

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12079 OF 2019

NASHIR KHA GULAB KHA BAGWAN
VERSUS
JAKIR HUSSAIN EDUCATION SOCIETY SHAHAD THROUGH
PRESIDENT

Mr.S.P.Brahme, Advocate for the petitioner.
Ms.S.T.Kazi, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 01/10/2019

PER COURT :

1. The petitioner/original defendant in RCS No.59/2014 is aggrieved by the order dated 18/07/2019, by which his application Exh.106 seeking an order that the suit be abated in view of the death of the Chairman of the Trust, has been rejected.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order by placing reliance upon the 7 grounds formulated in the memo of the petition. The learned Advocate for the respondent has vehemently opposed the petition and prays for dismissal of the same with costs.

3. I find that the suit was at the stage of recording evidence of the defendant. The recording of oral evidence of the plaintiff was already concluded. On 04/04/2019, the Chair Person of the Trust passed away. There was some time lag in the other trustees adopting steps to bring another trustee on record. 3 months time had passed away. A formal order that the suit is abated was yet to be passed when the petitioner filed an application Exh.106.

4. The Trial Court has relied upon the judgment delivered by this Court in the case of Aabaji Daulat Yadav and others Vs. Dhondiram Jagedevrao Yadav and others [1994(3) BCR 60] and the earlier judgment of this Court delivered in the matter of Sitabai Ramchandra Jaltare vs. Masjid Nurun Mohalla Jingerwadi [AIR 1979 Bombay 109].

5. I find that the Trial Court has rightly concluded that the order of abatement of the suit was yet to be passed and before such an order could be passed, the trustees had moved the Court with promptitude.

6. In view of the above, the impugned order permitting the trustee to be brought on record so as to continue with the suit, cannot be

termed as being perverse or erroneous or likely to cause grave injustice to the petitioner.

7. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)