

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5945 of 2015

(Mr. Vipin Vincent Bower
vs.
Ms. Vinita Vincent Bower and others)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

Shri A.P. Thakre, Advocate for the petitioner.
Shri S.R. Deshpande, Advocate for the respondent no.1.

CORAM : A.S. CHANDURKAR, J.

DATE : 25th JULY, 2016.

Heard.

The challenge in the present writ petition is to the order dated 07/10/2015 passed by the learned Joint Charity Commissioner condoning the delay in filing an appeal under Section 70 of the Maharashtra Public Trusts Act, 1950.

The respondent no.2 herein had filed change report proceedings under Section 22 of the said Act. The learned Deputy Charity Commissioner by order dated 06/12/2014 rejected the change report but at the same time issued certain directions to the trustees on Schedule-I for being complied with. The respondent no.1 being aggrieved, filed an appeal challenging the aforesaid order on 08/05/2015. Along with the said appeal, an application for condonation of delay of fifty three days came to be filed. This

application was opposed by the petitioner and by the impugned order, the delay came to be condoned.

Shri A.P. Thakre, learned Counsel for the petitioner submitted that the learned Joint Charity Commissioner was not justified in condoning the delay. According to him, though the delay was for a period of almost ninety days, in the application there was a prayer to condone the delay of fifty three days. The reasons given for the cause of delay were not sufficient and the learned Counsel also referred to the deposition of the respondent no.1 in that regard. According to him, the learned Joint Charity Commissioner by condoning the delay has granted relief which had not been sought for. In support of his submission, the learned Counsel placed reliance on the decision of the Hon'ble Supreme Court in Manohar Lal (D) by Lrs. vs. Ugrasen (D) by Lrs. & Ors. - 2010 ALL SCR 1570, as well as the judgment of learned Single Judge in Mahabaleshwar R. Hegde vs. Lakshmi A. Salgaocar & ors. decided on 17th June, 2008. It was, therefore, submitted that the impugned order was liable to be set aside.

Shri S.R. Deshpande, learned Counsel for the respondent no.1 supported the impugned order. According to him, the delay as caused was due to miscalculation of the

period of limitation. He submitted that though the change report had been rejected, certain ancillary directions were issued in paragraph 23 of the judgment, which were not noticed initially. He submitted that the respondent no.1 had also challenged said directions by preferring a revision application under Section 70A of the said Act. He, therefore, submitted that the discretion exercised by the learned Joint Charity Commissioner in condoning the delay did not deserve to be interfered with.

By the order dated 06/12/2014, the change report filed by the respondent no.2 came to be rejected. In the said order, the learned Deputy Charity Commissioner issued certain directions that required the trustees mentioned in Schedule-I to comply with the same. The appeal filed by the respondent no.1 is dated 08/05/2015. In the application for condonation of delay, there is a reference to the aspect of miscalculation of the period of delay and the same is stated to be for fifty three days. The learned Joint Charity Commissioner found that the actual delay caused was for ninety days. He further observed that the reasons assigned were sufficient as the delay in taking steps was on account of advice given by the Counsel. At the same time, costs came to be awarded as condition precedent.

From the contents of the application for condonation of delay as well as the deposition of the respondent no.1, it cannot be said that the learned Joint Charity Commissioner committed any error in condoning the delay in filing the appeal. The reasons assigned by the respondent no.1 in the said application were found to be acceptable and, hence, the discretion in that regard came to be exercised. If the appellate authority has condoned the delay by exercising discretion in that regard, this Court would not be inclined to interfere in exercise of such discretion especially when the same is not shown to be arbitrary.

As regards the submission that though there was a prayer to condone the delay of only fifty three days and the actual delay was of ninety days, the said aspect is not of much significance. The explanation for the delay having been found to be sufficient, the learned Joint Charity Commissioner was justified in condoning the delay. The ratio of the decisions relied upon in *Manohar Lal* and *Mahabaleshwar Hedge* (supra) cannot be made applicable to the facts of the present case.

In view of aforesaid, I do not find any case to interfere in writ jurisdiction. The writ petition is, therefore, dismissed with no order as to costs.

JUDGE

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of the original signed order.

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P.A. to the Hon'ble Judge.