

VPH

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

APPEAL (L) No. 73 OF 2017
IN
TESTAMENTARY SUIT No. 29 OF 2012
IN
TESTAMENTARY PETITION No. 341 OF 2012

Avabai Hormasji Tata Charitable
Trust through Dadi Lam Being Trustee ... Appellant
Vs.
Shernaz Faroukh Lawyer & Ors. ... Respondents

Mr. Ram Apte, Sr. Counsel a/w Ashutosh Gole, for the Appellant.
Mr. F. E. D'evitre, Sr. Counsel a/w D. J. Khambatta, Sr. Counsel a/w
Rahul Narichania, Sr. Counsel a/w P. A. Kabadi, Ms. Taruna Nagpal &
Ms. Prakruti Joshi i/b Doijode Associates, for Respondent Nos. 1 & 2.
Mr. M. K. Tanna, for Respondent No. 3.
Mr. Manish Bohra i/b M/s. A. S. Khan & Associates, for Respondent
No. 4 and 5.
Ms. Mansi V. Kaku i/b Solomon & Co., for Respondent No. 7.

CORAM : V. M. KANADE, &
P. R. BORA, JJ.

DATE : FEBRUARY 24, 2017

PC.

1. Heard the learned senior counsel Mr. Ram Apte appearing

on behalf of the Appellant and the learned senior counsel F. E. D'evitre appearing on behalf of the Respondent Nos. 1 and 2. The Appellant is aggrieved by an order passed by the learned Single Judge, dated 18.1.2017 on the report filed by the Administrator, appointed by this Court.

2. By a order dated 22.12.2016 the Appellant was directed to forward certain documents. The Appellant has agreed to comply with the said order. By the impugned order, however, the Trust was directed to provide further four documents, viz.

- (a) Copy of the Certificate of registration of the Trust issued by the office of the Charity Commissioner;
- (b) Copy of any change of name application, if any, made ever and further certificate in view of change of name issued by the Charity Commissioner;
- (c) Disclose name and address of those who have been Trustees since inception and from what date to what date they were trustees.
- (d) Provide duly certified true copy of the Annual Returns / balance-sheet / Income -Expenditure / Profit and Loss Account statement that has been filed by the Trust with the Charity Commissioner and with the Income Tax Authorities for the

Financial Years 2012-2013, 2013-2014 and 2014-2015.

3. Mr. Apte, the learned senior counsel appearing for the Appellant submitted that this being a testamentary suit, the Respondents are not entitled to carry on fishing inquiry, and secondly, he submitted that the copies, which are asked for, are not relevant for the purpose of deciding the testamentary suit and the petition.

4. On the other hand, Mr. D'evitre, the learned senior counsel appearing for the Respondents submitted that it is their specific case that certain sums of money and movable and immovable properties have been siphoned off through various Trusts, and these Trusts are not genuine Trusts. An amount of Rs. 15 lakhs was paid to the Appellant Trust, and it is necessary to find out whether this a front created by those who are trying to dispose of the properties of the Trust.

5. We are of the view that no prejudice would be caused to the Appellant, and secondly, Respondent Nos. 1 and 2 have a right to find out whether Trust is being used as a front to siphon off estate of the deceased. We are, therefore, not inclined to interfere with the

impugned order passed by the learned Single Judge. Appeal is, therefore, dismissed. Order of the learned Single Judge to be complied within a period of four weeks.

Sd/-
[P. R. BORA, J.]

Vinayak Halemath

Sd/-
[V. M. KANADE, J.]