



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 8082 OF 2022

Akilabano Faruk Ahmed Bali,
Aged 49 years, Occ. : Household,
R/o. Miskin Shah Plots, Chandani
Chowk, Amravati, Tah. & Dist. :
Amravati.

.... PETITIONERS.

// **VERSUS** //

1. Dilipsingh Sardarsingh Bagga,
Aged 71 years, Occu.: Business &
Agriculturist, R/o. Camp Amravati
Tah. & Dist. Amravati.
2. Summiya Faruk Ahmed Bali,
Aged 32 years, Occu.: Household,
3. Jarin Faruk Ahmed Bali,
Aged 29 years, Occu.: Household,
4. Shiraj Faruk Ahmed Bali,
Aged 27 years, Occu.: Student,
5. Faraj Faruk Ahmed Bali,
Aged 25 years, Occu.: Student,
6. Jaraj Faruk Ahmed Bali,
Aged 23 years, Occu.: Student,

Nos. 2 to 6 R/o. Miskin Shah Plots,
Chandani Chowk, Amravati,
Tah. & Dist. Amravati.

.... RESPONDENTS.

Shri A.A.Dhawas, Advocate for Petitioner.
Shri N.R.Saboo, Advocate for Respondent No.1.
Shri S.S.Taram, Advocate for Respondent No.2.
Shri A.D.Ramteke, Advocate for Respondent Nos.3 to 6.

CORAM : ANIL S. KILOR, J.
DATED : DECEMBER 19, 2023

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The orders dated 10/08/2022, 01/08/2022 and 05/07/2022 passed by the Second Joint Civil Judge Senior Division, Amravati in Special Civil Suit No.150 of 2009 rejecting the applications for appointment of Court Commissioner to record evidence of the defendant No.1 is under challenge in this writ petition. The appointment of the Court Commissioner to record the evidence of the defendant No.1, was sought on the medical ground.

4. Shri Saboo, learned counsel for the respondent No.1-plaintiff opposes the petition on the ground that earlier similar request was made and it was allowed by the trial Court vide order dated 18/02/2017. However, for five years no steps were taken by the defendant No.1 to file evidence in chief on affidavit. Therefore, a pursis was filed by the plaintiff on 22/02/2022 pointing out that no steps were taken by the defendant No.1. Thereafter, the affidavit in chief was filed and application for appointment of Court Commissioner was moved. It is also pointed out that on one more occasion a similar request was made and it was rejected. Accordingly, he prays for dismissal of the present writ petition.

5. Though Shri Saboo, learned counsel for the plaintiff is right in pointing out that despite the opportunity granted to the defendant No.1 to record the evidence through Court Commissioner, she failed to avail such opportunity, considering the medical documents, filed in support of the prayer for appointment of the Court Commissioner and to expedite the suit which was filed in the year 2009, I am of the opinion that no prejudice will be caused to the plaintiff if such request is accepted and the evidence is recorded in time-bound manner.

6. Thereupon, the learned counsel for the petitioner, on instructions, suggested the name of Advocate Shri R.B.Kalantri to be appointed as Court Commissioner to record the oral evidence of defendant No.1. It is also informed that the petitioner has obtained willingness of Shri Kalantri to act as Court Commissioner for recording evidence.

7. Shri Saboo, learned counsel for the respondent No.1 has no objection for appointment of Shri Kalantri as Court Commissioner.

8. In that view of the matter, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned orders dated 10/08/2022, 01/08/2022 and 05/07/2022 passed by Civil Judge Senior Division, Amravati are hereby quashed and set aside and thereby application for appointment of Court Commissioner, dated 01/08/2022 is allowed.
- iii) Shri R.B.Kalantri, Advocate is hereby appointed as Court Commissioner for recording the evidence of defendant No.1.

- iv) The Court Commissioner shall record the evidence within fifteen days from 01/01/2024 and submit the same before the trial Court.
- v) The petitioner shall pay the fees of the Court Commissioner.
- vi) The parties undertake to cooperate the Court Commissioner for recording the evidence within the stipulated time.

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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