

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9964 OF 2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.S.K.Jain with Ms.Parul Abhyankar with Mr.Sajal Yadav with Mr.S.K.Krishnan i/b M/s.Karan Vyas for the petitioner

Mr.Shailesh Shah i/b Mr.Deverath Singh with Mr.Parag Sharma i/b M/s.Udwadia and Co. for the respondent no.1

Ms.Aparna Vatkar, A.G.P. for the respondent no.2

CORAM : K. K. TATED, J.
DATE : AUGUST 24, 2016

P.C.:

1 Not on board. At the request of Advocate for the petitioner, matter is taken on board for urgent orders.

2 Heard the learned counsel for the parties.

3 Advocate for the respondent undertakes to file Vakalatnama within one week from today. Undertaking is accepted.

4 By this Petition under Article 227 of Constitution of India, the petitioner challenges the order dated 19.8.2016 passed by learned Assistant Charity Commissioner, Mumbai rejecting

Mr.Sameer Bhujbal's application who at present is in Arthur Road Jail, Mumbai for direction to the reporting trustee to provide him copies of all the papers and proceeding of the change report no.1117 of 2012 before entering into the witness box.

5 The learned counsel for the petitioner submits that witness Mr.Sameer Bhujbal is in jail for last 6 months. Therefore, it is very difficult for him to enter into witness box and give evidence without refreshing his memory about the facts of change report no.1117 of 2012 which is more than four year old matter. He submits that the learned Asst. Charity Commissioner failed to consider the fact that in the interest of Justice witness could have given some time to go through the papers and proceedings of matter. He submits that because of pressure in jail for last six months, it is very difficult for the witness to give proper evidence in the present change report no.1117 of 2012. He submits that by application dated 19.8.2016 witness asked three weeks time to go through the papers. He submits that in the interest of justice this Hon'ble Court be pleased to set aside the impugned order dated 19.8.2016 passed by learned Asst. Charity Commissioner and allow the application filed by the witness. He submits that learned Asst. Charity Commissioner erred in coming to the conclusion that in view of Section

159 of the Indian Evidence Act, witness can refresh his memory at the time of giving evidence from witness box.

6 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that though petitioner had knowledge that they want to examine Mr.Sameer Bhujbal as witness who is in jail for last six months. They failed and neglected to make application in advance. He submits that next date before the Asst.Charity Commissioner is 26.8.2016 and present application is filed by the witness on 19.8.2016. He submits that petitioner wants to prolong the present litigation of change report on one or the other ground. He submits that Asst.Charity Commissioner granted liberty to the witness to refresh his memory at the time of giving evidence under section 159 of the Indian Evidence Act. Hence, there is no substance in the present Writ Petition and same be dismissed.

7 I have heard both the sides.

8 At the outset it is to be noted that though the petitioner had knowledge that they want to examine Mr.Sameer Bhujbal as a witness in change report no.1117 of 2012 who is in jail for last six months they made application on 19.8.2016 i.e. at the last moment. When this court called upon the petitioner as to how many witnesses are there to examine in the present matter, he submitted that

the Mr.Sameer Bhujbal and also reporting trustee is remained to examine by them. When this court called upon the petitioner to take instructions as to whether is it possible for the reporting trustee to enter into the witness box on 26.8.2016 and at that time he showed his inability to do so. This itself shows that on one or the other ground petitioner wants to prolong the litigation. In any case, at the time of passing impugned order dated 19.8.2016 learned Asst.Charity Commissioner granted liberty to witness to go through the papers as per Section 159 of the Indian Evidence Act.

9 Considering these facts, impugned order passed by Asst.Charity Commissioner dated 19.8.2016 and application filed by witness, I do not find any substance in the present Writ Petition. Hence, same stands rejected.

JUDGE