

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6996 OF 2016
WITH
WRIT PETITION NO.6981 OF 2016

Feroze C. Titina and others ... Petitioners
Vs.
Kali G. Shroff ... Respondent

Mr. Shardul Singh a/w. Ms Sushma Singh for Petitioners.
Mr. Agnel Carnero i/b. Mr. Prasad B. Kulkarni Respondent.

CORAM : R. G. KETKAR, J.
DATE : MARCH 16, 2018

P.C. :

Heard Mr. Singh, learned Counsel for petitioners and Mr. Carnero, learned Counsel for respondent at length in both the Petitions.

2. Writ Petition No.6996 of 2016 takes exception to the judgment and order dated 01.01.2014 passed by the learned Judge, Court Room No.15 of the Court of Small Causes at Bombay below exhibit-16 in R.A.E.Suit No.455/746 of 2011 as also the judgment and order dated 16.02.2016 passed by the appellate Bench of the Small Causes Court at Bombay in Revision Application No.114 of 2014. By these orders, the Courts below have allowed the application made by the respondent, hereinafter referred to as 'defendant', and stayed the proceedings of R.A.E.Suit No.455/746 of 2011.

3. Writ Petition No.6981 of 2016 takes exception to the judgment and order dated 09.01.2014 passed by the learned Judge, Court Room No.15 of the Court of Small Causes at Bombay below exhibit-11 in

R.A.E.Suit No.187/305 of 2011 as also the judgment and order dated 16.02.2016 passed by the appellate Bench of the Small Causes Court at Bombay in Revision Application No.117 of 2014. By these orders, the Courts below have allowed the application made by the defendant and stayed the further proceedings of R.A.E.Suit No.187/305 of 2011.

4. By orders dated 14.09.2016 and 05.03.2018 of this Court, parties were put to notice that subject to the time constraint and convenience of the Court, Petitions will be disposed of finally. Accordingly, I have heard the parties at length. Rule. Mr. Kulkarni waives service for respondent. Rule is made returnable forthwith and the Petitions are taken up for final hearing. Since these Petitions raise common questions of law and facts, the same can conveniently be disposed of by this common order. In order to appreciate the controversy between the parties, facts from Writ Petition No.6981 of 2016 are taken into consideration for the sake of brevity and convenience.

5. Initially, Feroze C. Titina, Pervez R. Khosravi and Feroze S. Sethna instituted Suit against the defendant for recovery of possession of room No.16-A in Hormuzd Baug Building situate at Avabai Cassinath Street, Tardeo Road, Mumbai 400 034 (for short 'suit premises') inter alia contending that they are the present trustees of Hormuzd Baug Charity Trust, a Parsi Public Charitable Trust registered under PTR No.CC-59 (Bom.) (for short 'Trust'). The plaintiffs annexed Change Report No.2138 of 2007 dated 11.06.2007 and 21.01.2009. It is further contended that pursuant to the resolution dated 02.02.2011, the trustees have resolved to institute the eviction Suit. It appears that subsequently the Suit was amended and the Trust is also impleaded as one of the plaintiffs.

6. Defendant has filed written statement dated 06.04.2011 resisting the Suit. Pending the Suit, defendant took out interim notice No.11 of 2011 (exhibit-11) inter alia contending that the alleged appointment of the plaintiffs as trustees of the Trust is under challenge before the Assistant Charity Commissioner. No orders accepting the alleged Change Report i.e. acceptance of the plaintiffs as the trustees is passed till date by the Assistant Charity Commissioner. Reliance was also placed upon the order dated 14.12.2009 passed by this Court staying impleadment of the plaintiffs No.1 and 2 as trustees in B.C.C.C.Suit No.4564 of 2006. It was also asserted that under the provisions of the then Bombay Public Trust Act, 1950 (Maharashtra Public Trust Act), the Assistant Charity Commissioner has exclusive jurisdiction to decide whether plaintiffs are trustees of the Trust or not. Defendant, therefore, contended that as the Change Report is still pending, plaintiffs have no locus to file Suit and / or prosecute the same until the issue of their alleged appointment is determined. Defendant, therefore, prayed for staying the proceedings of the Suit sine die till the disposal of the Change Report No.2138 of 2007. On behalf of the plaintiff No.1, reply was filed on 25.08.2011 resisting the application. Defendant filed affidavit in rejoinder dated 19.10.2011. On behalf of the plaintiffs, sur-rejoinder was filed on 22.12.2011.

