IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2521 OF 2016

Pankaj Chhagan Bhujbal.] … Petitioner

Versus

1. Shri Sunil Gangadhar Karve,]
2. The Charity Commissioner.] … Respondents

Mr. Sanjay Jain a/w Mr. B. Reis i/b Mr. Karan K. Vyas for Petitioner.
Mr. Rizwan Merchant a/w Mr. Devvrat Singh, Mr. Dilip Kamat, Ms.Manali K. i/b Mr. Sayaji Nangare for Respondent No.1.
Mr. A. B. Vagyani, GP, a/w Mr. C. P. Yadav, AGP, for Respondent No.2.

CORAM :- M. S. SONAK, J.
DATE :- FEBRUARY 29, 2016

P. C. :-

1. The challenge in this petition is to the order dated 23/02/2016, by which the Assistant Charity Commissioner ('ACC') has disposed of applications at Exh.44 and Exh.46 in Change Report No.1118 of 2012. The application at Exh.44 was made by the Reporting Trustee Mr. Pankaj Bhujbal to issue witness summons of Mr.Sameer Bhujbal, now in custody of Special Court in connection with some criminal proceedings, to depose in the present matter. The application at Exh.46 was made by the respondent no.1 seeking directions to the Reporting Trustee i.e. Mr. Pankaj Bhujbal, to lead

evidence in the matter. By the impugned order, the application at Exh.44 has been dismissed and the application at Exh.46 has been partly allowed by the ACC. Hence the present petition by the Reporting Trustee Mr. Pankaj Bhujbal.

2. Mr. Sanjay Jain, learned Counsel for petitioner, has submitted that in the present case, Mr. Sameer Bhujbal has already filed affidavit in lieu of examination-in-chief on 05/01/2016. For reasons which are by no means attributable to either the Reporting Trustee or said Mr. Sameer Bhubjal, the cross-examination of said Mr.Sameer Bhujbal could not proceed. Mr. Jain has, in fact, submitted that on 05/01/2016 and thereafter on 07/01/2016, the respondents filed additional written statement and applied for framing of additional issues. As a result of this, the cross-examination of Mr.Sameer Bhubjal could not begin. Thereafter on 02/02/2016, Mr.Sameer Bhujbal came to be arrested with regard to an offence which has no direct nexus with the issues involved in the present Change Report. Mr. Sameer Bhujbal is present in judicial custody. Mr.Jain submitted that notwithstanding the arrest, in terms of Section 73 of the Bombay Public Trusts Act, read with provisions contained in Order 16A of the CPC, there can be no difficulty whatsoever to the examination of Mr. Sameer Bhujbal in respect of Change Report No.1118 of 2012 and there was absolutely no necessity for requiring Mr. Pankaj Bhujbal to depose in the matter. Mr. Jain submitted that the reasoning in the impugned order is quite flawed. The circumstance that Mr. Pankaj Bhujbal is the Reporting Trustee or that

he may have been present during the course of certain meetings of the trust or that he may have signed certain documents pertaining to the trust, are quite irrelevant, though, it is these circumstances which have been held in the impugned order as being the most relevant circumstances. That apart, Mr. Jain submitted that the circumstance that this Court had directed the expeditious disposal of the Change Report, is also not a circumstance which could have been taken into consideration for making the impugned order, particularly since neither Mr. Sameer Bhujbal nor Mr. Pankaj Bhujbal contributed to any delay in the disposal of the Change Report proceedings. Mr. Jain submitted that this is not a case of exercise of discretion under Order 16 Rule 14 of the CPC as, there are no findings in the impugned order to the effect that the examination of Mr. Pankaj Bhujbal is really necessary for any particular purpose. For all these reasons, Mr. Jain submitted that the impugned order warrants interference in the exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

3. Mr. Rizwan Merchant, learned Counsel for respondent no.1, has submitted that this is clearly a case where the ACC has exercised discretionary powers under Order 16 Rule 14 of the CPC. Relying upon the decision of this Court in the case of ***Harishchandra Keshaolal Fulsunge & Anr. Vs. Motilal Shivshankar Agrawal & 4 Ors.***[1], Mr. Merchant submitted that exercise of discretion in a matter of this nature ought not to be interfered with in the exercise of

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extraordinary jurisdiction under Article 227 of the Constitution of India. Mr. Merchant further submitted that the impugned order has recorded reasons as to why the examination of Mr. Pankaj Bhujbal is necessary in the facts and circumstances of the present case and such reasons are neither irrelevant nor extraneous.. Mr. Merchant, on the basis of instructions from his Attorney, states that respondent no.1 would have no objection to the examination of Mr. Sameer Bhujbal as a witness in the matter, in case, the petitioner indeed desires to examine him as a witness. However, the petitioner cannot find any jurisdictional fault with the impugned order to the extent it summons Mr. Pankaj Bhujbal to depose in this matter.

