

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

WRIT PETITION NO. 10457 OF 2024

Charu Mehta Trustee of Lilavati Kirtilal Mehta Medical Trust	...Petitioner
Versus	
Chetan Mehta And Ors.	...Respondents

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Ms. Fereshte Sethna a/w Mr. Abhishek Prabhu a/w Ms. Jyoti Ghag
a/w Mr. Shailesh Prajapati i/by Dua Associates, for the Petitioner.

Mr. Asim for the Respondent Nos.3 to 5.

Ms. Payal Vardham i/by Ms. Minal Parab for Respondent Nos. 6 to
11.

Mr. Vishal Kanade a/w Mr. Rahul Punjabi a/w Ms. Meghana
Lakhyani i/by Mr. Rahul Punjabi for Respondent No.1.

Ms. Aloka A. Nadkarni, A.G.P. for the Respondent – State.

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CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	30th JULY, 2024

P.C.:

1. Heard Ms. Fereshte Sethna, the learned counsel for the petitioner.
2. The learned counsel for the petitioner takes exception to the order dated 15.07.2024 passed by the learned Charity Commissioner Mumbai, an application filed below Exhibit-48 (Page-29), which seeks a relief of pronouncing the order on the

interim relief as prayed for by the respondent No.1 and Misc. Application No. 37 of 1989 (Page-93) on the same date which has been rejected.

3. Misc. Civil Application No.37 of 1989 is an application filed by the present petitioner, claiming a direction for holding a detailed inquiry into the financial affairs of the petitioner trust and to decide the liabilities of the respondent Nos.1 to 9 in the appeal, to reimburse to refund to the trust sums as indicated therein along with interest at the rate of 24% p.a. claimed to have been spent out of the trust's fund in the name of professional fees for defending their personal litigation and for this purpose to attach personal properties of the respondent Nos.1 to 9 therein, till such time the loss is recovered (Page-117), on the same date, which has been rejected.

4. The interim relief claimed in the appeal filed against decision of Change Report No.796 of 2020 which is being pointed out by the learned counsel for the petitioner from the compilation tendered across the bar is to stay the implementation, effect and operation of the order dated 14.12.2023 passed in the change reports by which the change reports were rejected.

5. The learned Charity Commissioner by the impugned order, which is passed in appeal, has opined, that the nature of both the applications, is totally different, and they require different consideration and therefore cannot be decided together (Page-36), which is being taken exception to on the ground that the Hon'ble Apex Court by the order dated 18.09.2023 passed in Special Leave Petition No.17965 of 2022 (Page-61) has also directed the Charity Commissioner/Assistant Charity Commissioner/concerned Authority to decide as to the liability of the parties regarding the funding of the litigation, as contained in Paragraph-4 thereafter (Page-63). It is therefore contended that this direction of the Hon'ble Apex Court has not been complied with, on account of which the impugned order cannot be sustained.

6. What is necessary to note is that the order of the Hon'ble Apex Court dated 18.09.2023 (Page-61), in Paragraph-3 records that the change report inquires were pending before the Assistant Charity Commissioner and issues a direction, to decide them before 15.12.2023. In accordance with that, it is not disputed that the Assistant Charity Commissioner by his order dated

14.12.2023 has rejected all the Change Reports (Page-81 of the compilation tendered across the bar).

7. What is also necessary to note is that vide Paragraph-4 in the order dated 18.09.2023 the following directions were issued by the Hon'ble Apex Court regarding the fixing of the liability, regarding the funds of the trust utilized for the purpose of funding and defending the litigation by persons, who were holding position as interim trustees which reads as under:

“4. The Charity Commissioner/Assistant Charity Commissioner/concerned Authority shall decide as to the liability of the parties who move, (seeking change and the liabilities, if any, of the parties who are holding position as interim trustee) to fund the litigation or defend their decisions in their personal capacity. Specific orders in that regard shall be made.”