7. By order dated 09.01.2014, the learned trial Judge allowed the application exhibit-11 and stayed the further proceedings of the Suit. Aggrieved by this decision, plaintiffs preferred Revision Application before the Appellate Bench of the Small Causes Court. By order dated 16.02.2016, the appellate Court dismissed the Revision Application on the ground that in view of the Full Bench decision of this Court in ***Bhartiben Shah Vs. Gracy Thomas, 2013 (2) Mh.L.J. 25***, the order passed by the learned trial Judge was merely a procedural order and

does not affect the substantive rights of the parties, and therefore, Revision Application is not maintainable. It is against these orders, plaintiffs have instituted the present Petition.

8. In support of this Petition, Mr. Singh submitted that the learned trial Judge allowed the application on the ground that there is a serious challenge to the position held by the plaintiffs posing themselves as trustees of the trust. As on today, finality of their position is not determined. In the circumstances, so long as the status of plaintiffs No.2 to 4 is not ascertained, the interest of the defendant would be highly prejudiced. Moreover, further exercise relating to the progress of the Suit would be improper. The learned trial Judge was, therefore, inclined to stay the further progress of the Suit with the help of Section 10 of C.P.C. till further orders.

9. Mr. Singh submitted that basically, the learned trial Judge committed serious error in staying the Suit as the Change Report cannot be equated with Suit pending in a Civil Court. He submitted that the Change Report filed under Section 22 is not a Suit and consequently, Section 10 has no application in the facts of the present case. He relied upon the decision of the Apex Court in ***Aspi Jal Vs. Khushroo Rustom Dadyburjor*, (2013) 4 SCC 333**, and in particular paragraph 9 to contend that plain reading of Section 10 shows that where a suit is instituted in a court to which provisions of the C.P.C. apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the C.P.C., it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10 i.e. “no court shall proceed with the trial of any

suit” makes the provision mandatory and the court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of C.P.C. are satisfied. The basic purpose and underlying object of Section 10 of C.P.C. is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceedings. He submitted that the subject matter of the Change Report and the subject matter of the present Suit are materially different. The reliefs claimed in both the proceedings are totally different. The cause of action in the present Suit and the cause of action in the Change Reports is also different.

10. He submitted that in paragraph 11, while interpreting the words “the matter in issue is also directly and substantially in issue in previously instituted suits”, the Apex Court observed that the test for applicability of Section 10 of C.P.C. is whether on a final decision being reached in the previously instituted suit, such decision would operate as *res judicata* in the subsequent suit.

11. Mr. Singh also relied upon the decision of the Apex Court in ***Nawab Usmanali Khan Vs. Sagarmal*, AIR 1965 SC 1798**, where the Apex Court has observed that “The word 'suit' ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint.” He, therefore, submitted that by no stretch of imagination, proceedings in the nature of Change Report can be construed as a Suit. In any case, he submitted that Trust is impleaded as one of the plaintiffs. It is not in dispute that the building

where the suit premises is situate is a property of the Trust. He, therefore, submitted that the impugned order deserves to be set aside thereby vacating the stay of further proceedings of the Suit.

12. On the other hand, Mr. Carnero supported the impugned orders. He submitted that basically though the learned trial Judge has referred to Section 10 of C.P.C., application made by the defendant is essentially under Section 151 of C.P.C. He submitted that defendant filed objections in the Change Report. As the defendant has raised objections, with a view to harassing him, the eviction suit is instituted against him. He has taken me through the Change Report No.2138 of 2007 dated 11.06.2007 as also resolution dated 15.05.1998, which recorded demise of Dr. Bejon Jal Parekh, one of the trustees, on 28.04.1998. After the demise of Dr. Parekh, two more trustees, namely, Pervez Khodamurad Khosravi and Feroze Cawas Titina (plaintiffs No.2 and 1) were appointed as new trustees of the Trust. He submitted that the resolution itself noted death of Dr. Parekh. The resolution also noted that one of the trustees - Bejon Dinshaji Engineer was critically ill and incapable of remaining present and giving his signature on the resolution. He, therefore, submitted that the resolution is not at all validly passed appointing plaintiffs No.1 and 2 as new trustees.