4. In the present case, it must be clarified that the impugned order concerns Change Report No.1118 of 2012 and therefore, the impugned order or for that matter, the present order, need not be extended to the facts and circumstances in respect of other Change Reports which are directed to be disposed of expeditiously. The impugned order has noticed that the pleadings in respect of Change Report No.1118 of 2012 have been signed by Mr. Pankaj Bhujbal. Further, if the affidavit in lieu of examination-in-chief filed by Mr.Sameer Bhujbal is perused, the same makes reference to a meeting of Board of Trustees held on 29/09/2011 which, it appears, is vital for the purposes of deciding the Change Report with which we are now concerned. Even the said affidavit in lieu of examination-in-chief records that the Mr. Pankaj Bhujbal was very much present at the said meeting and has taken part in the same. In the said affidavit, in para

5, it is stated that Mr. Pankaj Bhujbal is acting as a Secretary of the trust and has filed Change Report No.1118 of 2012. In fact, the said affidavit purports to identify the signature of Mr. Pankaj Bhujbal on the Change Report. In this context, if the impugned order records that deposition by Mr. Pankaj Bhujbal is necessary for the disposal of the said Change Report, it can certainly be held that the ACC has indeed exercised discretion under Order 16 Rule 14 of the CPC. This provision entitles a Court to examine any person, including a party to the suit or to produce any document in his possession.

5. Further, in exercising discretion under Order 16 Rule 14 of the CPC, the ACC has also incidentally made reference to the circumstance that there are directions from this Court for expeditious disposal of the Change Report and the circumstance that Mr. Sameer Bhujbal, who is presently in judicial custody, is not very readily available to depose in the matter. The submission of Mr. Jain that this is the sole basis for the making of the impugned order, is not correct. These are merely additional circumstances taken into consideration by the ACC in the matter of exercise of discretion.

6. In the aforesaid facts and circumstances, it cannot be said that the ACC has either failed to exercise jurisdiction or acted in excess of jurisdiction,. This is also not a case where discretion has been exercised perversely, unreasonably or on the basis of irrelevant or extraneous circumstances. Therefore, in a matter of this nature, considering the limited scope of supervisory jurisdiction under Article

227 of the Constitution of India, there is no case made out to interfere with the impugned order dated 23/02/2016 insofar as it partly allows the application at Exh.46.

7. If after the examination of Mr. Pankaj Bhujbal, the petitioner still desires to examine Mr. Sameer Bhujbal as a witness, obviously, there can be no difficulty with regard to the same. In fact, as noted earlier, the learned Counsel for respondent no.1, on the basis of instructions, has already stated that they will not object to the adoption of this course of action. However, the petitioner cannot insist that he will only examine Mr. Sameer Bhujbal on his behalf and that the ACC has no jurisdiction to summon Mr. Pankaj Bhujbal who is otherwise the Reporting Trustee, to depose in the matter. The impugned order, as noted earlier, has set out the reason for the exercise of discretion under Order 16 Rule 14 of the CPC in the matter of issuance of witness summons to Mr. Pankaj Bhujbal. The reasons are neither perverse nor unreasonable. In these circumstances, the impugned order dated 23/02/2016, to the extent it rejects petitioner's application at Exh.44, with regard to issue of witness summons of Mr.Sameer Bhujbal, is liable to be interfered with and modified. Therefore, after Mr. Pankaj Bhujbal is examined as a witness, witness summons can always be issued to Mr. Sameer Bhujbal if the petitioner is indeed desirous of examining Mr. Sameer Bhujbal, if necessary, by resort to the provisions contained in Order 16A of the CPC. If the petitioner desires, he may even apply to the ACC to commence the process under Order 16A of the CPC in the matter of summoning

Mr.Sameer Bhujbal as witness to depose in these proceedings, right away. This will, in fact, assist in the expeditious disposal of the Change Report. There is, however, no necessity to interfere with the order dated 23/02/2016 made on Exh.46.

7. Rule is partly made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)