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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5355 OF 2017**

Dr. Maniklal Srinivas Ruia	..Petitioner
Vs.	
Purshottam Gopiram Ruia & ors.	..Respondents

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Dr. Abhinav Chandrachud with Mr. Dipen Furia I/b. M/s. Shah and Furia Associates for petitioner.
Mr. N.R. Bubna for respondent No.2.
Mr. R.P Kadam for respondent No.3.

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**CORAM : M.S.KARNIK, J.
DATE : 4th JANUARY, 2019
(IN CHAMBER)**

P.C. :

The petitioner's challenge in this Petition under Article 227 of the Constitution of India is to an order dated 22nd August, 2016 passed by the Deputy Charity Commissioner, Greater Mumbai, Mumbai. By the impugned order the Deputy Charity Commissioner was pleased to reject the application filed by the petitioner at Exhibit – 19. The application was filed by the petitioner for taking additional affidavit of evidence on record, as according to the petitioner, the reporting trustee could not produce some documents as it was not within his knowledge and beyond his capacity to produce the documents.

In paragraph 8 of the impugned order it is mentioned that the reporting trustee is not yet cross examined by the opponents. The Deputy Charity Commissioner noted that there is no provision of tendering additional evidence by reporting trustee in the Act itself. It is further mentioned that additional evidence of reporting trustee means re-examination of witness and therefore was of opinion that unless his cross examination is completed and permission is sought for re-examination as per Rule 4 of Order XVII of C.P.C., the present application cannot be entertained.

2. Learned Counsel for the petitioner relied upon the decision of this Court in **Rajesh Varma v/s. Aminex Holdings and Investments and others (2008(3) Mh.L.J. 460)**. He invited my attention to paragraph 12, the relevant portion of which reads thus :-

“However, failure to mention those details in the affidavit does not preclude the plaintiff to enter the witness box to depose further ; nor does it preclude the Court from permitting the plaintiff to lead further evidence of examination-in-chief before the Court in addition to the affidavit in lieu of examination-in-chief already placed on record, filed in terms of Order XVIII, Rule 4 of Civil Procedure

Code. All that the Court ought to ensure is that the defendants get fair opportunity to cross-examine the plaintiff on matters deposed by him in the further examination-in-chief.”

3. It is not in dispute that this decision was not before the Deputy Charity Commissioner when the application was heard. In my opinion, the application filed by the petitioner needs to be considered in the light of the observations made in **Rajesh Varma's** case (supra) and in the interest of justice.

4. The matter was argued for some time. Learned Counsel for the respondent No.2 initially opposed the Petition and supported the impugned order. He invited my attention to the findings recorded on delay and contended that the application is not bonafide. Learned Counsel for contesting respondent No.2 later on, however, fairly submitted he has no objection if the application is heard afresh by the Deputy Charity Commissioner in which case he urged that all contentions be kept open including the question of delay and bonafides of the petitioner in making the application belatedly.

5. In this view of the matter, in my opinion following order will meet the ends of justice :-

ORDER

- I) The impugned order is quashed and set aside.
- II) The application (Exhibit – 19) be heard afresh on its own merits and in accordance with law without being influenced by any observations made by me in this order or those in the impugned order.
- III) All contentions of either parties are kept open.

6. Learned Counsel for the petitioner requests that the petitioner is 78 years old and prays for expeditious disposal of the change report itself. Taking into consideration his advanced age, if the petitioner makes a request to the Deputy Charity Commissioner for expeditious hearing of the change report, the Deputy Charity Commissioner may consider the same on its own merits.

7. The Writ Petition is disposed of in the above terms.

(M.S.KARNIK, J.)