13. He also drew my attention to the letter dated 15.05.1998 addressed by Sorab Jamshed Irani to plaintiff No.1 inviting him to join as co-trustee of the Trust and work for the benefit of the Trust and its administration and management. He submitted that the letter-head records phone number having 8 digits namely 23087168. He relied upon circular dated 23.10.2002 issued by MTNL in that regard. He submitted that basically MTNL has introduced 8 digits only in the year 2002 and thus the letter dated 15.05.1998 is a forged and fabricated document.

14. Mr. Carnero submitted that if the Suit instituted by the plaintiffs is abuse of process of Court as also abuse of process of law and is oppressive to the defendant, Court has ample power under Section 151 to stay the proceedings of that Suit. In support of this proposition, he relied upon the following decisions:

- a. ***Ram Bahadur Thakur Vs. Devidayal (Sales) Ltd.*, AIR 1954 Bombay 176;**
- b. ***The Breach Candy Swimming Bath Trust Vs. Dipesh Mehta*, AIR 2016 Bombay 167.**

15. He further invited my attention to the affidavit dated 27.02.2015 made by the plaintiff No.1 in Change Report No.2138 of 2007, and in particular paragraph 13 where it is stated that Sorab J. Irani, being the sole trustee of the Trust, informed Parvez K. Kushravi (plaintiff No.2) by letter dated 13.05.2007 of his appointment as a trustee of the Trust. In fact, Sorab J. Irani, the sole trustee, had made declaration on 10.02.2003. Thus, as on 2003, Sorab Irani was a sole trustee. In other words, there could not have been appointment of plaintiffs in the year 1998. He submitted that plaintiff No.1 has filed affidavit in support of the Chamber Summons No.____ of 2003 in Suit No.4564 of 2008 reiterating that on the basis of the resolution dated 15.05.1998, he along with plaintiff No.2 were given letters of offer to accept post of trustees of the Trust.

16. Mr. Carnero also invited my attention to the order dated 12.01.2018 passed by the Deputy Charity Commissioner, Greater Mumbai Region, Mumbai. In that order, it was observed that the enquiry was ordered to be completed through inspector as per order dated 25.05.2016 below exhibit 41. Inspector submitted report at exhibit 43. From the report, it appeared that applicants (plaintiffs) have

not co-operated the inspector though notice was accepted on 04.07.2016. The Deputy Charity Commissioner relied upon the circular No.146 and disposed of the Change Report No.2138 of 2007 and converted it into suo motu enquiry by assigning fresh number. He submitted that though the Change Report is submitted in the year 2007, plaintiffs are deliberately not co-operating with the authorities under the Trusts Act and they are not proceeding further. On one hand, they are not proceeding with the Change Report and on the other, they are instituting various proceedings only with a view to harassing the defendant. He relied upon the ad-interim order dated 14.12.2009 passed by this Court in Writ Petition No.7493 of 2009. By that order, this Court stayed the order of the City Civil Court impleading the plaintiffs in the Suit. He, therefore, submitted that the learned trial Judge is fully justified in staying the further proceedings of the Suit.

17. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The moot question is whether the change report can be equated with civil suit pending in a civil court. The next question is whether in view of pendency of the Change Report, the learned trial Judge was justified in staying the proceedings of the Suit pending in the Small Causes Court.

18. In the case of **Nawab Usmanali Khan** (*supra*), the Apex Court has observed thus,

"The word 'suit' ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint."

And construing Section 86 of the Code of Civil Procedure, Shah, J. speaking on behalf of this Court observed in *Bhagwat Singh v. State Rajasthan*, AIR 1964 SC 444 at pp.445, 446:

"The appellant is recognised under Art.366(22) of the

Constitution as a Ruler of an Indian State, but S.86 in terms protects a Ruler from being 'sued' and not against the institution of any other proceeding which is not in the nature of a suit. A proceeding which does not commence with a plaint or petition in the nature of plaint, or where the claim is not in respect of dispute ordinarily triable in a Civil Court, would prima facie not be regarded as falling within S. 86, Code of Civil Procedure."

19. In paragraph 9 of **Aspi Jal** (*supra*), the Apex Court observed thus,

"9. Section 10 of the Code which is relevant for the purpose reads as follows:

'10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of

the same relief and is aimed to protect the defendant from multiplicity of proceeding.”

