

Mr. Chetan G. Patil for Petitioners.
Mr. Yuvraj Narwankar for Respondent No.1.
Mr. Y. D. Patil, AGP for Respondent No.6-State.

P.C. :

Heard Mr. Chetan Patil, learned Counsel for the petitioners, Mr.Yuvraj Narwankar, learned Counsel for the respondent No.1 and Mr.Y. D. Patil, learned AGP for respondent No.6-State at length.

2. Mr. Patil orally applies for deletion of respondents No.2 to 5 on the ground that Joint Charity Commissioner, Kolhapur Region, Kolhapur (for short 'J.C.C.') has passed no cross order against the witness of the respondent No.1. In view thereof, leave to delete respondents No.2 to 5 is granted. Amendment shall be carried out forthwith.

3. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the orders dated 26.04.2018 and 19.05.2018

passed by J.C.C. By order dated 26.04.2018, J.C.C. passed “no cross order” in respect of respondent No.1's witness - Vijay Madanlal Navandhar (for short 'Vijay'). Petitioner filed application exhibit-136 on 10.05.2018 for recalling that order. By order dated 19.05.2018, J.C.C. rejected that application. In other words, no cross order is passed against the petitioners in respect of witness Vijay and petitioners will be precluded from cross-examining the said witness and his affidavit of evidence will go unchallenged.

5. In support of this Petition, Mr. Patil submitted that affidavit of evidence was filed by Vijay on 29.04.2013. On 28.11.2016, application exhibit-123 was made on behalf of the first respondent to the effect that as Vijay has resigned as a Trustee on account of personal and health grounds, he will not remain present for facing cross-examination. Reply opposing that application was filed on 16.02.2017. By order dated 06.04.2018, application exhibit-123 was rejected. Mr.Patil invited my attention to the Rojnama dated 06.04.2018. After rejecting the application exhibit-123, J.C.C. fixed the matter on 12.04.2018 for cross-examination of Vijay. Rojnama dated 12.04.2018 shows that witness Vijay was not present and was, therefore, adjourned to 23.04.2018 for his cross-examination. Rojnama of 23.04.2018 shows that Advocate for the petitioners, Shri Chivate was absent and the matter was adjourned to 26.04.2018 for cross-examination. On 26.04.2018, though Advocate Chivate was present, he did not cross-examine Vijay and filed application for adjournment. The J.C.C. passed no cross order on 26.04.2018 and fixed the matter on 10.05.2018. On 10.05.2018, the application exhibit-136 was made for recalling no-cross order, which was rejected by the impugned order dated 19.05.2018. He submitted that though witness Vijay filed his affidavit of evidence on 29.04.2013, till 06.04.2018, he did not face cross-examination. Though matter was fixed

for cross-examination on 12.04.2018 even on that date, he was absent, and therefore, matter was adjourned to 23.04.2018. On 23.04.2018, Advocate Chivate was absent. On 26.04.2018, Advocate Chivate was present. However, on health ground, application for adjournment was made and the J.C.C. rejected the application. He, therefore, submitted that orders of no-cross deserve to be set aside thereby permitting petitioners to cross-examine the said witness.

6. On the other hand, Mr. Narwankar supported the impugned orders. He submitted that Rojnama dated 26.04.2018 shows that petitioners' Advocate Chivate was present. Despite that, he did not cross-examine the said witness.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, Vijay had filed affidavit of evidence on 29.04.2013. For more than 3 years, his cross-examination was not conducted. On 28.11.2016, application was filed on the ground that Vijay had resigned as a Trustee on personal as also health grounds and therefore, he will not be available for facing cross-examination. That application was pending for more than one and half years. By order dated 06.04.2018, application of respondent No.1 was rejected and the matter was kept on 12.04.2018 for cross-examination of Vijay. As he was not present, it was adjourned to 23.04.2018. A perusal of Rojnama dated 23.04.2018 shows that Advocate Chivate was absent and it was adjourned to 26.04.2018. On 26.04.2018 though Advocate Chivate was present, he did not take cross-examination. A perusal of application dated 10.05.2018 shows that the reason given in that application is that Advocate Chivate was not well on 26.04.2018, and therefore, could not conduct cross-examination. In my opinion, after passing order on 26.04.2018 when the application exhibit-136 was made on the health

ground of Advocate, the Joint Charity Commissioner should have allowed that application and permitted petitioners to cross-examine Vijay. Instead of that, a perusal of Rojnama dated 19.05.2018 shows that at exhibit-137, application for adjournment was made and on the same day, petitioners filed application exhibit-138 for engaging another Advocate. On the same day, after rejecting the application, the J.C.C. fixed the matter on 05.06.2018 for arguments.

8. In my opinion, J.C.C. was not justified in passing order on 19.05.2018 as also fixing the matter for arguments on 05.06.2018. Even if it is held that the J.C.C. was justified in passing no-cross order, still, petitioners could have adduced their evidence. In other words, J.C.C. was not justified in fixing the matter for arguments on 05.06.2018. In view thereof, no cross-order dated 26.04.2018 stands set aside. Resultantly, order dated 19.05.2018 is also set aside. Since the application under Section 36 of the Maharashtra Public Trusts Act is pending since 2011, J.C.C. will dispose of the application expeditiously. Parties shall extend co-operation for expeditious disposal of the application. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)