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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 10718 OF 2024
IN
REJECTED CASE NO. 801 OF 2019
WITH
INTERIM APPLICATION NO. 864 OF 2025
IN
WRIT PETITION(ST) NO. 33725 OF 2023**

Pandu Hari Kode since deceased through ... Applicants/Petitioners
Lrs

vs.

Shankar Keshav Kode Deceased through ... Respondents
Lrs and Ors

Mr. Abhijeet Khade for Petitioners.

CORAM : GAURI GODSE, J.

DATED : 9th JULY 2025

ORDER:

1. Both the writ petitions are dismissed for non removal of office objections within the conditional time granted by the order passed by the learned Registrar(Judicial-I). Learned counsel for the petitioners submits that in both the petitions, the respondents were not represented when the conditional order was passed. He submits that he shall remove all office objections within four weeks from today.

2. In the facts and circumstances of the case, delay is condoned and interim applications are allowed. Both the writ petitions are restored to the file. Considering the nature of office objections, the objections are waived.

3. I have heard learned counsel for the petitioners on merits of both the writ petitions. Both these petitions are filed by the plaintiffs to challenge the order rejecting two separate orders filed for the appointment of the Court Commissioner. Learned counsel for the petitioners submits that one report of Court Commissioner is already on record. The impugned order is purely an interlocutory order which in no manner affects the rights of the parties.

4. No prejudice is caused to the petitioners, as one Court Commissioner's report is already on record. The Court Commissioner's report is never conclusive. The petitioners can always file objections to the report, which the trial court is bound to consider. The petitioners can also seek permission to cross-examine the Court Commissioner, at an appropriate stage.

5. Normally, court should be very slow in interfering with such an interlocutory order in its discretionary jurisdiction under Article 227 of the Constitution of India. Moreover, in view of Section 105 of the Code of Civil Procedure, 1908 ("**CPC**") the impugned

orders can always be challenged in an appeal against the decree which may be passed in the suit, in the event the decree is adverse to the petitioners.

6. Subject to the aforesaid observations, the petition is dismissed by keeping the liberty under Section 105 of CPC open. The rights and contentions of the parties in the suit are kept open.

(GAURI GODSE, J.)