

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Second Appeal No.193/2015

(Eknath Tukaramji Pise .vs. Rama Kawaduji Bhende and ors.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Mr. C.S. Kaptan, Senior Advocate with Mr. M.M. Agnihotri, Advocate
 for Appellant.

Mr. R.L. Khapre, Advocate with Mr. N.M. Jibhkate, Advocate for
 Respondents No.1,2 and 4.

CORAM : A.V. Nirgude, J.

DATED : April 21, 2015.

Heard.

2. This appeal arises from a change report proceedings initiated under Section 22 of the Bombay Public Trusts Act, 1950. The facts leading to this controversy in short are as under:-

On 10.12.1993 a change report was moved to the Assistant Charity Commissioner in which it was reported that 7 trustees stood removed because of a resolution passed in a general body of the society. These 7 trustees were also life members of the society. The bye-laws of the society still enjoined them to pay yearly subscription. Admittedly they did not deposit such yearly subscription for 2-3 years and, therefore, the society gave a notice to them as to why their membership should not be cancelled. They say that they did not receive the notice but assuming they received such notice, the question was whether the society could have removed them from membership. The learned District Judge held that the society did not

have such power mainly because the bye-laws of the society did not provide for such ground for removal. This view of the learned Judge of the lower appellate Court is being challenged in this second appeal.

3. The learned senior counsel tried to suggest that interpretation of bye-laws in juxtaposition of Section 15 of the Societies Registration Act, 1860 requires consideration and the appeal should be admitted for deciding such substantial question of law. On perusal of the bye-laws, resolution and the judgment of the lower appellate Court, I am inclined to hold that there is no error on the part of the learned Judge when he held that the bye-laws of the society did not provide default in paying yearly subscription as ground for removal from membership. I carefully went through the bye-laws and found that they have taken into account possibility of members committing default in paying yearly subscription. The consequence of such default, according to the bye-laws, would be that such defaulting members would not be able to contest the election. Besides this, there is no provision in the bye-laws that such defaulting members would cease to be members etc. Bye-laws also mention as to in what circumstances a member can be removed. As usual the grounds for removal are grave misconduct on the part of a member. So committing default in paying yearly subscription is not at all considered a serious misconduct and, therefore, such misconduct is not made a ground for removal from membership. The learned Judge of the lower appellate Court held this and I do not find it wrong.

4. The learned senior counsel placed reliance on two judgments of the Apex Court, one in the case of **Hyderabad Karnataka Education Society .vs. Registrar of Societies and others** reported in **(2000) 1 Supreme Court Cases 566**. The ratio of this judgment is quite well known but in my considered opinion the same is not useful in deciding this case. The other judgment is in the case of **Hero Vinoth vs. Seshammal** reported in **(2006) 5 Supreme Court Cases 545**. This judgment gives guidance to us as to what is substantial question of law in second appeal. The facts of the case as well as the judgment of the lower appellate Court virtually does not give rise to any substantial question of law. So I do not need help of this judgment also.

5. The litigation is lingering on in the Courts since 1993. It must come to an end.

6. The learned senior counsel insisted that he wanted to raise few more points which according to him would give rise to substantial question of law. I am afraid, he utilised the best point which could be argued and since I am not with him, I am unable to accept his contention that there would be few more points which could have been raised. Appeal stands dismissed.

JUDGE