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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 11298 OF 2019

Govindrao Korgaonkar Charitable Trust ... Petitioner
Vs.
Rupa S. Nair & Ors. ... Respondents

Mr. Amrut Joshi a/w Harsh L. Behany, for the Petitioner.

Mr. Chetan Patil, for Respondent Nos. 1 to 3.

Mr. Nakul Jain, Suraj Iyer, Rickin Dang, Jenil Shah i/b Ganesh & Co.,
for Respondent No. 4.

Ms. Vaishali Nimbalkar, AGP for Respondent No. 5.

CORAM : C. V. BHADANG, J.

DATE : MARCH 4, 2020

PC :

1. The challenge in this petition is to the order dated 19th September, 2019 below Exhibit 164 passed by the learned Joint Charity Commissioner, Kolhapur in Miscellaneous Case No. 40 of 2011. By the impugned order, application (Exhibit 164) filed by Respondent Nos. 1 to 3 for directing Mr. Anilpant Prabhakarant Korgaonkar to remain present before the Joint Charity Commissioner has been allowed.

2. The Respondent Nos. 1 to 3 are the intervenors before the learned Joint Charity Commissioner in an application filed under S. 36 of the Maharashtra Public Trust Act, 1950 (for short the “said Act”) by

the Petitioner – Trust for permission for alienation of the Trust property. It appears that earlier Respondent Nos. 1 to 3 had filed an application (Exhibit 156), seeking medical examination of the trustees Anil Korgaonkar as well as Madhukar Korgaonkr. It is contended that these trustees are suffering from Alzheimer' disease from the year 2010 and it is necessary to examine their mental condition. The record discloses that the learned Joint Charity Commissioner by an order dated 18th February, 2019 while dismissing the Application (Exhibit 156) had observed that the application cannot be decided at that stage and it would be necessary to ask the concerned Trustees to remain present for verification. As at present there is no challenge to the said order. The learned counsel for the Petitioner submitted that this is on account of the fact that application (Exhibit 156) was ultimately rejected.

3. Be that as it may, subsequently, Respondent Nos. 1 to 3 filed an application (Exhibit 164), which is consequent to the order dated 18th February, 2019 passed below application (exhibit 156). On the application (Exhibit 164), vide order dated 19th September, 2019 the learned Joint Charity Commissioner has directed Mr. Anil Korgaonkar to remain present. The learned Joint Charity Commissioner has also observed that in the event the Trustee fails to

remain present, an adverse inference will be drawn. It is this order, which is subject matter of challenge in this petition.

4. The learned counsel for the Petitioner has strenuously urged that the application under S. 36 of the Act is of the year 2011 and has been expedited by this Court vide order 30th November, in Writ Petition No.10985 of 2018. It is submitted that Respondent Nos. 1 to 3 got themselves impleaded in the year 2013 and the present application seeking to challenge mental condition of Mr. Anil Korgaonkar and Madhukar Korgaonkar is filed in the year 2018, which is belated. Reliance is placed on the decision of this Court in the case of ***Pirgond Hongonda Vs. Vishwanath Ganesh & Ors.***¹, and the decision of Madras High Court in the case of ***The Managing Director, M/s. V.V.D. & Sons P. Ltd. Vs. Ms. Kajal Aggarwal***² in order to submit that a party cannot call upon the opposite party adversary as its witness. He therefore, submits that the impugned order needs to be set aside.

5. The learned counsel for Respondent Nos. 1 to 4 submitted that as per Section 73 of the said Act, the Charity Commissioner has all the powers of civil court, including of summoning and enforcing attendance of any person and examining him on oath and also for

1 AIR 1956 251

2 2017 SCC OnLine Mad 12749

issuing of commission. It is submitted that the issue about the mental condition of the trustee is relevant for deciding the question whether the Trust can be granted permission for sell the land. It is submitted that by the impugned order, the Joint Charity Commissioner has not called Mr. Anil Korgaonkar as a witness.

5. I have considered the circumstances and submissions made. Perused record.

6. *Prima facie*, it appears that by order dated 18th February, 2019, the application (Exhibit 156) was dismissed observing that before allowing that application it would be appropriate to ask the concerned person to remain present, and in pursuance of that order, the private respondents filed application (Exhibit 164) for asking the concerned Trustee (which according to the Petitioner is now ex-trustee) to remain present before the Joint Charity Commissioner. As has been rightly submitted on behalf of private respondents, the learned Joint Charity Commissioner has not directed examination of said trustee as a witness, nor there is any order directing examination of his mental condition. Thus, the reliance placed on the decisions in the case of *Pirgonda Hongtonda (supra)* and *The Managing Director, M/s. V.V.D. & Sons P. Ltd. Vs. Ms. Kajal Aggarwal (supra)* is misplaced. As per S. 73 of the said Act, the learned Charity

Commissioner can indeed in a given case direct attendance of any person. It is neither necessary, nor appropriate to go into question of examination of medical / mental condition of the said person, inasmuch as there is no such order passed, as of today. Thus, keeping the said issue open, no case for interference in the impugned order is made out. The petition is accordingly dismissed, with no order as to costs.

Sd/-
C. V. BHADANG, J.