

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10509 OF 2023

Pratap S/o Dattatrya Taware

.... Petitioner

Versus

Narendra Shankar Joshi
and another

.... Respondents

.....

Mr. Sachin S. Deshmukh, Advocate for the Petitioner
Mr. Mahesh Deshmukh, Advocate for Respondent No.1
Mr. S.N. Kendre, AGP for Respondent for Respondent No.2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 03rd OCTOBER, 2023

ORDER :

1. Leave to correct the prayer Clause (B).
- 2 By this petition, filed under Article 227 of the Constitution of India, petitioner challenges orders dated 06/07/2023, 24/07/2023 and 01/08/2023 passed by learned Deputy Charity Commissioner, Jalgaon Division Jalgaon below Exhibits 51, 54 and 56 in Change Report No.1226 of 2021.
3. Facts in brief, which can be stated thus, change reported by petitioner and respondent No.1 bearing Change Report Nos.1226 of 2021 and 1184 of 2021 respectively, thereby reporting change in respect of Dalit Mitra Sau.

Nirmalatai Dattatraya Taware Janseva Foundation, Pachora, District Jalgaon, are pending before the second respondent/Deputy Charity Commissioner, Jalgaon.

4. Petitioner filed his evidence affidavit in Change Report No.1226 of 2021 on 06/12/2022. In the said affidavit, he has referred 11 documents, and requested for exhibiting them. Further examination-in-chief of petitioner was recorded on 20/12/2022. Thereafter, his cross-examination was conducted on 30/01/2022, and it was concluded on 09/05/2023. On 22/05/2023, petitioner filed application Exhibit-51, requesting the second respondent that documents which he has referred in his examination-in-chief at Sr. Nos.4 to 20, were referred in his cross-examination, and therefore, those documents may be exhibited. Respondent No.1 objected the said prayer contending that burden is on petitioner to prove these documents. By the impugned order, this application is rejected. Hence, the petition.

5. Petitioner's witness No.2 – Dinesh Jadhav by filing application Exhibit 54, praying for adjournment of the matter on the ground that his advocate Mr. Bhavsar is admitted at Pune, and his another advocate Mr. Patil is out of station. This

application is rejected, and evidence of witness No.2 – Dinesh Jadhav is closed.

6. Petitioner's witness No.2 – Dinesh Jadhav by filing application Exhibit-56 prayed for setting aside the order of closure of his evidence. This application is also rejected by the second respondent.

7. Orders passed below Exhibits 51, 54 and 56, are therefore, impugned in the present petition.

8. Heard learned advocate for petitioner, learned advocate for respondent No.1 and learned Assistant Government Pleader for Respondent No.2. Perused the writ petition memo, annexures thereto and impugned orders.

9. Perusal of cross-examination of petitioner shows that questions were asked to petitioner in respect of documents, referred by him in the examination-in-chief. However, those documents were not confronted to the petitioner. In this view of the matter, respondent No.2 is right in holding that burden is on petitioner to prove these documents. Only when petitioner proves these documents, exhibit numbers can be given to them.

10. However, there is no difficulty in giving article numbers to these documents for identification purposes at this stage. If petitioner proves these documents in accordance with law, then the documents can be exhibited, and considered in evidence, while adjudicating the dispute between parties.

11. Respondent No.2, while rejecting applications Exhibits 54 and 56, has adopted hyper technical approach. Merely because inquiries are expedited, request for adjournment on the ground of ailment of advocate could not have been refused. By closing evidence of witness No.2 – Dinesh Jadhav, and by rejecting application Exhibit-56, fair opportunity to lead best possible evidence in support of case of petitioner is denied. The impugned order, therefore, cannot be sustained. In the result, following order.

ORDER

(I) The writ petition is partly allowed.

(II) Learned Deputy Charity Commissioner shall give article numbers to the documents at Sr. Nos.4 to 20 submitted by petitioner along with list of documents, for the purposes of identification.

(III) If petitioner proves these documents in accordance with law, then exhibit numbers be given to these documents.

(IV) Question of proof, admissibility and relevancy of these documents is kept open, to be considered at the time of final adjudication of Change Report inquiries.

(V) Impugned orders passed below Exhibits 54 and 56 are hereby quashed and set aside.

(VI) Application Exhibits 54 and 56 are allowed subject to petitioner paying costs of Rs.25,000/- to respondent No.1 before the learned Deputy Charity Commissioner.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane