

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

**FIRST APPEAL NO.1009 OF 2015
WITH
CIVIL APPLICATION NO.2981 OF 2015**

**Nisar Sultanali Merchant and ors. : Appellants/Applicants.
Versus
Ismail Merchant and ors. : Respondents**

**Mr. Gaurav Mehta a/w Mr. Phiroze Merchant i/by M/s. Apex Law Partners
for the Appellants/Applicants.
Mrs. Seema Sarnaik i/by Ms. Shubhangi Abhyankar for the Respondent
Nos.1 and 2.**

**CORAM : R. M. SAVANT, J.
DATE : 22nd June 2016**

Oral Order :-

- 1 Admit. Considering the challenge raised heard forthwith.
- 2 The above First Appeal arises out of the order dated 17/04/2015 passed by the learned Charity Commissioner, Maharashtra State, Mumbai by which order the Application filed by the Respondent Nos.1 to 4 herein under Section 47 of the Maharashtra Public Trusts Act, 1950 came to be allowed and resultantly the Applicants – Respondent Nos.1 to 4 herein were appointed as trustees of Seth Ramjanalli Gulamhussain Charity Trust bearing P.T.R. No.B/771 (Mumbai). A direction also came to be issued to the said Applicants to administer the trust in the light of the scheme in existence or they may prepare a scheme under Section 50A(1) of the said Act within 3 months from the date of the said order and submit the same for approval. As result of the

order the entries in Schedule-I of the said Trustees were also directed to be amended.

3 The trust in question i.e. the said Seth Ramjanalli Gulamhussain Charity Trust has been registered on 19/10/1954, on the ground that the said trust was not managed by the trustees appointed authentically because the original trustees died and nobody in their place could be appointed, the Applicants filed the application invoking Section 47 on the ground that there are no trustees and that they are willing to act as trustees.

4 In the impugned order it is recorded that initially Ebrahim Jaffar, Mahomed Hassan A Fazelbhai, Sujatally G Vakil, Esmail Soomer and Nisar Sultanalli Merchant were appointed as trustees. However, it is the case of the Applicants that the said trustees are no more. In so far as Section 47 of the said Act is concerned, the power is vested in the Charity Commissioner to appoint any person as a trustee or remove or discharge any trustee for any of the reasons specified in subsection (1), amongst the said reasons is the reason of the death of a trustee.

5 In the instant case, it was the case of the Applicants that all the trustees were dead or not traceable and therefore there was a need to appoint trustees and that the Applicants were willing to act as trustees.

6 It appears that to the said Application filed by the Applicants i.e. the Respondent Nos.1 to 4 herein one Nisar Sultanalli Merchant was joined as the Respondent No.5. The name of the said Nisar Sultanalli Merchant is appearing in Schedule-I of the Trust register as being trustee. However, the notice to the said Nisar Sultanalli Merchant came back as “unclaimed”, however, there is no dispute about the fact that the said Nisar Sultanalli is a trustee and his name appears in Schedule-I of the Trust.

7 In so far as the Appellant Nos.2 and 3 are concerned, they also claimed to be trustees and in respect of Appellant No.2 a Change Report has been filed in the year 1984 and in respect of the Appellant No.3 a Change Report has been filed in the year 1997. Hence the said Appellants also claim to have an interest in the Trust.

8 The learned Charity Commissioner proceeded to consider the said Application being No.12 of 2014 and accepted the case of the Applicants that the original trustees are dead and though the deaths certificate were not placed on record, however observed that the affirmed statements of the Applicants to that effect cannot be disbelieved. The learned Charity Commissioner further observed that pursuant to the notices issued by registered post as well as public notice calling for objections, if any, to the appointment of applicants as

trustees, nobody had come forward pursuant to the said notices to object to the appointment of the Applicants as trustees. The learned Charity Commissioner thereafter adverted to his powers under Section 47 of the said Act and thereafter ventured to consider the credentials of the Applicants and has deemed it appropriate to allow the application thereby appointing the Applicants as trustees of the said trust. As indicated above, it is the said order dated 17/04/2015 which is taken exception to by way of the above First Appeal.

9 I have heard the learned counsel for the parties. Having regard to the fact that one of the persons whose name appears in Schedule-I viz. Nisar Sultanalli Merchant is very much alive and is available and also in view of the fact that the Appellant Nos.2 and 3 also claim to have an interest in the Trust, though the said fact is sought to be seriously disputed on behalf of the Respondent Nos.1 and 2 herein and also considering the fact that the Application in question is one under Section 47 of the said Act and impinges upon the management of the public trust, in my view, it would be just and proper to set aside the impugned order dated 17/04/2015 passed by the learned Charity Commissioner and remand the matter back to the learned Charity Commissioner for a de-novo consideration of the said Application. The Appellant Nos.2 and 3 herein would be entitled to intervene in the said Application and for being heard in the matter. Till the learned Charity

Commissioner decides the Application in question de-novo the present arrangement would continue, however, the same would be without prejudice to the rights and contentions of the parties and would not create any right in favour of the Applicants. In so far as the properties of the trust are concerned, the same are not to be dealt with pending consideration of the Application in question by the learned Charity Commissioner. In so far as payments towards property tax, electricity bills and day-to-day expenses are concerned, the Respondent Nos.1 and 2 herein would do the needful and maintain the account for the same. On remand the learned Charity Commissioner to hear and decide the Application in question latest by 31/10/2016. Needless to state that the said Application would be decided on its own merits and in accordance with law. During the aforesaid period the Respondent Nos.1 and 2 would also collect the rent from the properties of the trust but would maintain the account for the same. The above First Appeal is accordingly allowed to the aforesaid extent and disposed of as such. In view of the disposal of the above First Appeal, Civil Application No.2981 for stay does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]