

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6318 OF 2018

Mr.Tanvir Ismail Farid	.. Petitioner
Vs.	
Bombay Panjarapole Public Trust	
Bhuleshwar	.. Respondent

Mr.Sandesh Patil I/b Ms.Anusha Amin, for the Petitioner.

CORAM : M.S.KARNIK, J.

DATE : 14th JANUARY 2019

P.C. :

. Heard learned Counsel for the Petitioner.

2. The challenge in this Petition filed under Articles 226 & 227 of the Constitution of India by the original defendant is to an order dated 27/03/2018 passed by the Joint Civil Judge, Junior Division, Bhiwandi in Regular Civil Suit No. 78 of 1994. Learned Counsel for the petitioner – original defendant submits that the plaintiff – Bombay Panjarapole Public Trust is represented through constituted power of attorney holder. In

the submission of the learned Counsel for the petitioner, placing reliance on the decision of the Apex Court in the case of **Shaikh Abdul Kayum Vs. Mulla Alibhai AIR 1963 SC 309**, it is contended that the trustee cannot transfer his duties, function and power to some other body unless permitted by the instrument of trust. He also relies on the Full Bench decision of the High Court of the Gujarat in support of his submission. Learned Counsel for the petitioner raised objection that as a result of death of power of attorney holder, the suit would abate.

3. The trial Court upon considering the judgments relied by the petitioner, rejected the application. The trial Court was of the opinion that merely because the person is acting as a power of attorney holder, the power cannot be said to be delegated in favour of such person.

4. I have gone through the reasons recorded by the trial Judge. I see no reason to interfere with the view of the trial

Court. Moreover, I may also refer to the decision of this Court in the case of **Shyamabai and ors. Vs. Madan Mohan Mandir Sanstha a Public Trust and ors. in Second Appeal No. 116 of 1998 in Writ Petition No. 3749 of 2008 decided on 10/12/2009** wherein Full Bench of this court after taking into consideration the very same decisions relied by the petitioner has come to the conclusion that the provisions of the Indian Trusts Act 1882 are applicable only to the private trust and not to the public trust. It has been further held that the decision of the Apex Court is rendered keeping in view of the preamble of Indian Trusts Act and therefore could have no application to the public trust.

5. In this view of the matter I find no reason to interfere with the orders passed by the trial Court. Petition is rejected.

(M.S.KARNIK, J.)