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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 234 OF 2015

Smt.Mangal Jitendra Shah and another ... Applicants

Vs.

Shri Zopadi Ramdev Mandir Trust and others ... Respondents

Mr.Prabhakar Jadhav i/b Vishal L.Kolekar, Advocate for Applicants.

CORAM : R. G. KETKAR, J.

DATE : 21st JULY, 2015

P.C. :

. Heard Mr.Prabhakar Jadhav, learned Counsel for the applicants at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for 'C.P.C.'), original defendants No. 2 & 3 have challenged the judgment and order dated 18/10/2014 passed by the learned Civil Judge, Senior Division, Pune below Exhibit 65 in Special Civil Suit No. 1461 of 2005. By that order, the learned trial Judge rejected the application filed by the defendants No. 2 & 3 under Order 7 Rule 11(d) of the C.P.C. on the ground that the same is barred by the provisions of Section 50 of the Maharashtra Public Trusts Act (for short 'Act').

3. In support of this Application, Mr.Jadhav reiterated the submissions that were advanced before the trial Court. He submitted

that in paragraph 5 of the impugned order, the learned trial Judge observed that once the Court had restored the Suit on 07/10/2013, the defendants cannot agitate the same point again before the Court. By separate order passed by me today in Writ Petition No.6933 of 2015, I have already noted that on 27/02/2009, the learned trial Judge had returned the plaint and directed the plaintiffs to comply requirements under Sections 50 & 51 of the Act. In pursuance thereof, consent of the Charity Commissioner was obtained on 17/03/2010 and Misc. Application No. 627 of 2010 was filed on 30/06/2010. The said application was allowed on 07/10/2013. The said order was uphold by me in that Writ Petition.

4. In view thereof, it is not open now for the defendants No. 2 & 3 to contend that Suit is bad for not obtaining prior consent of the Charity Commissioner. Admittedly, defendants No. 2 & 3 did not challenge the order dated 27/02/2009.

5. In view thereof, I do not find that the learned trial Judge committed any error in rejecting the application. Hence, application fails and the same is dismissed.

(R. G. KETKAR, J.)