

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6940 OF 2014

Rekha Balwant Deshpande & Ors. .. Petitioners
VS.
Arvind V. Gholkar & Anr. .. Respondents

Mr. P. D. Dalvi for Petitioners.
Mr. Sandeep Koregave for Respondent No. 1.
Ms Neha Bhide – B' Panel – AGP for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE : 06 FEBRUARY, 2015

P.C. :-

1] Rule, with the consent and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition takes exception to the order dated 7 May 2014 made by the Deputy Charity Commissioner, Kolhapur.

3] The petitioners have lodged a change report before the Deputy Charity Commissioner, which is pending consideration. In the meanwhile, the respondent no. 1 applied to be impleaded as a third party under Section 73A of the Bombay Public Trusts Act, 1950 ("said Act"). The matter was posted on 29 January 2014 for hearing on this application. On the said date, the respondent no. 1

submitted an application (Exhibit 55) seeking an adjournment, on the ground that his Advocate had to leave for Dharwad in order to attend to some urgent business.

4] The Deputy Charity Commissioner, on the said date i.e. on 29 January 2014 after considering the petitioners say made the following order :

“Heard Ld. Adv. Atigre. Third Party app. is present. He was asked as to whether he wants to submit anything, he replied in negative. It seems from the record that basically it is a scheme appln. & the third party has filed appln. Vide Exh. 51 while argument (final) of Adv. Atigre was going on. So it seems that third party just wants to protract the trial. Today, reason mentioned in the appln. is not just & proper hence appln. is rejected. In view of order on Exh. 55 appln. stands filed.”

5] The respondent no. 1 on 21 February 2014 submitted an application to the effect that there was a sufficient cause for his not proceeding with the matter on 29 January 2014 and therefore the order made on the said date be recalled and his application for impleadment as third party to be considered on merits. It is upon this application dated 29 January 2014 that the Deputy Charity Commissioner has made the impugned order, which reads thus :

“Heard. Perused. Considering principal of Audi Alteram Partem appln. is allowed subject to cost of Rs.1000/-. Cost be deposited today itself, otherwise appln. be treated as rejected.”

6] Mr. P. D. Dalvi, the learned counsel for the petitioners has submitted that the impugned order virtually constitutes a review of the earlier order made on 29 January 2014, by which the application for third party impleadment came to be rejected. Mr. Dalvi submits that under the said Act, no power of review has been conferred upon the Dy. Charity Commissioner. Power of review is never inherent and consequently the impugned order is without jurisdiction and is required to be set aside.

7] Mr. Sandeep Koregave, the learned counsel for the respondent no. 1 made the following submissions, in defence of the impugned order :

(A) That by the earlier order dated 29 January 2014, application for third party impleadment had not been dismissed, but the same had merely been filed in view of the rejection of the application seeking an adjournment. As such, there was no question of exercise of any review jurisdiction;

(B) In any case, the principle that powers of review are never inherent applies to a substantive review and not to a procedural review. In the present case, there was no decision on merits. Only on the ground that the adjournment was declined, the application for third party impleadment came to be filed or rejected. There is never any bar to exercise procedural review, as has been laid down by the

Supreme Court in the case of *Grindlays Bank Ltd. vs. The Central Government Industrial Tribunal & Ors.*¹

8] Ms Neha Bhide, the learned AGP fairly submitted that since this is a dispute between two parties, she has no submissions to make on the merits or demerits of the matter. However, she submitted that there do not appear to be any provisions under the said Act in the matter of exercise of review jurisdiction.

9] Having heard the learned counsel for the parties and perused the record, there is no reason to interfere with the impugned order. On perusal of the order dated 29 January 2014, it is quite clear that what was rejected was the motion for adjournment. In view of the rejection of the motion for an adjournment, the application seeking third party impleadment was merely filed.

10] Even if it is assumed that the term '*filed*' means that the application for third party impleadment was rejected, then such rejection cannot be said to be one on merits. The rejection was basically on account of default in not proceeding with the matter on 29 January 2014. The order made on 29 January 2014 makes it clear that there was no rejection on merits.

1 AIR 1981 SC 606

11] There is no dispute to the proposition that powers of review are never inherent, but have to be specifically conferred by the statute. However the said principle does not apply to exercise of powers which are in the nature of procedural review. In this case, it cannot be said that the impugned order has been made in exercise of and by way of any substantive review. The impugned order is more in the nature of recall or restoration. Appropriate costs have also been imposed upon the respondent no.1 and it is reported that the same have been paid. Accordingly, there is no jurisdictional error involved. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)