

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO. 254 OF 2009

IN

WRIT PETITION NO. 3026 OF 2005

WITH

WRIT PETITION NO. 3026 OF 2005

Currimbhoy Ebrahim Khoja	}	
Orphanage and Ors.	}	Petitioners
versus		
State of Maharashtra and Ors.	}	Respondents

Mr. Milind Sathe-Senior Advocate with Ms. Jyoti Sinha i/b. M/s. Negandhi Shah and Himayatullah for the Petitioners.

Ms. Geeta Shastri-Addl. Government Pleader for Respondent Nos. 1 and 4.

Mr.R. M. Momin for Respondent Nos. 2 and 3.

Mr. Firoz A. Ansari for Intervener/Applicant in CHS/254/2009.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- AUGUST 26, 2015

P.C. :-

At the hearing of this Chamber Summons, what we have noticed is that the controversy in this Writ Petition stands covered by a Division Bench judgment of this Court rendered in the case of *Shaikh Yusuf Bhai Chawala and Ors. vs. State of Maharashtra and Ors.* reported

in **2012(1) Bom. C. R. 736**. Ms. Shastri appearing for the State does not dispute that the prayers in the present Petition are identical to those which stand decided and disposed of in terms of the Division Bench judgment. In fact it is not seriously disputed that present Petition also was to be taken up and heard along with the other Petitions and disposed of by the Division Bench. However, for some inadvertence on the part of the parties or the registry, we cannot take a different view and in a particular isolated matter. We are of the view that judicial discipline requires that we follow the Division Bench Judgment. The Writ Petition is therefore disposed of in terms of the Division Bench Judgment with same directions.

2) We clarify that beyond applying the Division Bench Judgment and to identical facts and circumstances, we have not considered the rival contentions in further details and depth. Each of these contentions including of the intervener are kept open for being canvassed in the appropriate proceedings before the Hon'ble Supreme Court of India as we have been informed that against the Division Bench Judgment, the matter has been carried by the State and Wakf Board to the Hon'ble Supreme Court of India.

3) At this stage, it is requested by Ms. Shastri that our order passed today should be stayed for a period of 10 weeks to enable the

State as also the contesting Respondents to challenge this order in the higher Court. This request is opposed by Mr. Sathe, learned Senior Counsel by pointing out that by subsequent order of the Hon'ble Supreme Court of India, reported in **(2012) 6 SCC 328** in the case of *Maharashtra State Board of Wakfs vs. Yusuf Bhai Chawala and Ors.*, particularly in paras 38, 39 so also para 40, the Division Bench Judgment of this Court, which we have followed and applied, is stayed. We do not wish to enter into this controversy for the simple reason that if the contesting Respondents and the State is carrying the matter to the higher Court, then, without prejudice to the rights and contentions of all parties including the Petitioners, we grant a stay of our order passed today for a period of 8 weeks from today. The Petition and the Chamber Summons both are disposed of.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)