20. A perusal of above extracted provision shows that before staying the proceedings of a Suit, conditions laid down in Section 10 are required to be satisfied. As noted earlier, the Change Report is essentially for considering the appointment of the plaintiffs as trustees of the Trust. As against this, the subject matter of the Suit pending in the Small Causes Court is eviction of the defendant from the suit premises. Thus, Section 10 can be invoked to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, same subject matter and the same relief. In the present case, this test is not satisfied. In paragraph 11 of **Aspi Jal** (*supra*), while interpreting the words “the matter in issue is also directly and substantially in issue in previously instituted suits”, the Apex Court observed that the test for applicability of Section 10 of C.P.C. is whether on a final decision being reached in the previously instituted suit, such decision would operate as *res judicata* in the subsequent suit. In my opinion, even this test is not satisfied in the present case.

21. Mr. Carnero relied upon the decision of the Division Bench of this Court in **Ram Bahadur Thakur** (*supra*) where in exercise of powers under Section 151, this Court stayed proceedings of the Suit pending in the Calcutta High Court. In that case, a formal contract dated 19.08.1952 was entered into between the parties. Clause 12 of the contract provided that “the contract is made subject to the Bombay jurisdiction”. On 08.12.1952, respondents-plaintiffs wrote to the appellants stating that if the appellants did not carry out one of the terms of the contract, they would consider it as a breach and would proceed against them as advised by their legal advisers. This was followed by

letter dated 18.02.1953 intimating to the appellants that the appellants had committed a breach of the contract and that they had suffered damages in the sum of Rs. 70,000/-. Appellants were called upon to pay the said sum within eight days from the receipt of the letter. The appellants did not send any reply either to the letter of 08.12.1952 or to the letter of 18.02.1953. Instead they filed a suit in the Calcutta High Court on 11.03.1953, alleging that the respondents had committed a breach of the contract and claiming damages from them in the sum of Rs.30,000/-.

22. Respondents instituted Suit on the Original Side of this Court on 18.03.1953. Pending that Suit, two notices of motion were taken out. One was taken out by the appellants for an order under Section 10 of C.P.C. staying the Bombay suit on the ground that they had filed a previous suit on the same cause of action in the Calcutta High Court. The other Motion was taken out by the respondents-plaintiffs for injunction restraining the appellants and the defendants from proceeding with the suit which they had instituted in the Calcutta High Court.

23. In paragraph 7, the Division Bench observed that Section 10 has no application when a suit is instituted which constitutes an abuse of the process of the Court. If a suit is filed in order to forestall a suit which would be filed subsequently in another Court, or if a suit is filed which is vexatious and frivolous, or if a suit is filed in violation of contractual obligation to have the matter adjudicated upon in another Court, such a suit would constitute an abuse of the process of the Court. In such a case, the Court will have to deal with the situation which arises not under Section 10 but under Section 151 of the C.P.C., and in dealing with Section 151, the Court issues an injunction preventing the defendant from proceeding with the earlier suit, taking the view that to

allow that suit to go on would constitute an abuse of the process of the Court.

24. The Division Bench also relied upon the decision of the Calcutta High Court in *Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney*, AIR 1941 Cal 670 (B), which in turn referred to the decision of *Durga Dihal Das Vs. Anoraji*, 17 All 29 (C). In paragraph 10, the Division Bench observed that the correct approach seems to be that if the Court is satisfied that the defendant should be restrained from proceeding with the earlier-instituted suit, then the Court cannot be called upon to stay the subsequently instituted suit under Section 10. If the injunction is properly granted, then, no question of stay could arise under Section 10. It was noted that the appellants had agreed with the respondents to have the disputes arising out of the contract adjudicated upon by the Bombay Courts. It would be permitting the appellants to violate their agreement if they were permitted to proceed with the suit which they had instituted in the Calcutta High Court. That was a basis on which an injunction was granted against them and they were prevented from breaking their own solemn obligation. In my opinion, the said decision has no application to the facts of the present case. As noted earlier, the Trust is also impleaded as one of the plaintiffs in the present Suit. The Suit is for evicting the defendant. It is not in dispute that the building where the suit premises is situate is the Trust's property. Prima facie, it cannot be said that the Suit instituted by the plaintiffs is vexatious or constitutes an abuse of process of the Court.

