

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10307 OF 2014

Dr. Narayan s/o Govindrao Tawde
Age : 73 years, Occ : Medical Practitioner
and Agri., R/o Talani, Tq. Hadgaon,
District Nanded.

... Petitioner

Versus

1. The Charity Commissioner,
Dharmadaya Ayukta Bhavan
Dr. Anie Bazent Road, Varali Naka,
Mumbai.
2. The Joint Charity Commissioner,
Aurangabad Region, Aurangabad.
3. Keshavrao s/o Sonbarao Tawde
Age : 78 years, Occ : Agri.,
R/o Talani, Tq. Hadgaon,
District Nanded.
4. Vitthalrao s/o Marotrao Tawde
Age : 73 years, Occ : Medical Prctitioner
and Agri., R/o Talani, Taluka Hadgaon,
District Nanded.

... Respondents

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Mr. P. H. Dighe h/f Mr. V. R. Dhorde, Advocate for the Petitioner
Mr. B. A. Shinde, AGP for Respondent Nos. 1 and 2
Mr. G. K. Muneshwar, Advocate for Respondent No. 3
Respondent No. 4 absent though served.

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CORAM : V. K. JADHAV, J.

**Reserved for Judgment on : 16.02.2016
Judgment pronounced on : 25.02.2016**

JUDGMENT :-

1. Rule, Rule returnable forthwith. By consent of learned counsel for respective parties, heard finally at admission stage.

2. Petitioner is the founder member of Shri Datta Education Society, Talani, Taluka Hadgaon, District Nanded, which is a trust duly registered under the Maharashtra Public Trusts Act, 1950 (for short "the Act of 1950"). The said trust runs one Secondary and Higher Secondary School and one girls' school at Village Talni, Taluka Hadgaon, District Nanded. Under the directions of Joint Charity Commissioner, elections were held in the year 2005, and accordingly, the Change Report was submitted before the Assistant Charity Commissioner. Present respondent Nos. 3 and 4 are also the members of the said trust and they were initially looking after the affairs of the trust. According to the petitioner, respondent Nos. 3 and 4 had committed various illegalities and mismanagement in the affairs of the trust and therefore, petitioner and one another member filed application bearing Enquiry No.6 of 2006 on 29.01.2006, before respondent No.2-Joint Charity Commissioner under Section 41-D of the Act of 1950. Learned Joint Charity Commissioner, by judgment and order dated 18.07.2008, rejected the application Enquiry No. 06 of 2006 filed by the petitioner. Being aggrieved and dissatisfied with the said judgment and order, petitioner has preferred R.J.E. No. 144 of 2008 before District Court, Nanded. During pendency of said

R.J.E., petitioner has received certain documents. Initially, said documents were not within the knowledge of petitioner and therefore, petitioner could not produce the said documents before Joint Charity Commissioner during the course of application Enquiry No.6 of 2006 filed under Section 41-D of the Act of 1950. Consequently, petitioner filed application Exh.33 under Order 41 Rule 27 of the Code of Civil Procedure seeking permission to lead additional evidence. On 16.01.2014, learned District Judge has observed that the counsel appearing for petitioner has given up the cause of the application for production of additional evidence. Petitioner has, however, filed *pursis* to the effect that the cause has not been given up seeking permission to lead additional evidence. However, petitioner has also filed application for grant of adjournment. Learned District Judge granted adjournment, however, further directed the petitioner to move an application for transfer of the case.

3. Being aggrieved by the said order passed by District Judge on 16.01.2014 below Exh.33, petitioner approached this Court by filing Writ Petition No. 1810 of 2014. This Court, by order dated 30.06.2014, disposed of the said Writ Petition and set aside the order dated 16.01.2014 passed below Exh.33 in R.J.E. No. 144 of 2008 and restored the said application for hearing afresh with directions to decide the same in accordance with law.

4. Thereafter, learned District Judge has heard the said application Exh.33 and by order dated 18.10.2014, rejected the said application. Hence this writ petition.

5. Learned counsel for the petitioner submits that the documents, which are sought to be produced by way of additional evidence are necessary for just decision in the case. Learned counsel submits that it is incumbent on the part of the appellate court to consider the documents at the time of hearing of appeal on merits so as to find out whether the documents or the evidence sought to be adduced have any relevance/bearing on the issues involved. Learned counsel submits that the appellate court had rejected application Exh.33 at the initial stage, though the appeal is yet to be heard finally on merits.

6. Learned counsel for the petitioner, in order to substantiate his contentions, placed reliance on the decision of the Apex Court in the case of ***Union of India vs. Ibrahim Uddin and another***, reported in ***(2012) 8 Supreme Court Cases 148***.

7. Learned counsel for respondent No.3 submits that petitioner has not shown any due diligence to procure the documents when the matter was pending before the Joint Charity Commissioner. Thus,

the application for production of additional documents before the appellate court cannot be considered. Learned counsel submits that the lower appellate court has rightly rejected the application Exh.33.

8. Learned counsel for respondent No.3, in order to substantiate his contentions, placed reliance on the decisions in the following cases:

1. ***Sardar Dastur Schools Trust and others vs. Adil Jamshed, Frenchman since deceased through his legal heirs and representatives***, reported in **2003 (1) Mh. L. J. 226**,
2. ***Malyalam Plantations Ltd. vs. State of Kerala and another***, reported in **AIR 2011 Supreme Court 559**,
3. ***Ashabai w/o Ramchandra Kotecha and others vs. Mohanlal s/o Bhika Badode (died) through his L.Rs. Smt. Munnabai w/o Mohanlal and others***, reported in **2012 (6) Mh. L. J. 176** and
4. ***Ferani Hotels Pvt. Ltd. vs. Nusli Neville Wadia***, reported in **2013 (3) Mh. L. J. 509**.

9. I have also heard learned AGP.

10. It is true that additional evidence can only be permitted under certain circumstances enumerated under Order 41 Rule 27(1) of the Code of Civil Procedure, and not as a matter of course. However,

under Sub-rule (b) of Order 41 Rule 27(1), admissibility of additional evidence is made to depend, not upon the relevancy or materiality of the evidence sought to be admitted, to the issue before the court or upon the fact whether or not the applicant has had an opportunity of adducing such evidence at some earlier stage, but upon whether or not the appellate court requires such evidence to enable it to pronounce judgment or for any other substantial cause. In view of this, appellate court may postpone consideration of the application till hearing of the appeal and should take up the same at the time of hearing of the appeal on merits so as to find out whether the evidence sought to be adduced is relevant and bearing on the issues involved. Since learned District Judge, by rejecting application Exh.33 has closed the doors forever, the very purpose of the provision of Order 41 Rule 27(1)(b) would be defeated. In view of this, the order of rejection of application Exh.33 is liable to be set aside and the application Exh.33 filed under Order 41 Rule 27 is required to be directed to be taken up along with hearing of the appeal. Hence the following order :

ORDER

- I. The writ petition is hereby partly allowed.
- II. The order dated 18.10.2014 passed by District Judge-1, Nanded below Exh.33 in R.J.E. No. 144 of 2008 is hereby quashed and set aside.

- III. Learned District Judge is directed to postpone the consideration of application Exh.33 till hearing of R.J.E. No.144 of 2008 and take up the same at the time of hearing of R.J.E. on merits so as to find out whether the evidence sought to be adduced by way of additional evidence is relevant and bearing on the issues involved.
- IV. Learned District Judge shall decide R.J.E. No.144 of 2008 as expeditiously as possible, preferably within a period of four (04) months from today.
- V. Rule is made absolute in the above terms. The writ petition is disposed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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