



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10349 OF 2024

Devidas Sitaram Chingare and Ors.

... Petitioners.

Versus

Rameshwar Shankarlal Malani and Ors.

... Respondents.

Mr.Rameshwar Gite a/w. Mr.Sushant Tare and Mr.Hiten Raut for
Petitioners.

Ms. Gunjan Shah, for Respondent Nos.1 to 3, 5 and 6.

Ms. Savita Prabhune, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : November 29, 2024

P. C.:

1. By this Petition the challenge is to the order dated 9th May, 2024 passed by the Charity Commissioner below Exhibit 47 in Application No.32 of 2021, rejecting the Petitioners' Application for cross-examination of the Respondents, who have filed an affidavit for the purpose of being appointed as Trustees of the Trust.

2. Learned counsel appearing for the Petitioners would point out the provisions of Sections 73 and 76 of the Maharashtra Public Trusts Act, 1950 [for short, "**Trusts Act**"] read with Rule 7 and would submit that against an order passed under Section 47 of the Trusts Act, the remedy is to file an Appeal as against a decree and for the said purpose, the proceedings have to take the nature of

trial. He would further submit that the Division Bench of this Court in the case of ***Chandrakant Thakkar vs. Alka Sahani and Ors. in First Appeal No.600 of 2016***, have taken a view that in an inquiry wherein the decision to appoint or removal of trustees is to be taken wherein disputed questions in fact have to be pleaded, it is incumbent on the part of the adjudicating authority to give an opportunity to the parties to lead evidence, if they so desire. He would further submit that as the inquiry under Section 47 of the Trusts Act has the attributes of the judicial trial which is also set out in Rule 7 of the Rules of 1951 and the inquiry is to test the eligibility criteria of the person desiring to be appointed as a Trustees, cross-examination must be permitted.

3. Learned counsel appearing for the private-Respondents would submit that the purpose of an inquiry under Section 47 was to fill in the vacancy and after the Trustee has been appointed, if any objection is taken by any of the parties, then subsequently, the proceedings can take the form of trial. However, at this stage of filling of the vacancy, it is not necessary that opportunity of cross-examination should be given.

4. Learned AGP would submit that the only inquiry which is contemplated is in the form of interview with the parties for the purpose of the inquiry under Section 47 of the Trusts Act. She seeks

time to file a detailed affidavit.

5. The proceedings have been initiated under Section 47 of the Trusts Act exercising the jurisdiction to appoint the Trustees. Sub-section (2) of Section 47 of the Trusts Act provides that the Charity Commissioner may after hearing the parties and making such inquiry as he may deem fit appoint any person as a trustee. Sub-section (5) of Section 47 of the Trusts Act, provides that an Appeal shall lie to the Court against the order of Charity Commissioner under Sub-section (2) of Section 47 of the Trusts Act, as if such order was decree of the District Court. Although it is sought to be contended by learned counsel for the Respondents that the purpose is to fill in the vacancy, the Application is filed under Section 47(1) of the Trusts Act and *prima facie*, the proceedings are for the purpose of appointment of a new trustee and the order would partake the nature of decree of the District Court as against which an Appeal is provided for.

6. Section 73 of the Trusts Act provides for the officers holding the inquiry under the Trusts Act to have powers of the Civil Court in trying the suit, as regards the proof of facts by affidavits, summoning and enforcing the attendance of any person and examining, ordering discovery and inspection, and compelling the production of documents and issuing of commissions. Rule 7 of the

Rules of 1951, governs the manner of inquiry and provides that except as provided in this Act, the inquiries under Section 47 shall be held as far as possible in accordance with the procedure prescribed for trial of suits under the Presidency Small Cause Courts Act, 1882.

7. Upon *prima facie* reading of the statutory provisions, it appears that the nature of decision which is required to be taken is regarding the suitability of the person for the purpose of being appointed as a trustee. *Prima facie*, the submission of learned AGP that what is contemplated is an “interview” while exercising jurisdiction under Section 47 cannot be accepted as the order passed partakes the nature of the decree and the result of an interview can never result into the decision being a decree. The proceedings under Section 47 of the Trusts Act, appear to be a complete Code in itself culminating into a decree and hence the adjudication decides the rights of the parties.

8. The decision in the case of ***Chandrakant Thakkar*** (supra), which has been relied upon by learned counsel for the Petitioner holds that the text and context of Section 47 of the Trusts Act, contemplate the adjudication of the right and status of the parties before it and the authority must hear the parties fully and adjudicate the lis between the parties by recording sufficient

reasons, the order being appealable.

9. In light of the enunciation of law laid down by the Division Bench of this Court, *prima facie*, it is incomprehensible as to how without an adjudication by permitting opportunity of cross-examination, the inquiry under Section 47 of the Trusts Act can be completed.

10. The present Petition challenges the decline of relief of cross-examination and in event the impugned relief is not granted, the matter will proceed further prejudicing the rights of the parties. Hence, case for ad-interim relief is made out. Ad-interim relief is granted in terms of prayer Clause (d).

11. Let the affidavit-in-reply be filed within a period of four weeks from today. Rejoinder, if any, to be filed within a period of one week thereafter.

12. Stand over to **10th January, 2025.**

[Sharmila U. Deshmukh, J.]