

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 626 OF 2017

Shree Jagadguru Panchacharya Education Society & Anr. V/s. Kolhapur Church Council	...	Applicants Respondent
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- Mr.A.V. Anturkar, Sr. Counsel i/b. Mr.Tanaji Mhatugade for the Applicants.
- Mr.Pranil Sonawane a/w. Mr.B.P. Jadeja for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rd APRIL, 2018.

P.C. :

1] Heard learned counsel for the Applicants and learned counsel for the Respondent.

2] By this Civil Revision Application, filed under Section 115 of the Code of Civil Procedure (*for short, "C.P.C."*) the Applicants are challenging the order dated 29th August 2017 passed by the Civil Judge, Senior Division, Kolhapur, below the application at Exhibit-41 in Special Civil Suit No. 339 of 2011.

3] The Application at Exhibit-41 was filed by the present Applicants who are the original Defendant Nos.1 and 2 before the trial Court under Order-7 Rule-11(d) of C.P.C. on the count that, the suit is

barred in view of Section 50 of the Maharashtra Public Trusts Act, 1950, for want of prior permission of the Charity Commissioner and also on the ground that it is filed by Mr.Shrikant B. Phathane, who has no authority and legal right to sign the plaint.

4] The trial Court was, after considering the submissions advanced before it, pleased to hold that, as the suit is filed by the public trust, claiming possession of the trust property from the alleged trespasser, prior permission of the Charity Commissioner is not at all necessary.

5] According to learned counsel for the Applicants, in view of the amendment to Section 50 and Section 2(10)(e) of the Maharashtra Public Trusts Act, it is incumbent upon the trustees also to obtain prior approval of the Charity Commissioner, to institute a suit against the trespasser for recovery of possession.

6] However, this submission was specifically raised before the Single Bench of this Court (Nagpur Bench) in the case of *Marwadi Samshan Hanuman Mandir V/s. Lakhanlal & Ors.*¹, and this Court has in paragraph No.7 of its judgment has rejected the said submission by observing as follows:

1 Misc. Civil Application (Review) No.661 of 2014 (Arising out of Civil Revision Application No.1242 of 19998), decided on 14.10.2014.

“7. ... We are in respectful agreement with the view taken by the Division Bench and the learned Single Judges, and we entirely disagree with the finding of the trial Judge that the suit was not maintainable in absence of permission. The learned trial Judge was clearly in error in holding that after amendment of section 50 and section 2(10)(e) it is incumbent upon the trustees to obtain prior approval of the Charity Commissioner to institute suit against a trespasser for recovery of possession. As the finding of the trial Judge on this count is set aside, consequently the finding that the High Court had no jurisdiction to entertain the suit and the suit could be filed only in the City Civil Court after obtaining prior approval cannot stand.”

7] In view thereof, the order passed by the trial Court on this aspect does not call for any interference.

8] The second ground that Shrikant B. Phathane has no authority and legal right to sign the plaint is concerned, the trial Court has already held that this being an issue of fact, it will be considered at the time of trial and hence, that issue being kept open, on that count, no interference is warranted in the impugned order passed by the trial Court.

9] The Civil Revision Application therefore being without merits, stand dismissed.