

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3829 OF 2016

Devendra Ramchandra Patil and anr. : Petitioners.

Versus

**The Charity Commissioner,
Maharashtra State, Mumbai and ors. : Respondents.**

**Mr. Mihir Desai, Senior Advocate with Mr. Sagar G Talekar for the
Petitioners.**

Ms. Aparna Vhatkar AGP for the Respondent Nos.1 and 2.

Mr. Umesh R Mankapure for the Respondent No.3.

CORAM : R. M. SAVANT, J.

DATE : 13th April 2016

P.C.

1 The above Petition has been heard from time to time. During the course of hearing of the above Petition, the learned Senior Counsel appearing on behalf of the Petitioners Mr. Mihir Desai submitted that the Petitioners would not press the above Petition but would be satisfied if the Respondent No.3 furnishes the notes of evidence in the 4 change reports in question being ACC (Hosp)/3761 of 2011, ACC (Hosp)/1496 of 2012, ACC (Hosp)/4160 of 2012 and ACC (Hosp)/4161 of 2012. To this the learned counsel appearing on behalf of the Respondent No.3 Shri Mankapure, on instructions, stated that the Respondent No.3 would furnish the notes of evidence in the aforesaid 4 change reports to the learned counsel for the Petitioners. Accordingly the notes of evidence in the aforesaid 4 change reports have been furnished to the learned counsel for the Petitioners except, the evidence of the hand writing expert in

respect of his report in Change Report No.3761 of 2011. The learned counsel for the Respondent No.3 states that the evidence of the hand writing expert in respect of the report submitted in Change Report No.3761 of 2011 would be furnished during the course of the present week.

2 The learned Senior Counsel for the Petitioner draws this Court's attention to the order dated 23/02/2016 passed by the learned Deputy Charity Commissioner, Greater Mumbai Region, Mumbai by which order the Application (Exhibit 11) filed by the Petitioners has been rejected. The said application has been rejected as according to the learned Deputy Charity Commissioner the same was contrary to the application (Exhibit 9) which was an application filed by the Petitioners for transfer of the proceedings to some other officer.

3 In view of the fact that the notes of evidence in the aforesaid 4 change reports have now been furnished to the learned counsel for the Petitioners, the above Petition would have to be disposed of as not pressed as stated by the learned Senior Counsel appearing for the Petitioners.

4 In so far as the order dated 23/02/2016 passed by the Deputy Charity Commissioner is concerned, it is required to be noted that the said application (Exhibit 11) was filed by the Petitioners for vacating ad-interim

relief which was granted in the application filed under Section 41A by the Respondent No.3 herein. In the said context it is required to be noted that in paragraph 5 of the impugned order dated 13/03/2016, the learned Charity Commissioner, Maharashtra State, Mumbai has observed that the ad-interim order passed in the application filed under Section 41A was for a short period and is not in force. Hence the learned Charity Commissioner has proceeded on the basis that the ad-interim order passed in the application filed under Section 41A was not in force and therefore the application (Exhibit 11) was misfounded. If that be so, then there is no warrant to issue direction to the learned Deputy Charity Commissioner to consider the application (Exhibit 11) on merits, but as the order dated 18/02/2016 by the learned Deputy Charity Commissioner discloses that the ad-interim relief was to operate until further orders passed by the learned Deputy Charity Commissioner, if the ad-interim relief is still continuing, then the learned Deputy Charity Commissioner is directed to hear and decide the said application (Exhibit 11) on merits. The order dated 23/02/2016 would accordingly stand set aside.

5 In so far as the hearing of the said 4 change reports is concerned, the learned Deputy Charity Commissioner is directed to offer an opportunity to the Petitioners to make their submissions on the basis of the said notes of evidence which have now been furnished to them by the learned counsel for the Respondent No.3.

6 Since the proceedings before the learned Deputy Charity Commissioner are time bound, it is expected of the parties that they co-operate in the early disposal of the said proceedings including the application (Exhibit 11) if required to be decided.

7 The above Writ Petition is accordingly disposed of as having not been pressed, subject to the directions as above.

[R.M.SAVANT, J]