



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

WRIT PETITION NO. 10471 OF 2024

Narsing Bhimrao Dhulekar And Others

VERSUS

Ram Maroti Bande

...

Mr. V. D. Gunale, Advocate for the Petitioners

Mr. D. P. Munde, Advocate for Respondent

.....

CORAM : AJIT B. KADETHANKAR, J.

DATED : 01ST APRIL, 2026

ORDER :-

. Mr. V. D. Gunale, learned Counsel for the petitioners would submit that in his suit bearing Regular Civil Suit No.344 of 2023 immediately after filing written statement the plaintiff filed an application at Exhibit 19, thereby seeking appointment of Court Commissioner under Order 26 Rule 9 of the Civil Procedure Code. He submits that it is a trite law that an application for such appointment of Court Commissioner would not be entertained at such premature stage in the suit. The *ratio Legis* behind such orders is that the provisions of Order 26 Rule 9 of CPC cannot be utilized for creation and collection of evidence.

2. This Court after hearing Mr. V. D. Gunale on 16.10.2024 has stayed the operation of the order dated 07.08.2024 till next date. Even today the interim order is in existence.

3. Mr. V. D. Gunale, learned Counsel submits that due to the pendency of this proceedings, the Trial Court even has not proceeded with the suit despite the defendants were ready to proceed with the suit.

4. It appears that the suit is of 2023 and is merely pending.

5. Mr. Gunale, learned Counsel submits that even the Trial Court has not even framed the issues, despite there being no preventive order passed by this Court against the suit proceedings.

6. In view of this, I pass following order:

ORDER

i. Writ Petition is allowed.

ii. The order dated 07.08.2024, passed by the learned Civil Judge Junior Division in Regular Civil Suit No.344 of 2023 is quashed and set aside.

iii. The plaintiff is at liberty to file a fresh application at appropriate stage of the suit, if circumstances so require.

iv. Writ Petition is disposed of.

(AJIT B. KADETHANKAR, J.)