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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.8057 OF 2016

Dnyaneshwar Shikshan Sanstha,
through its Secretary –
Prabhakar Ramrao Nagargoje
age 72 years, Occu. Agril.,
R/o Dawangaon, Tq. Renapur,
District Latur

... PETITIONER

VERSUS

1. Assistant Charity Commissioner,
Latur Region, Latur.
(Copy to be served on G.P., High
Court, Aurangabad)

2. Raosaheb Ganpati Nagargoje,
Age 50 years, Occu. Agri.,
R/o Dawangaon, Tq. Renapur,
District Latur

3. Baburao Kundlik Munde,
Age 65 years, Occu. Agri.,
R/o Dawangaon, Tq. Renapur,
District Latur

... RESPONDENTS

.....
Smt. Anjali Dhbe (Bajpai), Advocate for petitioner
Shri A.S. Shinde, A.G.P. for respondent No.1.
Shri H.D. Deshmukh, Advocate for respondents No.2 and 3
.....

CORAM: R.G. AVACHAT, J.

DATED : 17th OCTOBER, 2019.

J U D G M E N T :

Rule. Rule made returnable forthwith and heard finally
with the consent of learned counsel for the parties.

2. The petitioner is Secretary of the Trust - Dnyaneshwar Shikshan Sanstha, Dawangaon, Tq. Renapur, District Latur. The respondents No.2 and 3 were the founder President and Vice President respectively. In the year 2012, the respondent No.2 put in his papers, citing reasons of his inability to hold the post of the President of the Trust. The respondent No.3 also tendered resignation of his post on 17.6.2012, citing same reason. The resignations of both of them were approved in a meeting dated 27.6.2012. The petitioner held elections of the Trust and filed Change Report, being Change Report No.527/2012 for the period August 2012 to August 2017. The respondent No.2 raised objection to the said Change Report. He filed another Change Report, being Change Report No.114/2013 for the period December 2012 to December 2017. The petitioner filed its objection thereto. During enquiry of the Change Report, both the respondents No.2 and 3 specifically denied to have resigned from their respective posts. The petitioner, therefore, preferred applications, being Exh.22 in Change Report No.114/2013 and Exh.61 in Change Report No.527/2012, requesting the respondent No.1 (Assistant Charity Commissioner) to send the resignation letters to the handwriting expert for comparison of the signatures of the respondents No.2 and 3 with that of their admitted signatures. The learned Assistant Charity Commissioner rejected both the applications vide orders dated 15.6.2016. This is how the petitioner is before this Court.

3. Smt. Anjali Dube, learned counsel for the petitioner would submit that, while rejecting the applications, the learned Assistant Charity Commissioner observed that he himself would compare the disputed signature with the admitted signatures. The learned Assistant Charity Commissioner relied on Section 73 of the Evidence Act. According to the learned counsel for petitioner, the definition of 'Court' given in the Maharashtra Public Trusts Act indicates that, the office of Assistant Charity Commissioner is not a 'Court'. The Assistant Charity Commissioner, therefore, cannot exercise jurisdiction under Section 73 of the Evidence Act.

4. Mr. Deshmukh, learned counsel for respondents No.2 and 3 would submit that, the matters are old one. The Assistant Charity Commissioner can very well exercise powers under Section 73 of the Evidence Act, irrespective of the fact that the proceedings is a Civil or of Criminal nature. Mr. Deshmukh has placed reliance on the following judgments :

- (i) State of Uttar Pradesh Vs. Ram Babu Misra
[1980 AIR (SC) 791]
- (ii) Kamalabai Sadashiv Tirodkar & ors. Vs. Vasanti Deelip
Salgaonkar & ors. [2018 (2) Goa L.R. 532]

5. The question before the learned Assistant Charity Commissioner is whether the respondents No.2 and 3 have resigned from their respective posts. The resignation letters are before the learned Assistant Charity Commissioner. Both the respondents have

denied their signatures on the resignation letters and while rejecting the applications for sending the resignation letters to the handwriting expert for examination of the signatures with that of the admitted signatures of the respondents, the learned Assistant Charity Commissioner has observed that, as per Section 73 of the Evidence Act, the Court has a power to compare signature or writing. It is not necessary to send the documents to the handwriting expert. Enquiry under Section 22 of the Maharashtra Public Trusts Act is a summary procedure.

6. Section 73 of the Evidence Act reads as under :--

“73. Comparison of signature, writing or seal with others admitted or proved :--

In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(This Section applies also, with any necessary modifications, to finger-impressions).”

7. The term 'Court' appearing in this Section has to be interpreted in terms of a definition of 'Court' given in Section 3 of the Evidence Act. 'Court' means and includes all Judges and

Magistrates, and all other persons, except Arbitrators, legally authorised to take evidence. In view of this, the office of Assistant Charity Commissioner is covered by the term 'Court'.

8. Court should be slow to compare disputed document with admitted document for comparison although Section 73 empowers the Court to compare disputed writings with the specimen/ admitted documents shown to be genuine. Prudence demands that Court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/ admitted writings is not of high standard – **State of Maharashtra Vs. Sukhdeo Singh AIR 1992 SC 2100 : (1992) 3 SCC 700.** Therefore, despite no legal bar to Judge using his eyes, the Judge should hesitate to base his findings with regard to identity of handwriting solely on comparison made by himself – **State Vs. Pali Ram AIR 1979 SC 12; Ajit Vs. State AIR 1997 SC 3255 : (1997) 7 SCC 110 : 1997 SCC (Cri.) 992; 1997 Cr. L.J. 3964.**

9. In view of the above, in my view, the learned Assistant Charity Commissioner should have allowed the applications Exh.22 and Exh.61. True, the matter has been delayed. The delay is, however, attributable to judicial reasons such as pendency of matters for long. Delay in disposal of the matter shall not be a reason for rejection of an application for adducing best possible evidence.

10. In view of the above, the interference is called for with

the impugned order. The Writ Petition is, therefore, allowed in terms of prayer clause (C).

11. The learned Assistant charity Commissioner shall ensure that the admitted signatures of respondent No.2 and 3, which are on record of the matter before him, are sent to the handwriting expert, Office of C.I.D., along with the disputed signatures.

12. The petitioner to pay the fees of handwriting expert. The learned Assistant Charity Commissioner would request the office of the C.I.D. to do the exercise and submit the report within a period not later than eight months from the date of receipt of the request.

(R.G. AVACHAT)
JUDGE

fmp/-