8. It would be necessary to note, what the learned Assistant Charity Commissioner has said in this regard in the Judgment dated 14.12.2023 rejecting the change reports which is as under:

“213. The Hon'ble Apex Court in Special Leave to Appeal (C) No.17965/2022, directed this authority to decide liabilities of the parties who move, (seeking change and the liabilities, if any, of the parties who are holding position as interim trustee) to fund the litigation or defend their decisions in their personal capacity. It is pertinent to note that all parties to the proceedings are well aware about the provisions of the trust deed. Both groups want to run the trust by filing multiple litigations before various courts.

Therefore, they are filing unnecessary change reports against each other without any valid and legal change in the trust. Both the groups are not interested to lead the evidence in support of their change reports. Both groups are well aware about that if they would lead their evidence in support of their change reports, then their change reports will go away. Therefore, both groups have not led their evidence in support of their change reports because they will claim before appellate authority that they have not got opportunity to lead their evidence in support of their change reports. They will claim before appellate authority that matters be remanded for fresh hearing before the Assistant Charity Commissioner. Change reports are pending since year 2010. Both groups choose not lead their evidence willfully because litigation of the trust will go on indefinite time and they will remain in administration and management of the trust without any valid and legal appointment as trustee of the trust. Considering above facts and circumstance of the cases, it appears that parties are litigating for their own/personal interest. They are not litigating for interest of trust. Therefore, I am of the view that both the parties shall bear their own costs of the litigation.”

9. When the Hon’ble Apex Court, had issued the directions as contained in paragraph-4 above, it obviously indicated the initiation of an inquiry into the matter of utilization of funds by the persons, who claimed to have spent them for the purpose of initiating/defending litigation. The responsibility and liability regarding any claim of defalcation and mis-utilization of the funds of the trust for their personal benefits in initiating and defending the litigation, is an issue, which could not have been decided without a proper enquiry in that regard, by the parties making an

allegation to that effect, entering in the witness box and leading evidence in that regard. The observations in Paragraph-213 of the Judgment of the Assistant Charity Commissioner in fact, is telling in that regard, inasmuch as, he records that none of the parties has entered into the witness box to lead any evidence, which is so even in respect of the change report inquiry, much less the allegations of defalcation.

10. At this juncture, the learned counsel for the petitioner seeks accommodation till 2.30 p.m. to make a statement in this regard.

At 2.30 p.m.

11. The learned counsel for the petitioner upon instructions makes a statement that no evidence was laid before the Assistant Charity Commissioner in respect of the directions as contained in paragraph-4 of the order passed by the Hon'ble Apex Court dated 18.09.2023, which would in fact indicate an abject failure on the part of the petitioner to utilize the opportunity to bring home, facts and material necessary for deciding what has been directed in paragraph-4 thereof. Petitioner therefore, cannot blow hot and cold by alleging that the question was not decided by the Assistant Charity Commissioner and on the other hand, not even

placing any material or evidence before the Assistant Charity Commissioner to enable him to do so. This is clearly apparent from the observations of the learned Assistant Charity Commissioner in paragraph-213 of his Judgment. The impugned order, also does not state that the Charity Commissioner will not consider Misc. Application No.37 of 2024 filed by the petitioner in consonance with the subsequent order of the Hon'ble Apex Court dated 22.04.2024 in Special Leave Petition No.8331-8332/2024 (Page-87). Rather on the contrary he only opines that both the applications the one for interim relief and the other for seeking directions, cannot be decided simultaneously on account of the fact that consideration for both are different. In fact the very filing of the application Exhibit-48 seeking relief of deciding the application for stay and Misc. Application No.37 of 2024 simultaneously, itself is misconceived.

12. Considering what has been stated in the impugned order and what has been discussed above, I do not see any reason to interfere with the impugned order. The petition is dismissed. No costs.

(AVINASH G. GHAROTE, J.)