

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.352/2017

Dinshaw Mehta

... Petitioner

V/s.

Asstt. Charity Commissioner of Mumbai
and Ors.

... Respondents

Mr. Atul Damle, Senior Advocate a/w. Mr. Neil Patel, Ms. Reema Gupta
i/b. Rajesh Kinnerkar for the petitioner

Mr. Amar Mishra, AGP for the respondent No.1.

Mr. Prasad S. Dani, Senior Advocate a/w. R. K. Satpalkar, Mr. Nutash
Kotwal i/b. M/s. Mulla & Mulla C.B. & C. for respondent No.2.

Mr. Chaitanya Chavan /a.w Mr. Abhishek Sawant, Mr. Levi Rubens, Mr.
Yohaana Rubens i/b. Vigil Juris for respondent No.3.

CORAM: K.K. TATED, J.

DATED : FEBRUARY 15, 2017

PC. :

1. Heard the learned counsel for the parties. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 18.01.2017 passed by the Assistant Charity Commissioner, Mumbai, closing the hearing of a Change Report without giving any opportunity to the petitioner to cross-examine the respondents' witnesses.

2. The learned senior counsel for the petitioner submits that on 16.01.2017, the matter was adjourned to 18.01.2017 for orders on

Exhibit 47, 65, 75, 76 and 77. He submits that on that day, the learned Assistant Charity Commissioner allowed Exhibit Nos.47, 75 and 76. By these applications below Exhibit 47, 75 and 76, the Authority allowed respondent No.2 to place on record certain documents.

3. The learned senior counsel for the petitioner submits that though the petitioner made an application before the learned Authority for allowing them to cross-examine the respondent No.2's witnesses, same was not allowed. Even their request to lead evidence is also not accepted on the ground that all material is already on record to decide the change report. Hence, the Writ Petition.

4. The learned senior counsel for respondent No.2 vehemently opposed the Writ Petition. He submits that the petitioner, on one or the other ground prolonging the hearing and final disposal of the Change Report. He submits that the petitioner asked near about 270 questions to their witness in cross-examination. He submits that this court (Coram : S. J. Kathawalla, J.) by order dated 28.11.2016 directed the Authority to decide the Change Report as early as possible in any case on or before 31.01.2017. He further submits that after 18.01.2017, the petitioner has already filed their written arguments. Therefore, there is no question of setting aside the said order and allowing the petitioner to cross-examine the respondent No.2's witness as well as to allow them to examine own witnesses.

4. Heard the learned counsel for the parties. It is to be noted that, this court, by order dated 28.11.2016 in Suit No. 684/2016 directed

the Authority to decide the Change Report on or before 31.01.2017. Same is required to be decided after giving fair hearing to both sides. Bare reading of the roznama dated 16.01.2017 shows that the matter was posted on 18.01.2017 for final order on application below Exhibit-47, 65, 75, 76 and 77. As the petitioner wanted to cross-examine the respondent No.2's witness on the documents placed on record on 18.01.2017 and also wants to examine their witnesses, I am of the opinion that in the interest of justice, it is necessary to set aside the order dated 18.01.2017 directing the Assistant Charity Commissioner to allow the petitioner to continue and conclude cross-examination of respondent No.2's witness and to examine their own witnesses, if any.

5. During the course of argument, the learned senior counsel for respondent No.2 made a statement that they also want to examine two more witnesses.

6. Considering these facts, following order is passed:

- a. Order dated 18.01.2017 is set aside.
- b. The petitioner is permitted to cross-examine the respondent No.2 Yazdi Desai only in respect of the documents which were allowed by the Authority to place on record as per order dated 18.01.2017.
- c. Respondent No.2 is permitted to examine two more witnesses.
- d. Respondent No.3 is also permitted to cross-examine the witnesses and lead his evidence and his witnesses.
- e. The parties to tender their list of witnesses to the Authority within a week from today.

- f. Examination and cross-examination of witnesses of both the parties shall be concluded as early as possible in any case within four months from today.
- g. Change Report to be finally decided within five months from the date of this order.
- h. Writ Petition stands disposed of accordingly.
- i. No order as to costs.
- j. Parties to act on an authenticated copy of this order.

(K.K. TATED, J.)