IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10669 OF 2014

Shikshan Prasarak Mandali	..	Petitioner
vs.		
Damodar B. Bhandari & Ors.	..	Respondents

Mr. A. Gole i/b. Mr. S. C. Wakankar for Petitioner.
Mr. P. D. Paranjape for Respondent Nos. 1 and 2.
Ms Vaishali Nimbalkar – AGP for Respondent Nos. 34.

CORAM : M. S. SONAK, J.
DATE: 28 JANUARY 2015

P.C. :-

1] Rule. Parties had already been put to notice that this petition would be disposed of finally at the stage of admission.

2] This petition is directed against the order dated 7 November 2014 made by the Deputy Charity Commissioner, Pune Region, Pune, declining the petitioner's application seeking leave to amend their reply in proceedings instituted under Section 51 of the Bombay Public Trusts Act 1950 ("said Act").

3] The respondent nos. 1 and 2 have instituted proceedings under Section 51 of the said Act urging action against the persons in management of the petitioner trust. One of the allegations in the proceedings relate to withdrawal of exemptions under Section 80G of the Income Tax Act, as a result of which, the trust was saddled with tax liability to the tune of almost Rupees Fifty Crores. At the stage when the proceedings were initiated under Section 51 of the said Act, it appears that the order withdrawing the exemption was in force. Thereafter, the order withdrawing the exemption came to be reversed in the appeal / revision instituted by the petitioner before authorities under the Income Tax Act. Accordingly, the petitioner took out an application dated 5 August 2014 seeking to amend the reply, basically for the purposes of bringing on record the said fact, which is undoubtedly a subsequent event.

4] The Deputy Charity Commissioner, Pune by the impugned order dated 7 November 2014 has declined leave to amend by observing that if such an amendment is permitted, then the proceedings instituted by the respondent nos. 1 and 2 would become infructuous and further that the nature of proceedings would change.

5] The aforesaid reasoning, is not at all tenable. There is no question of any change in the nature of proceedings. The circumstance that the order, by which exemptions were withdrawn, has itself been set aside is the relevant fact. The learned counsel for the respondent nos. 1 and 2 has stated that apart from this allegation, there are several other allegations set out in the application under Section 51 of the said Act. The learned counsel for the respondent nos. 1 and 2 also pointed out that the factum of the subsequent event is not really relevant because during the period when the exemptions were withdrawn, already the trust has been saddled with tax liability of about Rupees Twenty Five Crores. In such circumstances, there can be no apprehension, about the proceedings under Section 51 being rendered infructuous. Even otherwise, if an amendment is necessary for full and effective adjudication, then the same cannot be denied, only on the ground that the proceedings, in response to which the same have been filed, may be rendered infructuous. The Deputy Charity

Commissioner has applied the incorrect tests and therefore arrived at an incorrect conclusion. The impugned order is unsustainable and is therefore hereby set aside. The petitioner is permitted to carry out amendment in terms of the draft referred to in the application dated 5 August 2014. Such amendment shall be carried out within a period of two weeks from today.

6] The learned counsels for the parties state that there is already an order for expeditious disposal of the proceedings under Section 51 of the said Act.

7] With the aforesaid directions, Rule is made absolute. There shall be no order as to costs.

8] All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka