IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 CIVIL APPLICATION NO. 11134 OF 2024
IN WP/5034/2019
INDUMATI SAHEBRAO PATIL DONGAONKAR AND ANOTHER
VERSUS
PRAMOD KASHINATHRAO JOSHI DIED AND OTHERS

WITH
WRIT PETITION NO. 5034 OF 2019
PRAMOD KASHINATHRAO JOSHI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
CIVIL APPLICATION NO. 11135 OF 2024
IN WP/374/2019
INDUMATI SAHEBRAO PATIL DONGAONKAR AND OTHERS
VERSUS
PRAMOD KASHINATHRAO JOSHI DEAD AND OTHERS

WITH
WRIT PETITION NO. 374 OF 2019
PRAMOD KASHINATHRAO JOSHI AND ANR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.V. Dixit, Advocate for the petitioners.
Mr.K.N. Lokhande, AGP for the respondent-State.
Mr.S.C. Arora, Advocate for private respondents.

CORAM : **KISHORE C. SANT, J.**
DATE : **13.01.2025**

PC :-

01. Heard learned Advocates for the parties.

02. Issue in both these petitions is limited as to whether permission to cross-examination of witness be allowed, in view of amended section 73 of the Maharashtra Public Trusts Act.

03. Writ Petition No. 374 of 2019 is arising out of Change Report No. 159 of 2014 pending before the learned Deputy Charity Commissioner, Aurangabad. In Writ Petition No. 5034 of 2019 the Change Report No. 152 of 2014 is pending before the Deputy Charity Commissioner, Aurangabad. Both the change reports have been filed in 2014. In both the petitions, present petitioner filed application seeking permission to cross-examine the witness. However, same is rejected stating reason that in view of proviso to section 73 of the Maharashtra Public Trusts Act, which provides that while holding enquiry under section 22 of the Act, the Assistant or Dy. Charity Charity Commissioner shall record the evidence in the form of affidavit only, subject to the cross-examination of the defendant, if permitted by him in appropriate proceeding. Said proviso is inserted by amendment w.e.f. 10.10.2017. Said order was confirmed in an appeal and also in review application.

04. The learned Advocate for the petitioners vehemently argued that in both the cases the change reports are filed in the year 2014 i.e.

prior to insertion of proviso to section 73 of the Act. The amendment can not be made applicable with retrospective effect. He relies upon judgment report in **Shaikh Mohd. Nadim and Anr. Vs. Asstt. Charity Commissioner, Mumbai and Anr. (2019) 1 Mah.L.J.403**.

05. Learned Advocate Mr. Arora supports the impugned order and submits that the petitions deserve to be dismissed. The authorities have rightly applied their mind in view of insertion of priviso to section 73. It is clear that party has to seek permission to cross-examination any witness.

06. This Court has considered the arguments. There is no dispute that the proviso for the first time is inserted w.e.f. 10.10.2017, whereas both the change reports are filed in the year 2014. The issue as to whether proviso has retrospective application is no more res integra. This Court at Principal Seat has already held that the said proviso would not apply where the enquiries are initiated under section 22 prior to coming into force the proviso to section 73. The proceedings prior to the said date will be governed by unamended section 73.

07. Considering the above, this Court is inclined to allow both the

writ petitions. The writ petitions are allowed in terms of prayer clause (B). Since the change reports are pending since 2014, the learned Dy. Charity Commissioner is expected to decide the change reports as early as possible and within one year from today.

08. In view of disposal of the writ petitions, pending civil applications also stand disposed off.

09. Learned Advocate Mr. Arora at this stage prays for specific observation regarding vacating interim relief.

10. The interim relief granted earlier stands vacated.

[KISHORE C. SANT, J.]

snk/2025/jan25/wp5034.19