25. Mr. Carnero also relied upon the decision of the learned Single Judge of this Court (Coram : S. C. Gupte, J.) in **The Breach Candy Swimming Bath Trust** (*supra*). Before I consider the decision relied by Mr. Carnero, it is necessary to consider the earlier order dated 07.05.2014 passed by the learned Single Judge (Coram : Smt. Roshan

Dalvi, J.) in Suit No.111 of 2014 and Suit (L) No.215 of 2014. First Suit was instituted by the plaintiffs, who were members of the Breach Candy Swimming Bath Trust (for short 'Trust'), challenging their suspension. The plaintiffs were ordinary trustees of the Trust. Plaintiffs had removed defendants as members of the Managing Committee of the Trust and suspended them as members of the Trust and appointed themselves as members of the Managing Committee on the basis of the Resolution passed by an Extraordinary General Meeting (EGM) convened under the provisions of the constitution of the Trust. In the second Suit, plaintiffs also sought injunction restraining the defendants from disposing of the property of the Trust as Managing Committee members, holding themselves as members of the Managing Committee / Trustees of the Trust and preventing the plaintiffs from carrying out their duties and from acting as a Managing Committee of the Trust.

26. The defendants raised plea of the lack of Court's inherent jurisdiction in view of Sections 2(4), 50, 51 and 80 of the Bombay Public Trusts Act, 1950 (for short 'B.P.T. Act'). By order dated 17.01.2014, preliminary issue was framed in both the Suits. The learned Single Judge dealt with the provisions of the B.P.T. Act and also considered the precedents relied by the parties. In paragraph 19, it was observed thus,

“19. In this case all will depend upon the ultimate decision of the Charity Commissioner in appeal from the order of the Assistant Commissioner or Deputy Commissioner. The reliefs prayed for by the plaintiffs can be granted only after that decision is ultimately reached. It is not for this Court to decide whether the EGM was correctly held so that the change report was correctly made as sought by the plaintiffs and consequently the defendants were correctly removed or the plaintiffs in the second suit were correctly appointed to the Managing Committee of the trust. After such a decision is reached by the Charity Commissioner, the various prohibitory and mandatory interim reliefs sought by the plaintiffs may be granted in the suit. This would apply as much to the ultimate final relief of

damages.”

27. In paragraph 31, the learned Single Judge observed that the Charity Commissioner is not enabled to decide the vindication of civil rights. From paragraph 33 onwards, the averments made by the plaintiffs in the Suit were considered. In paragraph 40, it was observed that the reliefs of injunction do fall within the parameters of the change report which would be considered by the Charity Commissioner's office finally and conclusively, based upon which findings, the plaintiffs relief of damages and further and other reliefs as deemed fit and appropriate by the Court would be decided. Ultimately, the learned Single Judge held that both the Suits were maintainable. Aggrieved by this decision, both the parties preferred appeal. By order dated 27.08.2014, the Appeal Court disposed of the appeals in the following terms:

- “1. These are the cross appeals. The appellants are aggrieved by certain observations made by the learned single Judge disposing of the respondents' application under section 9-A of the C.P.C. The learned Judge observed that the applications filed by the appellants can be heard only after the decision of the Charity Commissioner on the change reports filed by the appellants under section 22 of the Bombay Public Trusts Act.
2. The appellants' notice of motion for interim reliefs is pending before the learned single Judge. It is bound to be heard. It is always open to the appellants to contend in the notice of motion that the application is maintainable. Likewise, it is open to the respondents to contend, inter alia, that in view of the judgment impugned in these appeals, the notice of motion is not maintainable. Needless to add that the parties are at liberty thereafter to challenge the order if they so desire.”

28. It is in that context, the learned Single Judge (Coram: S. C. Gupte, J.) in his order dated 29.10.2015 observed in paragraph 9 that he was bound by the observations of the learned Single Judge that the hearing of the Suit cannot be proceeded with till Charity Commissioner conclusively rules on the change. That is an intrinsic part of the order of

