

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12077 OF 2015

Mr. Santosh B. Ghige .. Petitioner
vs.
Mr. Sadanand S. Shelar and ors. .. Respondents

Mr. Manoj J. Bhatt for the Petitioner.
Mr. R.D. Soni with Mr. S.N. Gawade and Ms Lochan Chandka i/b
Shree & Co. for Respondent Nos.1 to 3.
Ms Vaishali Nimbalkar, AGP for State.

CORAM : M. S. SONAK, J.
DATE : 12 JANUARY 2016.

P.C. :-

1] Rule. With the consent of and at request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 23 November 2015 made by the Joint Charity Commissioner in Appeal No. 509 of 2015, by which the Joint Charity Commissioner has permitted recall of the witness Mr. B.M. Pawar, so as to enable Respondent Nos.1 to 3 to cross-examine the witnesses.

3] Learned counsel for the Petitioner points out that several directions have issued to the Deputy Charity Commissioner for disposal of change report proceedings. In order dated 9 February 2015, by which, the Deputy Charity Commissioner had applied for

extension, directions were issued for completion of proceedings within three months. Despite such directions, learned counsel for the Petitioner submits that Respondent Nos.1 to 3 are bent upon delaying the proceedings and the application seeking recalling of the witness was in furtherance of such oblique motive to delay the proceedings.

4] Mr. R.D. Soni, learned counsel for Respondent Nos.1 to 3, however, submits that the cross-examination of Mr. B.M. Pawar could not be completed, as on the date posted for further cross-examination, a holiday was declared and the matter was posted to the next date. On the next date, no cross order was made and thereafter, the proceedings could not go on account of certain personal difficulties of the Deputy Charity Commissioner. Mr. Soni submitted that if upon consideration of all these circumstances, liberty to cross-examine has been granted, same does not warrant interference, particularly as exercise of discretion is neither unreasonable nor perverse.

5] Having heard the learned counsel for the parties, it must be noted that there is substance in the contention of learned counsel for

the Petitioner that Respondent Nos.1 to 3 are not cooperating in the matter of expeditious disposal of change report proceedings. In fact, as noted in the order dated 9 February 2015 in Writ Petition No. 6253 of 2012, the Deputy Charity Commissioner had also applied for extension of time citing that '*attitude of the parties*' was coming in the way of expeditious disposal. This Court had rejected such reasons and further observed that if the parties are delaying the proceedings, the Deputy Charity Commissioner would be well within his powers to make appropriate orders to prevent the same. After such observations, it was no doubt observed, that the proceedings should be disposed of expeditiously after afford of opportunity of hearing to all the parties. This expression, however, is being misinterpreted by the authorities as a licence to go on granting the opportunities after opportunities to the parties, irrespective of whether there is any real reason to grant the same.

6] The Joint Charity Commissioner, in making the impugned order, has completely misinterpreted the observations made by this Court in the matter of grant of opportunity of hearing. The said expression was not meant as a licence to the parties to go on delaying the proceedings for one reason or other.

7] Having said this, considering the peculiar circumstances that a holiday was declared upon the date on which the cross-examination was to continue, there is no necessity to interfere with the exercise of discretion. No doubt, Respondent Nos.1 to 3 ought to have been more diligent in the matter. Even on the earlier occasion, a witness was examined and thereafter, Respondent Nos.1 to 3 delayed in the matter of cross-examination and ultimately no cross order came to be passed. Therefore, although the impugned order is not being interfered with, this is a fit case to impose exemplary costs upon Respondent Nos.1 to 3, so that the said Respondents think twice before further delaying the proceedings, which this Court time and again, has directed to dispose of expeditiously.

8] The Respondent Nos.1 to 3 are therefore, directed to pay costs of Rs.20,000/- to the Petitioner on or before 20 January 2016. The Assistant Charity Commissioner, upon being satisfied that such costs are indeed paid by Respondent Nos.1 to 3 to the Petitioner on or before 20 January 2016, shall fix a date for cross-examination of Mr. B.M. Pawar. On the said date, Respondent Nos.1 to 3 shall proceed with cross-examination without seeking any adjournment.

9] The Assistant Charity Commissioner, who is now incharge of this matter, is directed to dispose of the change report proceedings within a period of two months from today. In case, any of the parties do not cooperate in the matter of expeditious disposal, the Assistant Charity Commissioner, as directed earlier, is free to make appropriate orders.

10] The Rule is disposed of in the aforesaid terms with costs as aforesaid. It is made clear that in case the costs are not paid on or before 20 January 2016, then the impugned order dated 23 November 2015 made by the Joint Charity Commissioner shall stand set aside and there will be no further right to cross-examine Mr. B.M. Pawar.

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

(M. S. SONAK, J.)