

Anand

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

WRIT PETITION NO. 3597 OF 2022

Jeev Raksha Animal Welfare Trust

.Petitioner

Vs.

Lila Parulekar Welfare Trust & anr.

.Respondents

Mr. V. P. Sawant, Senior Advocate a/w Mr. Prabhakar M. Jadhav
i/b. Mr. Viskas B. Shivarkar, Advocate, for the Petitioner
Mr. C. P. Modi, AGP, for Respondent No. 2

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 26.07.2023

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. Notice was issued to the Respondents for final disposal vide order dated 18.04.2022 and office noting shows that the notice was served upon Respondent No. 1. However, none appears for Respondent No. 1. Considering the limited controversy which arises in the present Petition, the Petition is taken up for final disposal.

2. The Petitioner's intervention application is filed in an application filed under Section 55(1) of the Maharashtra Public Trust Act, 1950 (for short 'MPT' Act), being C. M. A. No. 276 of 2017 invoking doctrine of cypress to be applied to the income derived from Lila Parulekar Welfare Trust to be used for welfare

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of animals looked after by the Petitioner – Trust, has been rejected.

3. Heard learned counsel for the Petitioner and the learned counsel for Respondent No. 2.

4. Mr. Sawant, learned senior counsel submits that the Respondent No. 1 had filed C. M. A. No. 276 of 2017 seeking direction as regards disposal of Respondent No. 1 – Trust as also income from the property belonging to the beneficiaries of the Trust be applied cypress for the purpose of maintenance, upkeep and welfare of the animals reared and looked after at the animal shelter by name Jeev Raksha. He would further contend that Respondent No. 1 – Welfare Trust came to be constituted by this Court to lookafter permanent property of Lila Parulekar during her life time. He would further submit that Lila Parulekar expired on 13.09.2019 and the Will of Lila Parulekar bequeathed certain property to the Petitioner - Jeev Raksha Animal Welfare Trust which is also entrusted with the task of looking after the animal shelter on one of the properties which is the sole property of Lila Parulekar. He would further submit that as the application in question seeks to invoke the document of cypress to be applied

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to the income derived from Respondent No. 1 – Trust to be used for the welfare of animals which are looked after by the Petitioner – Trust, the Petitioner is a necessary party.

5. Considered the submissions.

6. The application for intervention has been rejected by the learned District Judge for the reason that the order of this Court forming Respondent No. 1 – trust was for the property and welfare of Lila Parulekar. The learned District Judge also rejected the application on the ground that the Petitioner – Trust and not active. It is not in dispute that Jeev Raksha Animal Welfare Trust had been formed for the purpose of taking care of the animals which were kept in the animal shelter on one of the properties of Lila Parulekar. It is only by an order of this Court that Respondent No. 1 – Trust came to be constituted for looking after the person and property of Lila Parulekar. In the Probate Petition which has been filed by the Petitioner, who is seeking probate of the Will of Lila Parulekar, Respondent No. 1 – Trust has been permitted to intervene. That being so, considering that the application under Section 55(1) of the M. P. T. Act seeks the relief of the application of the funds for the purpose of

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maintenance, upkeep and welfare of the animals reared and looked after at the animal shelter by Jeev Raksha Animal Welfare Trust, it cannot be said that the Petitioner viz. Jeev Raksha Animal Welfare Trust is not a necessary party. The learned District Judge while rejecting the application has taken into consideration the order of this Court appointing Respondent No. 1 - Trust for the property and animals of Lila Parulekar but has failed to consider that the Petitioner - Trust was looking after welfare of the animals which were kept in the animal shelter formed on one of the properties of Lila Parulekar. The trial Court has also failed to take into consideration that the Will of Lila Parulekar bequeaths certain properties to the Petitioner - Trust and that the Probate Petition seeking probate of the Will is still pending. The learned District Judge rejected the application on the ground that there are no documents which have been produced by Jeev Raksha Animal Welfare Trust to indicate that the said Trust is active. However, it needs to be noted that same is not required for the purpose of deciding the application under Order I, Rule 10 of the Code of Civil Procedure, 1908 (for short 'CPC'). All that is required to be considered is as to whether Jeev Raksha Animal Welfare Trust i. e. the Petitioner, herein is the necessary and proper party.

7. Considering that doctrine of cypress is invoked to be applied to the income derived by Respondent No. 1 – Trust which is to be used for the welfare of animals which the Petitioner – Trust was looking after, any order which would be passed in those proceedings would affect the Petitioner – Trust. That being so, the Petitioner herein has an interest in the subject matter and as such, is required to be impleaded as a party. The Probate Petition is still pending and same cannot be a ground to deny intervention of the Petitioner – Trust. What has to be taken into consideration is whether party seeking impleadment has a direct interest in the subject matter of the proceeding. Considering that the Petitioner – Trust was, during the lifetime of Lila Parulekar, formed by her for the specific purpose of taking care of animals in the animal shelter, in my opinion, outcome of the application under Section 55(1) of the M.P.T. Act would affect the Petitioner – Trust and as such, the Petitioner is required to be impleaded as party.

8. In view of the above, the impugned order dated 27.06.2019 is hereby quashed & set aside. As the impugned order is quashed & set aside, the application for intervention filed by

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the Petitioner – Trust below Exh. 19 in C. M. A. No. 276 of 2017
stands allowed.

9. Writ Petition stands allowed.

(SHARMILA U. DESHMUKH, J.)