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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6759 OF 2019

Shri Kedareshwar Devasthan Trust, Dandeghat
Taluka Mahabaleshwar, Dist.Satara
Through Trustee Suhas Laxman Wakade .. Petitioner
VS.

Pallavi Shekhar Chidgupkar & ors. .. Respondents

Mr. Atul Damle, Senior Advocate i/b. Ojas Deolankar for
petitioner.

Mr. A.M. Kulkarni a/w. Akanksha Helaskar for respondent No.1.

Mr. S.H. Kankal, AGP for State.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 22, 2021

P.C.:-

The challenge in this Petition is to an order passed below Exhibit 116 in change report No. 179 of 2015 which was filed by the respondent No.1 – original applicant under Section 22 of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as ‘the said Act’ for short).

2. The application Exhibit 116 was filed by the respondent No.1 for condonation of delay. In the application it is averred that the application is well within limitation and there is no delay in

filing the change report. However, the change report pertains to the reporting change of death of the trustees on 21/3/1997, 2/12/2009 and 13/7/2004 and appointments and hence as and by way of abundant caution delay if any be condoned.

3. Learned Senior Advocate for the petitioner submitted that the Assistant Charity Commissioner committed an error in ordering that the application for condonation of delay Exhibit 116 will be decided at the final hearing of the case. According to him, once an objection has been raised that there is a delay and even the respondent No.1 having made an application, may be, by way of abundant caution to condone the delay, in that case, unless and until the delay is condoned by first deciding application Exhibit 116, the Court does not get jurisdiction to embark upon inquiry on merits of the matter.

4. He invited my attention to Section 22 of the said Act. Learned Senior Advocate relied upon the decisions of this Court in the case of **Shankar Ramrao Rangnekar vs. Narayan Sakharam Sawant and others**¹ and **Yashomandir Sahakari Patpedhi Maryadit, Mumbai vs. Ashok Raj Enterprises, Mumbai and others**² in support of his contentions.

1 2013 (1) Mh.L.J. 706

2 2013 (3) Mh.L.J. 39

5. Learned counsel for the respondent No.1 on the other hand supported the impugned order. According to him, there is no delay in filing the change report. It is just by way of abundant caution that the application was made for condoning the delay, if any. He further submitted that the issue of limitation ultimately is a mixed question of law and fact and therefore, the Assistant Charity Commissioner having observed that the issue of delay raised in the application touching the factual aspect of the trust, the approach of the authority to decide the application Exhibit 116 at the time of the final hearing of the case cannot be faulted. He further submitted that even otherwise the Petition at the instance of the petitioner is not maintainable. He submits that the petitioner claims to be a trustee of the petitioner trust but his change report is already rejected and hence has no locus to challenge the impugned order by filing this Petition.

6. Learned counsel for the respondent No.1 relies upon the decision of the Apex Court in the case of **Nusli Neville Wadia vs. Ivory Properties and others**³ in support of his submission that question of limitation, in no case, can be said to be a question of jurisdiction of the Court and that issue of limitation therefore cannot be decided as a preliminary issue.

3 (2020) 6 SCC 557

7. Heard learned counsel.

8. The respondent No.1 while filing the application for change report also filed an application for condonation of delay at Exhibit 116. The averments made in the application reveal that according to respondent No.1 there is no delay in filing the application but by way of abundant caution an application is filed with a prayer that in the event there is a delay the same should be condoned. A substantive application to that effect raising various contentions has been filed. It is prayed in the application that the delay, if any, be condoned.

9. To appreciate the rival submissions it would be pertinent to reproduce and consider Section 22 of the said Act, the relevant portion which reads thus :-

“ **22.** (1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

[Provided that, the Deputy or Assistant Charity Commissioner may extend the period of ninety days for reporting the change on being satisfied that there was a

sufficient cause for not reporting the change within the stipulated period subject to payment of costs by the reporting trustee, which shall be credited to the Public Trust Administration Fund.]”

(emphasis supplied)

10. Reading of Section 22 and proviso thereof shows that the Deputy or Assistant Charity Commissioner may extend the period of 90 days for reporting the change on being satisfied that there was a sufficient cause for not reporting the change within the stipulated period subject to payment of costs by the reporting trustee. In this view of the matter, it is only after the satisfaction is recorded about sufficient cause for not reporting the change that the period of 90 days for reporting the change can be extended. The respondent No.1 having filed an application for condonation of delay albeit with the case that there is no delay but with a rider that in the event there is a delay the same should be condoned, in that case having regard to the law down by this Court in the cases of **Shankar Ramrao Rangnekar** and **Yashomandir Sahakari Patpedhi Maryadit, Mumbai** (supra) the Assistant Charity Commissioner should have firstly decided the application for condonation of delay and then embarked upon inquiry on merits of the matter.

11. The decision relied upon by learned counsel for the respondent No.1 in the case of **Nusli Neville Wadia** (supra), in my opinion, will not have any application in the contextual facts of the present case. Their Lordships were considering the question whether issue of limitation can be decided as a preliminary issue of jurisdiction under Sec 9A of the Code of Civil Procedure. Their Lordships held that under the provisions of Section 9A and Order XIV Rule 2 of the said Act, it is open to decide preliminary issues if it is purely a question of law not a mixed question of law and fact by recording evidence. In the present case, having regard to the provisions of Section 22 of the said Act, as application for condonation of delay has been made, in my opinion, the Assistant Charity Commissioner should have first decided the application for condonation of delay instead of deciding to deal with the application Exhibit 116 at the stage of final hearing.

12. I also do not find any force in the submission of learned counsel for the respondent No.1 that the Petition at the instance of the petitioner is not maintainable. The Petition has been filed by the trust of which petitioner claims to be trustee. The Petitioner was heard by the Assistant Charity Commissioner when the impugned order came to be passed on the application Exhibit

116 as a party respondent. Moreover, though the change report filed by the petitioner has been rejected, it is pointed out by learned Senior Advocate that the appeal against the said order is pending before the Joint Charity Commissioner. In any case, so far as the aspect of locus is concerned, it is open for the respondent No.1 to raise appropriate objection before the Assistant Charity Commissioner when the application Exhibit 116 is heard afresh.

13. The Petition is therefore allowed.

14. The impugned order is set aside.

15. The Assistant Charity Commissioner to hear all concerned and decide the application Exhibit 116 afresh and after passing necessary orders and if delay is condoned the change report be heard on merits.

16. The Writ Petition is disposed of.

(M.S.KARNIK, J.)