

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11271 OF 2016

Mahendra Bhargav Mohite & Anr. .. Petitioners
VS.
Suheet Jevan Trust & Ors. .. Respondents

Mr. Ojas Deolankar for Petitioners.
Mr. S. R. Ronghe for Respondent Nos. 1 and 2.
Ms M. S. Bane – AGP for Respondent Nos. 3 and 4.

CORAM : M. S. SONAK, J.
DATE: 15 NOVEMBER 2016

P.C :

- 1] Rule. Rule is made returnable forthwith with the consent and at the request of the learned counsel for the parties.
- 2] This petition challenges order dated 27 June 2016, by which the Assistant Charity Commissioner, Raigad, has dismissed petitioner's application seeking a witness summons to one Mr. Surendra G. Patil.
- 3] The impugned order dated 27 June 2016, reads thus :

“Order

Heard. Perused proceedings of Annual General meeting dated 19/7/2010. As per opponent alleged meeting dated 19/7/2010 was not took place, and in order to prove that said meeting dated 19/7/2010 is not took place, testimony of Mr. Surendra Patil is necessary. After perusing of proceeding of meeting dated 19/7/2010 it appears that Mr. Surendra Patil was presented in meeting. If it is contention of applicant that

Mr. Surendra Patil is evidence to prove that Mr. Surendra Patil examined of witness, it will be proved that said alleged meeting dated 19/7/2010 is not taken place. Assuming without admitting that if it is case, that applicant / opponent must produce along with this application that Mr. Surendra Patil has also disputed said meeting dated 19/7/2010, I would have convinced to issue summons to him. However more than 6 years has taken elapsed, after six to come and say that said meeting is not took place would be against justice. Hence I feel that testimony of Mr. Surendra Patil is not necessary, and if took place. It will be defeat of the justice. Hence I proceed to pass following order.

a) *Application is rejected.*

Date:- 27/6/2016

*--Sd--
A.C.C. Raigad"*

4] The respondent no. 2 Dr. Surekha Patil has filed affidavit in reply on behalf of the respondent no. 1 and herself. To this affidavit in reply, she has annexed an application / affidavit said to be made by Mr. Surendra G. Patil, in respect of whom witness summons was applied for by the petitioner. In this application / affidavit, the said Mr. Surendra G. Patil has made reference to change report no. 838 of 2010, with which, we are concerned in the present matter. He has made certain statements in relation to the meeting dated 19 July 2010.

5] At this stage, we are obviously not concerned with the veracity or otherwise of the statement made by Mr. Surendra G. Patil in the aforesaid application / affidavit. However, if the

impugned order dated 27 June 2016 is perused, it is clear that the presence of Mr. Surendra G. Patil was requested, precisely in order to depose with regard to the alleged meeting dated 19 July 2010. This means that the testimony of Mr. Surendra G. Patil is quite relevant to the controversy between the parties. The impugned order also does not reject the petitioner's application for witness summons on account of irrelevancy but the application is rejected on the ground that six years have elapsed since 19 July 2010 and, according to the Assistant Charity Commissioner "..... ***after six to come and say that said meeting is not took place would be against justice.***"

6] According to me, the aforesaid is hardly a reason to decline issuance of witness summons and in any case, if Mr. Surendra G. Patil has himself, filed application / affidavit on 8 July 2016 in this very proceedings, it is clear that Mr. Surendra G. Patil is a material witness in so far as the alleged meeting dated 19 July 2010 is concerned.

7] Mr. Ronghe, learned counsel for the respondent nos. 1 and 2 however submits that the evidence of the petitioner has already concluded. Therefore, he submits that the application for witness summons to Mr. Surendra G. Patil was highly belated and has

been rightly rejected.

8] If the impugned order is perused, the rejection of the petitioner's application is not on the aforesaid ground. In any case, it cannot be said that the application is highly belated. The matter will have to be considered in the light of the application / affidavit now filed by Mr. Surendra G. Patil in this very proceedings.

9] Accordingly, the impugned order is set aside. The Assistant Charity Commissioner, Raigad, is directed to issue witness summons to Mr. Surendra G. Patil. Upon an appearance of the said Mr. Surendra G. Patil, the petitioner will be entitled to examine himself and the respondent nos. 1 and 2 will have full opportunity of cross-examining him. Such a course of action would be in the interests of justice.

10] Rule is accordingly made absolute to the aforesaid extent. There shall however be no order as to costs.

11] All concerned to act on basis of authenticated copy of this order.

Chandka

(M. S. SONAK, J.)