



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

957 WRIT PETITION NO. 11877 OF 2022

ARUN TAPA MAHAJAN
VERSUS
UDDHAV TOPA MAHAJAN AND OTHERS

...

Advocate for the Petitioner : Mr. Gholap Ajit M.
Advocate for Respondent No.1 : Mr. Deshmukh Anand I.

...

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 05.12.2025

PER COURT :

1. Heard the Learned Counsel for the respective parties.
2. By way of present petition, the petitioner-original defendant No. 5 challenges the order dated 15.01.2022 passed below Exh. 108 by the Civil Judge, Junior Division, Yawal in Regular Civil Suit No. 84 of 2013 whereby, the application filed by the petitioner for appointment of Court Commissioner came to be rejected.
3. Learned Counsel for the petitioner submits that Original defendant No. 1 is 96 years old, and therefore, with a view to record his evidence, the Court Commissioner must be appointed. The said application was rejected by the learned Trial Court only because the application was filed under Order XXVI Rule 1.
4. Mr. Deshmukh, learned Counsel for respondent No.1 submits that the application itself was not maintainable under Order

XXVI Rule 1.

5. Though application was filed under Order XXVI Rule 1 of Code of Civil Procedure, the Trial Court is well empowered to appoint the Court Commissioner under Order XXVI Rule 4 and therefore, only because incorrect provision was mentioned, it does not mean that the application was not maintainable.

6. Therefore, I am inclined to allow the Writ Petition by setting aside the order passed by the learned trial Court on 15.01.2022.

7. In view thereof, the Writ Petition is allowed. The order dated 15.01.2022 passed below Exh. 108 by the Civil Judge, Junior Division, Yawal in Regular Civil Suit No. 84 of 2013 is quashed and set aside. The application below Exh. 108 is allowed.

8. It is made clear that if the learned Counsel for the plaintiff and respondent No. 5 request their presence at the time of recording of evidence of respondent No. 2/Original Defendant No. 1 through Commissioner, the Commissioner to permit the same to them.

(SIDDHESHWAR S. THOMBRE, J.)

mahajansb/