the learned Single Judge upholding jurisdiction of this Court to try the Suit. In paragraph 18, the learned Single Judge considered the provisions of the B.P.T. Act and observed that Section 2(18) defines expression 'trustee'. It however, does not provide how such trustee is appointed or the property of the trust comes to vest in the trustee so defined. In paragraph 19, the learned Single Judge noted that plaintiffs do not sue for causing any entry to be made, deleted or altered, but for preventing the defendants, who they claim to have no authority to do so, from interfering with their rights to administer and manage the trust. These are civil or common laws rights which every trustee has and if someone unauthorizedly interferes, or threatens to interfere, with these rights, a suit would obviously lie before a Civil Court. None of the provisions of the Trusts Act prevents any such suit being filed or any interim relief being granted in such suit. The charity authorities are not empowered to decide or deal with any such question, namely, whether anyone can or cannot interfere with the trustees' right to administer or manage the trust and its property; neither is any decision of the charity authorities in this behalf made final or conclusive by any provision of the Trusts Act. In paragraph 20, the learned Single Judge observed that it cannot be said that because an inquiry under Section 22 is pending before the charity authorities, this Court cannot grant any interim relief, since the charity authorities themselves have powers to grant interim reliefs in such inquiry. There is no question of prosecuting two parallel proceedings on the same subject matter before two different authorities or fora.

29. In paragraph 21, the learned Single Judge dealt with the submission that the Court is asked to grant interim relief on the footing that the EGM of the Trust Members has effected a change in the management; but such change, even assuming that it is made, cannot take effect till the particular entry reflecting such change is made in the

register under Section 22. The learned Judge held that the said submission is devoid of any substance. It was held that because such appointment or removal is to be entered in a register of trusts and such entry is preceded by an inquiry under the Trusts Act, it cannot be suggested that the change has not in fact or in law occurred till the inquiry is held and entry made. The charity authorities merely inquire into and render a finding about a change, which has in fact and law already occurred. Even if the charity authorities eventually hold that the change did not actually occur, what it means is that the change had never occurred. A change is, thus, inquired into and found by the charity authorities and not that the change comes about or takes effect because the authorities find it. The learned Single Judge referred to the decision of the Apex Court in ***Chemur Trombay Education Society Vs. D. K. Marathe*, 2002(3) Bom C.R. 161**, which in turn referred to the decision of the Apex Court in ***Managing Committee, Khalsa Middle School Vs. Mohinder Kaur*, 1993 Supp (4) SCC 26**. The learned Single Judge held that defendant's submission that change in the management cannot take effect till it is entered in the register, accordingly, has no substance. In fact, the said decision is against the defendants. At the cost of repetition, before the learned Single Judge, application was not under Section 10 of the C.P.C. but question was about jurisdiction of the Civil Court in view of Sections 2, 4, 50, 51 and 80 of the B.P.T. Act. In view thereof, the said decision does not advance the case of the defendant.

30. In the present case, the learned trial Judge has observed that the position held by the plaintiffs posing themselves as trustees of the trust is under serious challenge. As on date, finality of their position is not determined. As the status of plaintiffs No.2 to 4 is yet to be ascertained, the interest of the defendant would be highly prejudiced. In my opinion, the learned trial Judge has totally misdirected himself in complying the conditions laid down under Section 10 of C.P.C. The learned trial Judge

also did not consider whether the conditions stipulated in Section 10 are satisfied or not. Mr. Carnero submitted that though the learned trial Judge has referred to Section 10 in the impugned order, an application is essentially under Section 151 and as the Suit instituted by the plaintiffs is vexatious and is abuse of process of law as also abuse of process of Court, the learned trial Judge stayed the proceedings under Section 151 of C.P.C. It is not possible to accept this submission in the absence of any finding recorded by the Competent Court as regards status of the plaintiffs as trustees. Mr. Carnero relied upon the ad-interim order passed by this Court on 14.12.2009 staying the impleadment of plaintiffs in Suit filed in the City Civil Court. On query made to him, he submitted that the said Petition is still pending. In other words, no final conclusion is recorded about the status of the plaintiffs in that Petition as well. In so far as the order passed by the appellate Court is concerned, the appellate Court had dismissed the revision application only on the ground of maintainability.

31. In the light of the aforesaid discussion, the impugned order cannot be sustained and is liable to be set aside and is accordingly set aside. Rule is made absolute in both the Petitions with no order as to costs. It is made clear that it will be open to the defendant to raise all his contentions before the Small Causes Court as regards relationship of landlord and tenant between the parties as also whether plaintiffs can prosecute the suit as also maintainability of the Suit. Liberty to apply to the Charity Commissioner to apply for expeditious disposal of the Change Report. If such application is made, the Authorities will pass appropriate orders keeping in mind that the Change Report was filed in 2007.

(R. G. KETKAR, J.)