

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

WRIT PETITION NO. 1665/2018

(SURESH MAHADEO SHRIRAME & OTHERS **VERSUS** DR.SUDHAKAR RAMCHANDRA HANWATE & OTHERS)

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

Court's or Judge's orders

Mrs. R.S. Sirpurkar, counsel for petitioners.
Shri V.R. Thote, counsel for R-1.
Shri S.P. Bhandarkar, counsel for R-2 to 4, 6 to 14 & 17.
Shri A.M. Balpande, A.G.P. for R-18 & 19.

CORAM : A.S. CHANDURKAR, J.

DATE : AUGUST 13, 2019.

RULE. Heard finally with consent of counsel for the parties.

The challenge raised in the present writ petition is to the order passed by the learned District Judge dated 14.07.2017 refusing to condone delay in filing an appeal under Section 72(1) of the Maharashtra Public Trusts Act, 1950 (for short, 'the said Act').

It is the case of the petitioners herein that in change report proceedings that were filed under Section 22 of the said Act being Change Report Enquiry No.162 of 2003, the learned Assistant Charity Commissioner on 28.04.2005 directed the petitioner no.1 to call a meeting for selection of interested persons with a view to enable the official body to conduct the affairs of the trust. This order was the subject matter of challenge at the instance of the respondent no.1 herein in an appeal before the learned Joint Charity Commissioner. That appeal was partly allowed on 30.07.2015 and after setting aside the direction issued in the matter of appointment of the new

managing committee, the recorded body was directed to hold fresh elections. It is the case of the petitioners that they were not aware about the passing of this order and hence there was a delay in filing an appeal for challenging the said order. Hence, on 19.01.2016 an application for condonation of delay alongwith the appeal came to be filed. This application was opposed by the contesting respondents and by the impugned order, the learned District Judge refused to condone the delay. Being aggrieved, the said order has been challenged in the present writ petition.

Mrs. R.S. Sirpurkar, learned counsel for the petitioners submitted that the reasons that were stated in the application for condonation of delay have not been considered by the learned District Judge in its proper perspective while refusing to condone delay. She submitted that an affidavit at Exhibit 50 in support of the reasons for the period of delay was also placed on record. However, by observing that Change Report No.257 of 2015 had been filed, it was assumed that the petitioners had accepted the order passed by the learned Joint Charity Commissioner and hence there was no justification for challenging the same. It was submitted that said change report was not filed on the basis of the order passed by the learned Joint Charity Commissioner but the same was pursuant to the initial order passed by the learned Assistant Charity Commissioner. A request was thus made that the application in question be directed to be reconsidered afresh.

These submissions were opposed by Shri S.P. Bhandarkar, learned counsel for the contesting respondents. According to him, since it was found by the learned District Judge that further steps have been taken to hold elections, it was rightly observed that the petitioners had accepted the order passed by the

learned Joint Charity Commissioner. It could not be said that Change Report No.257 of 2015 was filed in view of the orders passed by the learned Assistant Charity Commissioner. It was further submitted that there were no scheme proceedings which entitled the petitioners to hold elections as sought to be indicated in Change Report No.257 of 2015. It was thus submitted that the impugned order did not call for any interference.

On hearing the learned counsel for the parties, it can be seen that the learned Joint Charity Commissioner by his order dated 30.07.2015 had directed the recorded body to hold fresh elections as per the scheme framed within a period of six months. In the affidavit filed at Exhibit 50, it was sought to be indicated that the petitioners were not aware about the order dated 30.07.2015 and hence delay was caused in preferring the appeal. The learned District Judge has observed that in view of filing of Change Report No.257 of 2015, the order passed by the learned Joint Charity Commissioner stands complied with. It is seen that Change Report No.257 of 2015 refers to the scheme framed on the basis of which the General Body Meeting was held on 22.11.2015. On the other hand, the contesting respondents have stated that pursuant to the order passed by the learned Joint Charity Commissioner, the elections were held on 17.01.2016. It is thus obvious that Change Report No.257 of 2015 cannot be related with passing of the impugned order on 30.07.2015.

The impugned order does not indicate consideration of the reasons as to whether the delay was sufficiently explained or not. Since that relevant aspect has not been considered, it is found necessary to direct re-consideration of that application by the learned District Judge.

In that view of the matter, the order dated 14.07.2017 passed below Exhibit 1 in Miscellaneous Civil Application No.14 of 2016 is set aside. The application for condonation of delay shall be considered afresh on its own merits and after giving an opportunity to all the parties. The respective contentions on merits are kept open.

With these observations, the writ petition is disposed of.
No costs.

JUDGE

APTE