

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.153 OF 2014**

Dr Bhaskar Keshav Prani & Anr ...Appellants
Versus
Hindu Dharamshala & Sanatorium, Miraj & Ors ...Respondents

Mr Ashutosh Kulkarni, for the Appellants.
Mr Amit Thakkar, *with Mr Dipesh Siroya i/b Thakkar & Co, for*
Respondents Nos.1 to 3

CORAM: G.S. PATEL, J
DATED: 6th June 2017

PC:-

1. Admit. Paper-book dispensed with. By consent, the appeal is taken up for hearing and final disposal on the basis of the compilation in the Appeal.
2. The two Appellants are aggrieved by the order dated 12th April 2013 passed by the Ad-hoc District Judge-1, Sangli in their Miscellaneous Civil Application.
3. This Miscellaneous Civil Application was purportedly an appeal against an order passed under Section 41-D of the Bombay Public Trusts Act, 1950. That order was also against the Appellants.

4. The 1st Respondent, the Hindu Dharamshala & Sanatorium, Miraj, was established in 1934. It provides accommodation to patients, funeral expenses and assistance to needy persons. It is a registered trust. Before the Joint Charity Commissioner, witnesses were examined and documents were produced at the hearing of the Appellants' Miscellaneous Application. The allegation was in respect of alleged defaults by the trustees. The Joint Charity Commissioner held against the Appellants. They came up in appeal.

5. Before the Ad-hoc District Judge-1, Sangli,, the Appellants contended that there was a default by Respondents Nos.2 and 3, both trustees of the Respondent No.1 Trust. The Appellants said or claimed to be well-wishers and also beneficiaries. However, neither was able to show ever done any activity for or in the name of the Trust or ever been involved in the activity of the Trust. There was also no evidence either of the Appellants had made any attempts at raising public funds for the benefit of the Trust, although I have the gravest doubt that even this would have given them any rights such as the ones they claim. Most curiously, the Appellants then claimed to serve the role of *amicus curiae* before the hapless ad-hoc District Judge-1; the District Judge himself did not seek out their assistance, and I am confident had he wanted to appoint *amicus curiae* he had a plenitude of choice that did not include these Appellants. Very possibly, there is no more unhelpful creature in an adversarial judicial system than a self-proclaimed *amicus*.

6. The Joint Charity Commissioner and the District Judge correctly held that the Appellants had no concern whatever with the Trust. I see no reason to differ with them. It is quite candidly stated

that there is no material on record, other than saying that it was always within the powers of the authorities under the BPT Act to invoke and exercise *suo motu* powers. The District Judge found no substance to the allegations and these findings are not controverted by any material on record before me. The District Judge correctly concluded the Appellants have no locus; that was my first question as well. The Appellants are neither well-wishers nor beneficiaries; and being a 'well-wisher' would not necessarily afford sufficient standing to sue. Merely being donors does not confer any rights.

7. There is also the question of maintainability, and although since I am dismissing this Appeal on merits, this may not be of immediate concern, I will note the argument since Mr Thakkar for the Respondents Nos. 1 to 3 presses it. He points out that under Section 41-D(5), an application to Court lies only against an order suspending, removing or dismissing a Trustee. It does not lie against an order refusing to suspend, remove or dismiss a Trustee. Mr Thakkar submits that the Miscellaneous Application before the District Judge was itself not maintainable and consequently there is no question of the First Appeal being maintainable before this Court under sub-Section (6). This question is left open, since there is no reason to examine it further, as the Appeal is being disposed of on merits.

8. The Appeal is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)