



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10602 OF 2023

Bhanusaheb Maruti Hirgal And Others

VERSUS

Mohiniraj Raoji Dohale And Others

...

Mr. C. K. Shinde, Advocate for the Petitioners

Mr. B. G. Sagde, Advocate for Respondent Nos. 1 to 4

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CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2024

PER COURT :

1. By consent of the parties, heard finally at admission stage.

2. This Petition takes exception to order passed below Exh. 19 in RCS No. 719/2021 i.e., application filed by the Plaintiff for appointment of the Court Commissioner under Order XXVI, Rule 9 of Code of Civil Procedure.

3. Learned Counsel for the Petitioner submits that this order is sought to be assailed on the sole ground that the stage at which it has been passed the same is not justified. It is his contention that the suit is at the stage of hearing of Exh. 5 and that the Court Commissioner cannot be appointed to collect

evidence on behalf of the parties.

4. Learned Counsel for Respondent opposed the said contention and supported the impugned order. However, he submits that if the Court is inclined to cause any interference therein, the suit be expedited.

5. There cannot be any dispute made with regard to the proposition sought to be canvassed by the Petitioners that the Court Commissioner cannot be appointed to collect evidence for and on behalf of the parties. The stage of the suit is for hearing of the application Exh. 5. It would be the responsibility of both sides to substantiate their case by appropriate evidence placed before the Court for its *prima facie* consideration. At this stage, as rightly pointed out by the learned Counsel for the Defendants/Petitioners, the collection of evidence on behalf of the parties is not permissible in law.

6. Having regard to the same, the impugned order cannot sustain. Hence, impugned order dated 09.08.2023 passed below Exh. 19 is set aside. It is however

clarified that it would be open for the respective parties to the suit to prefer appropriate application for appointment of the Court Commissioner in accordance with law.

7. So far as request made by learned Counsel for Respondent for expeditious disposal of the suit is concerned, since the suit is of the year 2021, this Court is not inclined to pass any such order.

(R. M. JOSHI, J.)

Malani