

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1453 OF 2015

Ankush Ramchandra Ingole ...Petitioner
versus
Machindra Bira Ghopane ...Respondent

Mr. Ajay Joshi, for the Petitioner.
None for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 20TH FEBRUARY 2015

P.C. :-

Not on board. Upon production, taken on board.

2. This petition is directed against the following orders :-

a) Order dated 11th December, 2012 made by the Assistant Charity Commissioner permitting impleadment of respondent No.1 in Change Report No.2082 of 2000 by resort to provision of Section 73A of the Bombay Public Trust Act;

b) Order dated 13th August, 2013 made by the Assistant Charity Commissioner, dismissing the petitioners' application under Rule (2) of Rule 10 of Order 1 of Code of Civil Procedure to strike out the name of respondent No.1 as respondent in the aforesaid Change Report proceeding.

3. The Assistant Charity Commissioner in the order dated 13th August, 2013 has held that the reasons as to why respondent No.1 is an interested person had already been set out in the earlier order dated 11th December, 2012. The order dated 11th December, 2012 has not even been challenged by the petitioner. The Assistant Charity Commissioner, therefore concluded that the application though styled as one under Rule (2) of Rule 10 of Order 1 of Code of Civil Procedure, was nothing but a review in disguise.

4. There is neither any jurisdictional error nor any perversity involved in the reasoning of the Assistant Charity Commissioner. In fact, having not challenged the order dated 11th December 2012, the

application under Order I Rule 10(2) of Code of Civil Procedure was not even maintainable before Assistant Charity Commissioner. Accordingly, there is no reason to interfere with the order dated 13th August, 2013.

5. The petitioner has however challenged the order dated 11th December 2012 made by the Assistant Charity Commissioner in the present petition. Such challenge can however not be entertained for several reasons. In the first place, said challenge is barred by delay and laches. There is no satisfactory explanation as to why such order was not challenged, soon after the same was made. Secondly, the basic objection raised to the order dated 11th December 2012 is that under Section 73A of the Bombay Public Trusts Act 1950, only a member of a society, registered under the Societies Registration Act 1860 answers the definition of the expression '*person having interest*' as appearing in Section 2(10) of the said Act. Therefore, it was contended that since

the respondent no.1 is not a member of the society, his impleadment could not have been permitted under Section 73A of the said Act. Such contention is misconceived.

6. Perusal of the definition of the expression '*person having interest*' under Section 2(10) of the said Act would indicate that the same is only an inclusive definition. The Assistant Charity Commissioner in his order dated 11th December 2012, has correctly appreciated this position. There is accordingly no jurisdictional error or any perversity in his approach.

7. Accordingly, no case is made out for grant of any relief in the present petition. The petition is liable to be dismissed and is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)