

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11389 OF 2014

RAMCHANDRA SHANKAR PANDHARE & ORS.)...PETITIONERS

V/s.

MHASKOBA DEVASTHAN TRUST PUNE & ORS.)...RESPONDENTS

Shri.Subhash Jha a/w. Ms.Sanjana Pardesi a/w. Shri.Shailendra Dubey, Advocate for the Petitioners.

Shri.Rajesh More, Advocate for Respondent No.1.

CORAM : A. M. BADAR, J.

DATE : 8th NOVEMBER 2019

PC. :

1 By this petition, the petitioners are challenging the order dated 5th August 2014 passed by the learned District Judge, Pune, thereby rejecting their application for condonation of delay in filing an application under Section 72(1) of the Bombay Public Trusts Act (now Maharashtra Public Trusts Act).

2 Heard finally the learned counsel appearing for petitioners as well as the learned counsel appearing for

respondents. The learned counsel appearing for respondents drew my attention to reply to the application for condonation of delay and submitted that deceased father of respondents, namely Shivajirao Jagannath Bhosale, had submitted Change Report and the same was accepted. It is further argued that said Shivajirao Jagannath Bhosale expired on 10th October 1997. After his death, three sons of late Shivajirao Bhosale i.e. respondents became Trustees of the Trust. Infact, there is delay of 13 years in moving the application under Section 72 of the then Bombay Public Trusts Act, and therefore, the learned District Judge has rightly exercised the jurisdiction in rejecting the said application.

3 I have considered the submissions so advanced and also perused the impugned order. Application No.2 of 1998 came to be moved by respondent nos.1, 2 and 3 before the learned Assistant Charity Commissioner in exercise of powers under Section 50A(1) of the then Bombay Public Trusts Act for framing of the Scheme for Shri Mhaskoba Devasthan Trust, Pune. Averment made in the said application was to the effect that the

Trust was registered on 5th April 1955 and mode of succession came to be settled as “surviving Trustees to appoint Trustee from Pandhare family.” It is seen that despite this mode of succession, the learned District Judge was pleased to appoint Shivajirao Bhosale, father of respondent nos.1 to 3 herein, and ultimately, on expiry of Shivajirao Bhosale, an application came to be filed under Section 50A(1) of the then Bombay Public Trusts Act, 1950 by respondent nos.1 to 3 by arraigning Ganpat Pandhare, who was dead by that time, as opponent. That is how, application under Section 50A(1) of the then Bombay Public Trusts Act came to be allowed and Scheme at Annexure A to the application was directed to be the Scheme for management of Shri Mhaskoba Devasthan Trust, Pune, bearing PTR No.A-822 (Pune).

4 It is, thus, seen that though members of Pandhare family were having right and interest in being appointed as Trustees of Shri Mhaskoba Devasthan Trust, Pune, they were not arraigned as party respondents to the application under Section 50A(1) of the then Bombay Public Trusts Act, 1950, and the

Scheme was framed without noticing them. That order was sought to be challenged by filing an application under Section 72 of the Bombay Public Trusts Act by members of Pandhare family. As such, I am of the considered opinion that there was sufficient cause for not preferring an application under Section 72 of the then Bombay Public Trusts Act (now Maharashtra Public Trusts Act), by petitioners and the learned District Judge had erred in rejecting the application by holding that there is 13 years delay in filing the application under Section 72 of the then Bombay Public Trusts Act.

5 Even otherwise, it is well settled that primary function of the court is to adjudicate the dispute on its own merit and when petitioners were not made party respondents in an application under Section 50A(1) of the then Bombay Public Trusts Act, it cannot said that they are guilty of delay and laches in preferring the application under Section 72 of the then Bombay Public Trusts Act. The impugned order, as such, cannot be sustained, and therefore the order :

ORDER

- i) The petition is allowed in terms of Prayer Clause (a).
- ii) The learned District Court is directed to decide the application under Section 72 of the then Bombay Public Trusts Act, 1950, on its own merit, according to law.

(A. M. BADAR, J.)