

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2204 OF 2017

Harishchandra A. Sawant & Ors. ... Petitioners
V/s.
Pratap S. Rajeshirke & Ors. ... Respondents

Ms. Gauri Jadhav for the Petitioners.
Mr. Sandip J. Ghogare, for Respondent Nos.1 to 3, 6 and 8.

**CORAM : C.V. BHADANG, J.
DATE : 13th APRIL, 2017.**

P.C. :

1 Heard learned counsel for the Petitioners and learned counsel for the Respondents.

2 Although, in the prayer clause, there is no specific order which is subject matter of challenge, the learned counsel for the Petitioners, states that the Petitioners are challenging the order dated 10.11.2016 (below Exh. 9), which was an application filed on behalf of Petitioner No.2 under Order I Rule 8 of the Civil Procedure Code for permitting Petitioner No.2 to sign written statement and contest the matter on behalf of the other trustees.

3 The learned Charity Commissioner has found that the matter is not governed by Order I Rule 8 but by Order I Rule 12 of the C.P.C.

4 On hearing the learned counsel for the parties and on perusal of the impugned order, I do not find that any case for interference is made out. Order I Rule 8 of the C.P.C. applies to a case where the Suit is filed or is sought to be defended in a representative capacity. Assuming that Order I Rule 8 of the C.P.C. applies it presupposes that the defendants who intend to have leave to defend the matter in a representative capacity have 'same interest', in the subject matter of dispute. Neither in the written statement nor in the application Exh.9, there is even an averment that interest of Petitioner No.2 is same, as that of the other trustees. For this reason alone, the leave could not have been granted. The Petition is without any merit and is accordingly dismissed. However, it would be open to the other opponents before the learned Assistant Charity Commissioner to file written statement along with an application for condonation of delay and if such, application is filed, the Assistant Charity Commissioner shall decide the same in accordance with law.

5 In the circumstances there shall be no order as to costs.

(C.V. BHADANG, J.)