

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.248 OF 2019
WITH
WRIT PETITION NO.5362 OF 2019
WITH
WRIT PETITION NO.6727 OF 2019
WITH
WRIT PETITION NO.6723 OF 2019**

KRISHNA TUKARAM SIRASE AND ANOTHER)...PETITIONERS

V/s.

VIKAS SHIKSHAN MANDAL AND OTHERS)...RESPONDENTS

Shri.Sugandh Deshmukh, Advocate for the Petitioners.

Shri.VA.Shastry, Advocate for the Respondent Nos.1 and 3.

CORAM : A. M. BADAR, J.

DATE : 4th NOVEMBER 2019

PC. :

1 By these petitions, applicants, in an application under Section 72 of the Maharashtra Public Trust Act, are challenging the judgment and order dated 6th October 2018 passed by the District Judge, Kolhapur, thereby rejecting the application.

2 Heard finally.

3 Facts, in brief, are thus :

On 1st April 2005, Change Reports submitted by the respondent no.2 came to be accepted by the learned Deputy Charity Commissioner. Feeling aggrieved by the said acceptance of Change Reports, petitioners herein preferred an appeal under Section 70 of the Maharashtra Public Trust Act accompanied by applications for condonation of delay in preferring said appeals. Applications for condonation of delay in preferring appeals came to be rejected by the learned Joint Charity Commissioner. That is how, petitioners preferred applications under Section 72 of the Maharashtra Public Trust Act before the learned District Judge, Kolhapur. By impugned orders dated 6th October 2018, those applications came to be rejected firstly on the ground that there is no evidence for explaining the delay caused in filing the appeals before the learned Joint Charity Commissioner. The second ground for rejecting said applications is to the effect that the learned Joint Charity

Commissioner has not exercised jurisdiction under Section 70 of the Maharashtra Public Trust Act and therefore, the applications under Section 72 of the Maharashtra Public Trust Act are not maintainable.

4 Heard the learned counsel appearing for the petitioners. He drew my attention to grounds raised in the petitions and submitted that advocate of the petitioners came to be appointed as Member of the Industrial Court and as such, petitioners were not represented before the learned District Judge, when their applications came to be rejected. It is further pointed out that the learned District Judge has committed patent error in law in holding that the applications under Section 72 of the Maharashtra Public Trust Act are not maintainable. For this purpose, my attention is drawn to the judgment of the learned Single Judge of this court in Civil Revision Application Nos.148 of 2013, 155 of 2013, 156 of 2013 and 157 of 2013 between the same parties wherein similar arguments were negatived by the learned Single Judge of this court relying on the judgment of the

Hon'ble Apex Court in the matter of **Shyam Sunder Sarma vs. Pannalal Jaiswal & Ors.**¹.

5 As against this, the learned counsel appearing for the respondents strenuously urged that the delay of more than 4½ years is totally unexplained, and as such, the learned District Judge was right in rejecting the applications under Section 72 of the Maharashtra Public Trust Act. It is further argued that both petitioners claim to be Founding Members of the Trust and petitioner no.2 was present and participated in all proceedings. Even Change Reports were not objected to by the petitioners. The petitioner no.2 was present in the meeting and he has proposed or seconded several resolutions. Relying on judgment of a learned Single Judge of this court in the matter of **Jagatnarayansingh Swarupsingh Chithere and Others vs. Swarupsingh Education Society and Another**², it is urged that the appeals are infructuous as tenure was only for one year and therefore, there is no propriety in entertaining these petitions.

1 (2005) 1 SCC 436

2 1980 Bom.C.R. 837

6 I have considered the submissions so advanced and also perused the impugned orders. Duly sworn petitions show that the petitioners had engaged Advocate D.M.Patil to represent them before the District Judge in their applications under Section 72 of the Maharashtra Public Trust Act. It is also seen from the averments made in the petitions that as Shri.D.M.Patil came to be appointed as Member of the Industrial Court, he failed to attend the court and the petitioners remained unrepresented before the learned District Judge. This fact is also reflected from the impugned judgments. Therefore, I see no substance in contention of the learned counsel for the respondents that appearance of Shri.D.M.Patil is not reflected in the impugned orders. As the learned counsel engaged by the petitioners was absent before the learned District Judge, the impugned judgments show that the applicants were absent in the proceedings.

7 Viewed from this angle, I am of the considered opinion that the petitioners deserve an opportunity of hearing in the matter and the contention that the appeals are infructuous can be

taken care of by keeping all issues open. Whether the delay is sufficiently explained or not, can be examined by the learned District Judge upon hearing the petitioners, who are applicants before the said court. Hence, the order :

ORDER

- i) The petitions are allowed.
- ii) The impugned judgments and orders dated 6th October 2018 passed by the learned District Judge-2, Kolhapur in Miscellaneous Application Nos.7 of 2013, 4 of 2013, 5 of 2013 and 6 of 2013 are quashed and set aside.
- iii) The applications are remanded for fresh decision by the learned District Judge, Kolhapur. All contentions of the parties are kept open.
- iv) The petitions are accordingly disposed off.

(A. M. BADAR, J.)