

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3050 OF 2023

**TILAKNAGAR SHET KAMGAR TRUST THROUGH ITS PRESIDENT AND
ANOTHER
VERSUS
PADMA W/O PRALHAD POL AND OTHERS**

...

Advocate for Petitioners : Mr. Vijay P. Latange
Advocate for Respondent Nos. 1 & 2 : Mr. Shahikant S. Londhe

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 16th MARCH, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 22/12/2022, passed by learned Joint Civil Judge, Senior Division, Shrirampur, below Exhibit-63 in R.C.S. No.59/2020, thereby partly allowing application filed by the respondents/plaintiffs and directing the petitioner/defendant Trust to supply the documents and record as well as copies of the same.

2. Respondents, claiming to be the beneficiaries of petitioner trust namely Tilaknagar Shet Kamgar Trust, registered under the Bombay Public Trusts Act, filed R.C.S. No.59/2020 praying relief that plaintiffs and beneficiaries may be appointed as trustees of the said defendant Trust, as per clause 3(2) of the Registered Declaration of Trust read with section 74 of the Indian Trusts Act, 1882. Further direction is sought to the Trust to alienate

and transfer the property and allot the property to legal heirs of Pralhad Ramchandra Pol, who has created the said Trust, i.e. plaintiffs by way of Gift Deed as per clause 7(B) of the Declaration of Trust. Also, perpetual injunction is sought that defendant should not create third party interest in the Trust property or otherwise to the extent of Baithi Chal. During the course of hearing, plaintiffs filed application for inspection of Trust record (Exhibit-47) to which the Trust has given 'no objection' and accordingly the plaintiffs have inspected the record.

3. Subsequent thereto, application Exhibit-63 is filed by the plaintiffs seeking certain documents mentioned in the said application. The Trust objected the said application by filing written say. Trial Court has allowed the said application by the impugned order.

4. Heard learned advocate for petitioners and learned advocate for respondents. Perused the grounds raised in the writ petition, annexures annexed to it and reply affidavit filed by respondent Nos. 1 and 2.

5. According to petitioners there is non-compliance of Rule 15 and 16 of Order 11 of the Code of Civil Procedure. Therefore, the application should have been rejected by the trial Court. It is further contended that unnecessarily the record is sought by the

plaintiffs which is not relevant for consideration of prayers of the plaintiffs. The Trust, therefore, claims that the impugned order is unsustainable and the same is liable to be quashed and set aside.

6. Per contra, learned advocate for respondents submits that the application was filed under Order 11 Rule 18 read with section 57 of the Indian Trusts Act. Section 57 gives right to the beneficiaries to inspect and take copies of instruments of trust accounts, etc. Therefore, the trial Court has rightly allowed the application and there is no merit in the writ petition and the same may be dismissed.

7. Perusal of record indicates that documents sought by the plaintiffs are necessary for just decision of the suit. Trial Court in the impugned order has observed that *"no harm would be caused to defendants if they submit records regarding appointment of previous and present Trustees from year 1962 till year 2020, when the suit came to be filed and till present year, as it would be fruitful for meritorious and effective adjudication of the suit"*.

8. It is the contention of plaintiffs that trustees are not legally and validly appointed. They, therefore, have sought above documents. Trial Court is right in allowing the application, as reasonable and fair opportunity needs to be given to the plaintiffs to prove their case which is based on the documents, which are in possession of the Trust.

9. Fact remains that the Trial Court in order passed below Exhibit-70 in this suit has noted conduct of the Trust by observing thus:-

"5. Apart, considering defendant Trust's conduct through out the matter, they are more interested to prolong the matter rather than assisting the Court to adjudicate it expeditiously. Vide order below Exh.47, defendant Trust has been directed to furnish requisite documents to plaintiff and order below Exh. 63, is the elaborate version of the order below Exh.47.

6. Considering the issues raised in the suit, said documents are fruitful for its effective and meritorious adjudication. But, defendant Trust is not interested to comply with the orders on one or other ground. Apart, the order below Exh. 63, itself states that if defendant Trust is unable to trace record, its present Trustees, who shall be 7 in number, as per the declaration, to file their respective affidavits in its regard. So, in case defendant Trust is not having these documents, it could file the affidavit of its 7 Trustees.

7. Considering defendant Trust's prolonging conduct in the suit as appearing from record and after considering its above observed economical condition, this application is nothing but an attempt to prolong the proceeding and to avoid the compliance of the orders.

8. Defendant Trust is obligated to comply with the orders below Exh.47 and 63, unless and until they seek reliefs against these orders, for which they have to move Appellate Court rather than seeking time from this Court on non sustainable grounds. If, defendant Trust is eager to seek relief from Appellate Court, it would have taken requisite steps right after the order below Exh.63, or right after the order below Exh.47, which has been passed way back in the year 2021.

9. I would like to note here that the order below Exhs. 47 and 63, are of same nature, wherein defendant Trust is directed to submit requisite documents. But, rather than complying these orders, defendant Trust is consuming the time of this Court and that of the plaintiffs, out of whom plaintiff No.1 is the Senior Citizen

of more than 80 years, by making the mockery of Court procedure, which provides reasonable opportunity to the parties of which, defendant Trust is taking benefit. In view of above discussed facts, this application is not tenable. Accordingly, I pass following order.

ORDER

- 1. The application is rejected.*
- 2. In interest of justice, no order as to costs."*

10. No prejudice is likely to be caused to the Trust if the said record is made available in accordance with the directions of trial Court. Since order of the trial Court is in accordance with the principles of natural justice, this Court is not inclined to accept the technical objections raised by the petitioners in the present petition. No case is made out by the petitioners to exercise extraordinary writ jurisdiction. The writ petition being devoid of merits is dismissed.

(NITIN B. SURYAWANSHI, J.)