

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 132 OF 2024

IN

WRIT PETITION NO. 14 OF 2023

Dhanesh Gosavi

Review Petitioner

.. (Org. Petitioner)

Versus

Shri. Vajreshwari Yoginidevi Sansthan & Anr.

.. Respondents

-
- Mr. Sachin Dhakephalkar for Review Petitioner
 - Mr. Aditya Gurav a/w Mr. Suraj Gurav for Respondent No. 1
-

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 24, 2024

P. C.:

1. Heard Mr. Dhakephalkar, learned Advocate for Review Petitioner and Mr. Gurav, learned Advocate for Respondent No. 1.

2. This Review Petition seeks review of order dated 21.08.2024 passed by this Court in respect of certain observations culminating into directions passed by this Court in paragraph Nos. 2, 8 and 10 of the said order on the ground that there is distinct error apparent on the face of record in the said order.

3. Mr. Dhakephalkar, learned Advocate for Review Petitioner who was the Petitioner in Writ Petition No. 14/2023 would submit that while determining the Writ Petition, this Court has allowed the same with a direction that Petitioner would be entitled to honorarium

determined by the learned District Judge vide order dated 20.06.2015 from the date of the said order. He would submit that while determining the Writ Petition, this Court has held and it is an admitted position on record that on and from 01.09.2019, Petitioner is appointed as the Hereditary Trustee by a statutory order passed by Competent Authority to succeed in the footstep of his mother who was the previous Hereditary Trustee until then. He would submit that this Court has returned a finding that for the past one decade i.e. on and from 20.06.2016, Petitioner was carrying out all functions as required by the Hereditary Trustee with respect to the affairs of the Respondent No. 1 temple. He would submit that on this count there is no dispute whatsoever. Additionally he would submit that Petitioner became a major in the year 2012. He would also persuade me to consider that in the present case as observed by the Court while passing the order dated 21.08.2024, appointment of Petitioner as Hereditary Trustee is in view of he being the successor-in-title of the original Hereditary Trustee anointed and appointed by the District Court as per the Scheme framed by the District Court by its order dated 27.08.1965. He would persuade me to peruse Clause 33(iii) of the said Scheme framed by the District Judge / Court for fixation of honorarium for the Hereditary Trustees @ Rs. 250/- per month under the said Clause and the Scheme which came into effect on and from 27.08.1965. He would

draw my attention to the order dated 21.08.2024 to contend that this Court has taken cognizance of the fact that pursuant to thereafter the honorarium amount was enhanced subsequently on five different occasions by the District Judge on enhancement Applications made by the Hereditary Trustee in consonance with the Scheme of Respondent No.1 - Trust based on the rate of inflation and index over a period of time. He would draw my attention to the fact that the honorarium of Rs. 250/- was enhanced to Rs. 500/- by the first order dated 13.12.1973. Next he would submit that honorarium was enhanced from Rs. 500/- to Rs. 1500/- per month by the second order dated 22.09.1983. Thereafter he would submit that the honorarium was enhanced from Rs. 1500/- to Rs. 2000/- per month by the third order dated 23.09.1988. Next honorarium was enhanced from Rs. 2000/- to Rs. 5000/- by the fourth order dated 26.04.2000 and finally honorarium was enhanced from Rs. 5000/- to Rs. 41000/- by the fifth order dated 20.06.2015 which is prevailing as on date. All these orders are appended to the principal Petition of which cognizance has been taken by this Court. He would submit that after 20.06.2015, when honorarium was enhanced to Rs. 41000/- the fact needs to be corrected that the mother of Petitioner who was appointed as Hereditary Trustee did not receive the said honorarium until the appointment of Petitioner as Hereditary Trustee on 31.08.2019. He

would submit that when the mother of the Petitioner was appointed as Hereditary Trustee at that time none of the male descendants in the family of the Hereditary Trustee had attained majority of 18 years who could be appointed as Hereditary Trustee. He would submit that Clause 33 of the original Scheme propounded by the District Court was wide enough to accommodate and state that in the event if any male descendant of the family of the original Hereditary Trustee was not a major then a female member / descendant of the family could be appointed as Hereditary Trustee and in that view of the matter, the mother of Petitioner was appointed as Hereditary Trustee.

