

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

WRIT PETITION NO. 10184 OF 2014

Prakash Rajmal Zawar and others .. Petitioners

Versus

Kaumudi Charudatta Sane and others .. Respondents

Shri V. J. Dixit, Senior Advocate i/by Shri Siddhartha B.
Yawalkar, Advocate for the Petitioners.

Shri V. P. Latange, Advocate for the Respondent No. 2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 16TH FEBRUARY, 2023.

FINAL ORDER :

. The challenge is to the order dated 12th September, 2014 passed by the Joint Charity Commission in M. A. No. 51 of 2012 rejecting the petitioners' application for setting aside the order dated 30th November, 2012 for want of compliance of the order dated 15th October, 2012, which required the payment of process fee for the purpose of issuance of notice.

2. The dispute in the present case is as regards the change report in Enquiry No. 129 of 2011 filed before the Assistant Charity Commissioner, which came to be allowed by order dated 16.06.2011. The petitioners being aggrieved by the order filed appeal U/Sec. 70 of the Maharashtra Public Trust Act (for short "Trust Act") along with M. A. No. 42 of 2012 for condonation of delay of 15 months 22 days in filing appeal. On 15th October, 2012 notices were issued as per the rules. As there was non compliance of payment of process fees for the purpose of issuance

of notice, by order dated 30th November, 2012, the application was disposed of and for the restoration of the application, the petitioners' counsel filed an application dated 21st December, 2012, in which it was stated that due to personal commitments, the petitioners and the counsel were not present and due to inadvertence there was non compliance of payment of process fees. Subsequently, by an affidavit dated 28th December, 2012, the petitioner No. 1 verified the averments made in the application.

3. By the impugned order, the application came to be rejected on two grounds firstly that the application initially was not signed by any of the parties and was filed by the counsel for the parties and secondly that there is no provision quoted under which the application is filed.

4. Heard Mr. Dixit, learned senior counsel appearing for the petitioners and Mr. Latange learned counsel appearing for respondent No. 2.

5. Mr. Dixit, the learned senior counsel would urge that the defect in the application, which was not signed by the parties came to be cured by the subsequent affidavit which was filed by the petitioner No. 1 and verified. As such he would urge that all the petitioners are not required to sign the affidavit and there is sufficient compliance, if the affidavit is verified by the petitioner No. 1. He would further submit that in view of provisions of Section 73 and 76 of the Trust Act, the provisions of the Code of Civil Procedure to the extent that they are not in conflict with the Trust Act are applicable and as such the Joint Charity

Commissioner erred in dismissing the application. In support of his contention, he would rely upon the decision in the case of **Balaji Bhikaji Kapale and another Vs. Punjaji Balaji Tayade and others** reported in ***2001(4) Mh. L. J. 821***.

6. *Per contra*, learned counsel appearing for the respondent No. 2 points out that it is necessary that a proper application to be filed by quoting relevant provisions for setting aside order of dismissal and in the present case as proper application has not been filed, there is no error in the impugned order.

7. Considered the submissions of the learned counsels for the parties.

8. The dismissal of the appeal is on ground of non compliance of the payment of process fees, which is procedural in nature. There is no substantial right which is affected by reason of non payment of process fee. In the application for setting aside the order of dismissal of the appeal, it was clearly stated that due to the personal commitments, the petitioners and the counsel were not available. In this context, it is necessary to consider relevant dates. On 15th October, 2012, notices were issued. On 30th November, 2012, the application was disposed of i. e. within a period of one and half month. Immediately on 21st December, 2012 application for restoration has been made. As such, it cannot be said that the petitioners were negligent in pursuing the application before the Joint Charity Commissioner.

9. As regards the defect that the application was not signed by the petitioners, subsequently an affidavit has been filed on

record by the petitioner No. 1, duly signed and verified. In my opinion, the non signing of the application by the party is mere irregularity, which was cured by filing of the subsequent application. As regards the findings of the Jt. Charity Commissioner that there is no provision quoted, the provisions of Section 73 and 76 of the Trust Act is a complete answer and needs no elaboration.

10. Learned Senior Counsel for Petitioner submits that to satisfy the requirements, the Petitioners are ready to file a fresh application. In the interest of justice, the petitioners are permitted to file a detailed application signed by all the applicants, which will be considered by the Joint Charity Commissioner on its own merits and in accordance with law. All rights and contentions of both the parties are kept open. Writ petition stands allowed in above terms. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23