

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.708 OF 2014
IN
TRUST PETITION NO.1 OF 2014

Ralph Desouza. .. Appellant
Vs
Jude Everard Desouza and Others. .. Respondents

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Shri Rishabh Shah i/b Raval Shah & Co for the Appellant.
Shri Dakshesh Vyas along with Shri Durgaprasad Sabnis, Shri Durgesh Kulkarni and Ms. Shauna Jain i/b Lex Firmus for the Respondent Nos.1 to 3.
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CORAM : A.S. OKA & P. D. NAIK, JJ
DATED : 31ST MARCH 2016

PC.

. Heard learned counsel appearing for the Appellant and the learned counsel appearing for the Respondents. The challenge in this Appeal is to the three orders passed by the learned Single Judge on 31st October 2014, 3rd November 2014 and 14th November 2014. The orders have been made by the learned Single Judge on the Petition filed by the Respondents.

2. A Trust was created by one Mrs. Maria Perpetua Nazareth under the Last Will and Testament dated 1st July 1974. The first and the second Respondents in the said Petition were the Trustees of the

said Trust. The present Respondents are grandsons of the Testatrix. The present Appellant is the second Respondent in the Petition filed by the Respondents herein. The contention raised in the Petition by the Respondents as against the Appellant was that he has attracted a disqualification under Section 73 of the Indian Trusts act, 1882 (for short “the said Act”). There was a prayer made in the Petition filed by the Respondents on the premise that the present Appellant has ceased to be the Trustee by virtue of Section 73 of the said Act and, therefore, a fit and proper person should be appointed as a Trustee in place of the Appellant.

3. By the first impugned order dated 31st October 2014, the learned Single Judge recorded a finding that admittedly, the present Appellant has been absent from India continuously for more than six months. The learned Single Judge also recorded that the other Trustee (the first Respondent in the Petition filed by the Respondents) had tendered his resignation. Therefore, by the said order dated 31st October 2014, the learned Single Judge directed the parties to the Petition to suggest the names of the persons for appointing two Trustees. By the subsequent order dated 3rd November 2014, the learned Single Judge appointed Mr. Francis Fernandes, Ex Municipal Engineer, PWD, Government of Goa and Mr. Joseph Mathew, Chartered Engineer & Electrical Consultant, both the residents of Goa, as the

Trustees. The third impugned order dated 14th November 2014 is an order correcting the accidental errors in the earlier orders.

4. Learned counsel appearing for the Appellant submitted that an advantage is being taken of the observations made in the order dated 31st October 2014 for prosecuting the Appellant. His second submission is that both the new Trustees appointed are residents of Goa and even they may attract disqualification under Section 73 of the said Act. He submitted that the immovable property of the Trust is in Mumbai and, therefore, both the Trustees being from Goa may not be able to properly administer the Trust.

5. The learned counsel appearing for the Respondents candidly stated that the order dated 31st October 2014 is not stigmatic and except for the finding based on Section 73 of the said Act, there is no adverse finding recorded against the Appellant.

6. We have considered the submissions. We have perused the order dated 31st October 2014. The only finding recorded by the learned Single Judge against the Appellant is as regards the applicability of Section 73 of the said Act based on the admitted position of the absence of the Appellant from India continuously for a period of more than six months. In Paragraph 5 of the said order, the

learned Single Judge has referred to the contention raised by the Respondents in their Petition that the Appellant has failed to perform his functions and obligations under the Will. The learned Single Judge has not recorded any finding on the said allegation and has recorded that the said allegation is inconsequential. Moreover, in Paragraph 2 of the order dated 3rd November 2014, the learned Single Judge has clarified that the order dated 31st October 2014 is fully non-stigmatic. The learned Judge has further clarified that the Court was not called upon to decide whether the Appellant is a fit and proper person to continue as a Trustee and the Court has decided the issue only on the basis of the plain language of Section 73 of the said Act. Therefore, we hold that the order dated 31st October 2014 is not stigmatic at all and there is no adverse finding recorded as regards the conduct of the Appellant. All that the learned Single Judge has done is to record a finding that Section 73 of the said Act is attracted due to absence of the Appellant from India continuously for a period of more than six months. Therefore, we do not agree with the submission of the learned counsel appearing for the Appellant that on the basis of the impugned order, the Appellant is sought to be prosecuted. If at all the Appellant is prosecuted, the Appellant can always point out the finding recorded by this Court that the said order dated 31st October 2014 is not stigmatic.

7. As regards the challenge to the appointment of the two new Trustees appointed under the order dated 3rd November 2014, the learned Single Judge had permitted even to the Appellant to suggest the names. The Appellant did not suggest any name. Therefore, the learned Single Judge accepted the names suggested by the Respondents and appointed the aforesaid two persons as Trustees. It is not the case of the Appellant that the persons appointed are not fit and proper persons to continue as Trustees. The only contention is that as they are the residents of Goa, it cannot be said that they will not be able to administered the Trust properly. We cannot interfere with their appointment only on the basis of apprehension expressed by the Appellant.

8. In view of the findings recorded above, it is not necessary to entertain the Appeal and accordingly, the Appeal is dismissed.

(P. D. NAIK, J)

(A.S. OKA, J)