3.1. He would submit that present Review Petition is filed in a very narrow compass i.e. while considering the case of Petitioner, this Court has recorded the statement of the learned Advocate appearing for Petitioner that the mother of Petitioner who was the Hereditary Trustee until 31.08.2019 was receiving honorarium amount of Rs. 41000/- per month. Mr. Dhakephalkar would draw my attention to the Review Petition and would submit that this fact is incorrect and the statement which was made and recorded by the Court is a clear mistake. He would submit that record bears out the fact that mother of the Petitioner who was the Hereditary Trustee until 31.08.2019 did not receive a single farthing towards honorarium. This fact is clearly borne out from the record. In that view of the matter, he would

submit that once this Court has come to the conclusion that Petitioner being the Hereditary Trustee appointed by order dated 31.08.2019 would be entitled to the honorarium of Rs. 41000/- then it should be so on and from the date of his appointment. In this regard he would submit that there is a clear and distinct error apparent on the face of record whereby this Court has held that the mother of the Petitioner was receiving the amount of honorarium of Rs. 41000/- until the date of filing of the petition / proceedings by the Petitioner seeking honorarium which is an incorrect fact. He would submit that recording of the fact that Petitioner was receiving Rs. 250/- per month as honorarium is also an incorrect recording as even that honorarium was never received by Petitioner. In that view of the matter, he would draw my attention to the specific averments which have been recorded by this Court in paragraph Nos. 2, 8 and 10 to the above effect and would submit that said averments as recorded in paragraph Nos. 2, 8 and 10 are required to be expunged as they are incorrect recording of facts. He would submit that in that view of the matter, Petitioner having performed his functions as the Hereditary Trustee would and should be entitled to the honorarium of Rs. 41000/- per month from the date of his appointment i.e. on and from 01.09.2019 onwards till today which should be granted by the Court.

4. *PER CONTRA*, Mr. Gurav, learned Advocate appears for Respondent No. 1 - Trust. Trust has not filed any reply to the Review Petition. In fact, pleadings clearly bear out the fact that on five different occasions at a prior point of time, honorarium of the Hereditary Trustee was enhanced by the District Judge from the honorarium which was fixed originally under the Scheme. Admittedly there is nothing placed on record by the Trust to show that the honorarium as determined by the order dated 20.06.2015 was paid to the mother of the Petitioner. In any event, once the appointment of the Hereditary Trustee is confirmed by the District Judge vide order dated 31.08.2019 in favour of the Petitioner and it is an admitted fact on record that since the Petitioner became a major in the year 2012 he has been carrying on all functions required to be performed as a Hereditary Trustee, there can be no impediment in granting and allowing the honorarium to him from the date of his appointment. In that view of the matter, order dated 21.08.2024 is required to be corrected as follow:-

4.1. Last two sentences of paragraph No. 2 of the said order shall stand deleted. Similarly the last sentence of paragraph No. 8 shall also stand deleted. Further sentence Nos. 2 and 4 in paragraph No. 10 beginning with the words "*Resultantly, honorarium.....*" and "*It is clarified.....*" shall stand deleted. These sentences are directed to be

deleted as there is a clear and distinct error in appreciating the material evidence on record with respect to the functioning of the Hereditary Trustee pursuant to the orders passed by the District Judge and hence are directed to be struck off and expunged.

5. In addition to the above, Mr. Dhakephalkar would draw my attention to the directions contained in paragraph No. 10 of the said order and would submit that Interim Application filed below Exh. 15 in the principal Application pending before the District Judge seeking enhancement of honorarium has allowed interim honorarium at the rate of Rs. 41000/- per month. He would submit that this Court while considering the said fact in paragraph No. 2 has noted that Interim Application seeks interim honorarium of Rs. 41000/- from the date of his appointment that is on and from 31.08.2019. In that view of the matter he would submit that while considering and allowing the Writ Petition, the findings recorded by this Court in paragraph No. 10, line No. 1 allowing the Petition and directing the Trust to pay honorarium of Rs. 41000/- per month to the Petitioner from the date of the order is incorrect and rather it should be from the date of appointment. Considering the aforementioned inadvertent error apparent on the face of record which is now required to be corrected, I agree with the submissions made by Mr. Dhakephalkar.

6. In that view of the matter, the directions contained in sentence 1 of paragraph No. 10 which reads as follow :-

"The Trust is directed by this Court to pay the honorarium of Rs. 41,000/- per month to the present Petitioner on and from the date of this order."

shall also stand deleted and substituted by the following:-

"Respondent No. 1 - Trust is directed by this Court to pay the honorarium of Rs. 41000/- per month to the present Petitioner on and from the date of his appointment i.e. 31.08.2019. Respondent No. 1 shall pay the entire arrears of honorarium at the aforementioned rate to the Petitioner within a period of ~~four~~ eight weeks from today."

7. Corrections / additions to the above effect be carried out in the order dated 21.08.2024 and corrected order be uploaded again.

8. At this stage after the above order is dictated, Mr. Gurav, learned Advocate for Respondent No. 1 makes a request to the Court that in view of the impending Diwali festivities, Respondent No. 1 - Trust be granted a little more time to pay the arrears to the Petitioner. The request made by Mr. Gurav is accepted. Respondent No. 1 - Trust is permitted to pay the arrears amount to the Petitioner within a period of eight weeks from today as per this order and the corrected copy of the order dated 21.08.2024 be uploaded.

9. Review Petition stands allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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2024.10.24
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