

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

CIVIL APPLN. (O) NO. 201 OF 2015
IN
MISC. CIVIL APPLN. ST. NO. 22347 OF 2014
IN
WRIT PETITION NO. 2917 OF 2013 (D)

Narayan Motiram Zade

-vs-

Anandrao Shankar Aadbale and others

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

Court's or Judge's Orders.

Mr.H.N.Potbhare, counsel for the applicant/respondent.
Mr.S.O.Ahmed, counsel for the non-applicants/petitioners.

CORAM : SMT. VASANTI A. NAIK, J.

DATE : 22.04.2016.

CIVIL APPLN. (O) NO. 201 OF 2015

Heard.

Perused the contents of the application. Though the learned counsel for the non-applicants opposes the prayer made in the application, for the reasons stated in the application, the delay in filing the miscellaneous civil application is condoned. The civil application is allowed and disposed of.

MISC. CIVIL APPLN. ST. NO. 22347 OF 2014

Heard.

Shri Potbhare, the learned counsel for the applicant, states that since this Court had not adjudicated upon the merits of the case and since a statement was made by the learned counsel for the non-applicants that the applicant could have raised an objection before the Assistant Charity Commissioner, a statement was made on instructions by the counsel for the applicant that the applicant would

withdraw the suit and file an objection in the change report enquiry proceedings filed by the original applicants, the non-applicants herein. It is stated that the said statement was made by the learned counsel on a belief that the change report enquiry proceedings were pending before the Assistant Charity Commissioner. It is stated that on verification, it is found that the statement made by the learned counsel for the original petitioners was factually incorrect and no proceedings were pending before the Assistant Charity Commissioner. It is stated that in this background, the applicant had withdrawn the suit. It is stated that the order, dated 21/12/2013 is liable to be recalled, as the same is based on the statement made by the learned counsel for the original petitioners that the change report enquiry proceedings were pending.

Shri Ahmed, the learned counsel for the non-applicants, states that since a communication/representation was made to the Assistant Charity Commissioner, Chandrapur on 30/10/2011 in respect of the resolution accepting the members, the learned counsel had made a statement on the instructions of the non-applicants that the change report enquiry proceedings were pending. It is stated that if this Court is of the view that the communication dated 30/01/2011 would not be in respect of change report enquiry proceedings, an appropriate order may be passed.

On a reading of the communication, dated 30/10/2011, it appears that no change report enquiry proceedings are registered before the Assistant Charity Commissioner. Merely a communication is issued by the Secretary of the Trust to the Assistant Charity Commissioner about certain changes. Since the order that is sought to be reviewed was based on a statement made by the learned counsel for the original petitioners/non-applicants that the change report enquiry proceedings were pending before the Assistant Charity Commissioner, a statement was made by the learned counsel for the applicant on instructions that the applicant would withdraw the suit and file an objection in the change report enquiry proceedings. The statement made by the learned counsel for the applicant was based

on the submission made on behalf of the original petitioners/non-applicants. This Court had not decided the question of maintainability of the suit in view of the provisions of Section 80 of the Maharashtra Public Trusts Act and/or any other grounds that were raised in the petition.

Hence, for the reasons aforesaid, the order, dated 21/12/2013 is hereby recalled. Writ Petition No.2917 of 2013 may be listed for admission. The applicant may take appropriate steps for the revival of the suit in pursuance of this order.

Order accordingly. No costs.

JUDGE

KHUNTE