4. The petitioner is at liberty to invoke Order XXVI Rule 9 of CPC at appropriate stage of the proceedings. If such application is preferred, it should be strictly considered within the parameters of Order XXVI Rule 9 of CPC, without being influenced by the observations made in the impugned order.

[SHAILESH P. BRAHME, J.]

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