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

**WRIT PETITION NO. 5906 OF 2018
WITH
WRIT PETITION NO. 6504 OF 2018
WITH
WRIT PETITION NO. 9473 OF 2018**

Shri Bhagwan Krishna Patil .. Petitioner
Vs.
The Walva Education Society, Kasba Walva .. Respondents
Through Secretary & Ors.

Mr. Abhijit M. Adagule for the Petitioner.
Mr. Chetan G. Patil for Respondent No.1.
Mr. S. D. Rayrikar, AGP for Respondent No.2.

CORAM : V. L. ACHLIYA, J.
DATE : 4th MARCH, 2019.

P. C. :

1. By this Petitions filed under Article 227 of the Constitution of India, the Petitioner has challenged the order dated 19.03.2018 passed by the learned Assistant Charity Commissioner, Kolhapur. By the impugned order the learned Assistant Charity Commissioner has allowed the production/filing of Affidavit of witness supporting the Change Report.

2. In brief, it is the contention of learned Counsel for the Petitioner that the production of the Affidavit of witness has been allowed without giving opportunity to the Petitioner to record his say and opposed the production of the Affidavit. It is submitted that the stage of recording of evidence in the case already over and the filing of Affidavit of the witness has been

allowed at the stage of advancing final argument in the matter.

3. On the other hand, learned Counsel for Respondent No.1 has opposed the admission of the Petition with contentions that the order impugned calls for no interference under writ jurisdiction of Article 227 of the Constitution of India. The learned Counsel submits that the proceeding pending before the Assistant Charity Commissioner is in the nature of acceptance of change in the managing committee of Trust which have taken place on account of resignation/death of three members of the managing committee of the Trust. It is further submitted that the Change Report filed by the Petitioner was rejected by the Assistant Charity Commissioner and order has been upheld till the stage of Appeal. By referring the nature of the Affidavit filed, the learned Counsel submits that the Affidavit has been filed in support of change notified to the Assistant Charity Commissioner by the persons who have resigned/retired as members of the Trust. It is further submitted that allowing the Affidavit has nowhere caused any serious prejudice to the Petitioner as the matter is still pending for hearing. By inviting the attention to the order dated 21.03.2018 passed in the matter arising out of same proceeding, the learned Counsel submits that the Assistant Charity Commissioner has observed in the order that the filing of the Affidavit would not cause any prejudice to the other side as the right of cross-examination will be available to them.

4. Shri Adagule, learned Counsel for the Petitioner submits that the Appeal filed against the rejecting the Change Report filed by Petitioner is still pending before the District Court.

5. Having considered the submissions advanced in the light of overall facts of case, the nature of the proceeding and the purpose of filing the Affidavit of the outgoing members of the managing committee of the Trust, I am of the view that the order passed by the Assistant Charity Commissioner cannot be termed as perverse, without jurisdiction on in excess of statutory process so as to call for interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. No serious prejudice has been caused to Petitioner on account of production of Affidavit of outgoing trustee. The Affidavit has been filed to support the change recorded on account of outgoing trustees. In case, the Petitioner has desires to cross-examine the witness, the Petitioner can certainly urge to call the deponent for cross-examination. In such case, the Assistant Charity Commissioner can certainly look into such request, in the light of order dated 21.03.2018 passed below Exhibit 42 in the proceeding. In that view, the Petition filed devoid of substance and merit therein, I am, therefore, not inclined to entertain the Petitions. Accordingly, the Petitions are dismissed with no order as to costs.

[V. L. ACHLIYA, J.]