

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO.16995 OF 2015**

Chetan Mehta

..Petitioner

Vs.

Kishor Mehta & Anr.

..Respondents

Mr. Shailesh Shah a/w Mr. Sayesh Ashar Chhaya, Mr. Ashar Ranjeent Vghani Sinha, i/b K Ashar & Co. for the Petitioner

Mr. Davvrat Singh a/w Mr. Dilip Kamath i/b Lawfin & Associates for the Respondent No.1

Ms M S. Bane "B" Panel Counsel for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 1st July, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 25-6-2015 passed by the Learned Assistant Charity Commissioner, Mumbai Division, Mumbai, by which order, the applications Exhibit 240 and 242, came to be allowed and resultantly the name of the Petitioner was added to the list of witness and witness summons came to be issued to the Petitioner which was made returnable on 29-6-2015.

2 The proceeding in question is Change Report No.403 of 2006 filed by one Vijay Mehta who is the original reporting trustee. After the death of the said Vijay Mehta in the year 2010, the Petitioner herein has stepped into his shoes as a reporting trustee. The subject matter of the Change Report is the

cessation of the Respondent No.1 as a trustee of the trust in question on the ground that he has remained absent for more than one year and therefore his consequent deletion from the list of trustees is sought by making a change in the PTR. The said Change Report has been expedited by the Apex Court and since it has not been disposed of within the outer limit initially fixed by the Apex Court, the Apex Court has once extended the time. It is in the said proceedings that the instant applications Exhibit 240 and Exhibit 242 came to be filed by the Respondent No.1 herein. The examination of the Petitioner i.e. the reporting trustee is sought on the ground that he is taking a contrary stand to the stand taken by the original trustee Vijay Mehta in respect of an alleged reply prepared by Solicitors Kanga & Co. The said reason finds place in paragraphs 23 and 24 of the application Exhibit 240. The said application was replied to on behalf of the Petitioner and the reason mentioned in the said application was questioned by the Petitioner. It was the case of the Petitioner in the said reply that there is no such contradiction between the stand taken by the original reporting trustee Vijay Mehta and the Petitioner. The Assistant Charity Commissioner considered the said applications and has by the impugned order dated 25-6-2015 has allowed the same. The Assistant Charity Commissioner has in the impugned order referred to the judgments cited on either side and thereafter on the ground that an opportunity has to be given to the Respondent No.1 herein to lead evidence, has allowed the application. The Assistant Charity Commissioner has however laid down parameters for the

examination in chief of the Petitioner. The Assistant Charity Commissioner has observed that in the examination in chief the Applicant/Respondent No.1 would not be entitled to confront the Petitioner and also not ask leading questions. As indicated above, it is the said order dated 25-6-2015 which is taken exception to by way of the above Petition.

3 The Learned Senior Counsel appearing on behalf of the Petitioner sought to challenge the impugned order on the ground that the examination of an adversary as a party's witness can only be permitted if the circumstances so warrant. The Learned Senior Counsel in support of the said contention sought to place reliance on the judgment of a Learned Single Judge of this court in the matter of **Pirgonda Hongonda Vs. Vishwanath Ganesh & Ors.**¹ where a witness summons came to be issued on behalf of the Defendants at the behest of the Plaintiff in the Suit. The Learned Single Judge in the said case relying on the Judgment of Privy Council wherein the Privy Council has observed that the practice of calling the party's Opponents as a witness is objectionable and that such practice ought never be permitted in the result to embarrass judicial investigations as it is sometimes allowed to be done. The Learned Judge has further observed that it should normally not open to the Opponent to seek the presence of the witness by issuance of witness summons as if the party does not appear in the witness box. It would be open for the Trial Court to draw an adverse inference. The Learned Senior Counsel would contend that in the

1 AIR 1956 Bombay 251

instant case, the examination of the Petitioner is sought for malafide reasons and only to delay the adjudication of the said change report proceedings.

4 In my view, having regard to the fact that the proceedings are under the Bombay Public Trust Act, and also having regard to the fact that the Assistant Charity Commissioner for the reasons mentioned in the order has deemed it appropriate to permit the examination of the Petitioner as the witness of the Respondent No.1 and also having regard to the fact that certain parameters for such examination have been laid down, the interference at this stage with the impugned order is not warranted. It would be open for the Petitioner to raise the issue raised in the above Petition in the Appeal that would be required to be filed if the occasion so arises in future. It would also be open for the Petitioner to apply to the Assistant Charity Commissioner for a direction to be issued to the Respondent No.1 for a draft of the examination in chief to be furnished to him in consonance with Order 18 read with Order 16 of the Civil Procedure Code. If any such application is filed by the Petitioner, the Assistant Charity Commissioner would consider it in accordance with law.

5 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]