

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3601/2019

(ANANDKUMAR RADHAKRUSHNA SHUKLA **VERSUS** KIRAN RAJKUMAR BAJPAI & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri J.B. Gandhi, counsel for petitioner.
 Shri H.R. Gadhia, counsel for R-1.
 Shri A.H. Mishra, counsel for R-2, 4 & 10.

CORAM : A.S. CHANDURKAR, J.

DATE : OCTOBER 01, 2019.

RULE. Heard finally considering the short issue involved.

The petitioner is aggrieved by the order passed by the Court in exercise of jurisdiction of Section 72 of the Maharashtra Public Trusts Act, 1950 (for short, 'the said Act').

An application filed under Section 72(1) of the said Act raising a challenge to the adjudication by the learned Joint Charity Commissioner in Revision No.7 of 2013 was pending before the Court. In those proceedings, the petitioner herein filed an application seeking permission to adduce evidence in terms of provisions of Section 72(4) of the said Act. The Court proceeded to reject that application principally on the ground that in view of deletion of the provisions of Section 72 from the said Act, such permission could not be granted. Being aggrieved, that order has been challenged in the present writ petition.

Shri J.B. Gandhi, learned counsel for the petitioner submitted that though the provisions of Section 72 of the said Act stand deleted, such deletion would not affect pending proceedings. It was not in dispute that the application filed under Section 72 of

the said Act was pending when the provisions of Act LV of 2017 for amending the provisions of the said Act came into force. He referred to Section 33 of that Amendment Act to submit that the application ought to have been considered on merits.

Shri H.R. Gadhia, learned counsel for the respondent no.1 and Shri A.H. Mishra, learned counsel for the respondent nos.2, 4 and 10 supported the impugned order. According to them, even if the provisions of Section 72 of the said Act are considered, rejection of that application on merits is justified. The petitioner was interested in delaying the proceedings and after considering the conduct of the petitioner, the Court had refused permission to grant the said application. No interference therefore was called for with the impugned order.

I have heard the learned counsel for the parties and I have perused the documents on record. It is not in dispute that when the proceedings under Section 72(1) of the said Act were filed, the provisions of Section 72 had not been amended. The said amendment came into force from 01.09.2017 and hence by virtue of Section 33 of the amending Act, the proceedings filed earlier were liable to be decided as per the law as prevailing prior to the coming into force of such amendment. In the impugned order, the Court in paragraphs 6 to 10 has made a specific reference to the deletion of Section 72 and has thereafter observed that the application itself is not maintainable. These observations are contrary to the provisions of Section 33 of the Amendment Act. Though the learned counsel for the respondents sought to support the impugned order by urging that the Court had taken into consideration the conduct of the petitioner, it is found that deletion of Section 72 of the said Act has heavily weighed with the Court while adjudicating the said application. It is therefore found that

the application at Exhibit 47 deserves to be re-considered on its own merits.

Accordingly, the order dated 02.05.2019 passed below Exhibit 47 is set aside. The Court shall decide the said application afresh on its own merits and in accordance with law. All points raised in that regard are kept open for being urged before the Court. The Court shall keep in mind the directions issued in the earlier writ petitions for expeditious disposal of the said proceedings.

The Writ petition is allowed. Rule is made absolute in aforesaid terms. No costs.

JUDGE

APTE