

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.4186 OF 2024

Shri. Krishna Tukaram Shirase
 Age: 75 years, Occu: Agriculture,
 R/at Savarde Budruk, Taluka Kagal,
 District Kolhapur

..Petitioner

Versus

1. Vikas Shikshan Mandal,
Savarde Budruk, Taluka Kagal
District Kolhapur.
2. Joint Charity Commissioner,
Kolhapur Division, Kolhapur.
3. Deputy Charity Commissioner,
Kolhapur Division, Kolhapur.
4. Shri. Pandurang Hari Patil,
Age: 78 years, Occ: Agriculture.
5. Shri. Shankar Dadu Hirugade,
Age: 77 years, Occ; Agriculture.
6. Shri. Razakaso Nizamso Inamdar,
Age: 46 years, Occ: Agriculture,
Respondent Nos.4 to 6 residing at Savarde Budruk
Tal. Kagal, District Kolhapur.
7. Shri. Suresh Bapu Shevale,
Age: 56 years, Occ.: Agriculture,
8. Shri. Rajendra Pandurang Hirugade,
Age: 40 yers, Occ.: Agriculture,
4 to 8 residing at Savarde Budruk
Tal. Kagal, District: Kolhapur

..Respondents

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Mr. Chetan Patil a/w Mr. Bhushan Jadhav i/by Mr. Mandar Bagkar,
 Advocate for Petitioner.

Mr. Prashant Bhavake, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 04th SEPTEMBER, 2025.

PRONOUNCED ON : 12th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.

2. The petitioner impugns order dated 27.06.2023 passed by learned District Judge-4, Kolhapur in Miscellaneous Civil Application No.7/2013, thereby upholding order dated 25.08.2009 passed by learned Joint Charity Commissioner, Kolhapur in Miscellaneous Application No.30/2008, thereby rejecting prayer to condone delay in filing Appeal under Section 70 of Maharashtra Public Trust Act, 1950 (for the sake of brevity hereinafter referred as 'MPT Act, 1950').

3. The petitioner contends that he is member of Vikas Shikshan Mandal, Savarde, which is a Public Trust registered under MPT Act, 1950. The Application No.2169/2004 was filed by respondent no.4 reporting change in composition of Board of Trustees. On 01.04.2005, Deputy Charity Commissioner, Kolhapur allowed application, eventually, on 28.03.2008 recorded change as reported. The petitioner challenged order dated 01.04.2005 passed by Deputy Charity Commissioner, Kolhapur before Joint Charity Commissioner, by filing Appeal under Section 70 of MPT Act, 1950. Since there was delay in filing Appeal, Miscellaneous Application No.30/2008 seeking to

condone delay was independently moved, however, learned Joint Charity Commissioner vide his order dated 25.08.2009 declined to condone delay observing that there is no explanation for inordinate delay. Aggrieved petitioner filed Miscellaneous Civil Application No.7/2013 under Section 72 of MPT Act, 1950 before District Judge, Kolhapur, which has been rejected by learned District Judge vide impugned order dated 27.06.2023. Hence, this Writ Petition.

4. Mr. Chetan Patil, learned Advocate appearing for petitioner vehemently submits that Change Report No.2169/2004 has been allowed without issuing notices to outgoing Trustees. He points out that change was reported on 23.12.2004 and it has been allowed on 01.04.2005 without conducting enquiry contemplated under Section 22 of MPT Act, 1950. He would point out that petitioner had no knowledge of order dated 01.04.2005 till 28.03.2008 when change was recorded in PTR. Although change report was accepted on 01.04.2005, same has been given effect on 28.03.2008. The petitioner applied for certified copy on 01.10.2008 and received same on 03.10.2008. Immediately Miscellaneous Application No.30/2008 was filed before Joint Charity Commissioner, Kolhapur raising challenge to change report. However, by cryptic order, application is rejected only on the ground that there is no explanation as to when applicant received knowledge of recording change.

5. Per contra, Mr. Prashant Bhavake, learned Advocate appearing for respondents raises preliminary objection as to maintainability of writ petition on ground that impugned order is passed by learned District Judge under Section 72 of MPT Act, 1950. Therefore, petitioner could have filed Appeal in terms of Sub-section (2) of Section 72 of MPT Act, 1950. He would further submit that change report, which is accepted in the year 2005 was challenged in the year 2008 under Section 70 of MPT Act, 1950 without showing sufficient cause for inordinate delay.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that present writ petition takes exception to order passed by learned Joint Charity Commissioner, thereby refusing to condone delay caused in filing Appeal under Section 70 of MPT Act, 1950 as well as concurring order passed by learned District Judge in Application under Section 72 of MPT Act, 1950. Apparently, writ petition does not raise challenge to decision of Charity Commissioner on merit of order accepting change report. Even it is assumed that Appeal would be maintainable before this Court against impugned order, jurisdiction of this Court to entertain Writ Petition under Article 227 of Constitution of India cannot be held to be barred. Looking to the nature of controversy involved in present petition, this Court is of the opinion that since remedy to challenge impugned order falls within jurisdiction of this

Court either by way of Appeal or writ petition, writ petition can be entertained without relegating petitioner to convert proceeding of writ petition in Appeal.

7. Perusal of record shows that petitioner is a member of respondent no.1-Trust. The respondent nos.4 to 8 filed Change Report No. 2169/2004 reporting change in composition of Trustees on the basis of Resolution passed in Annual General Meeting dated 26.09.2004. The learned Deputy Charity Commissioner accepted change report vide his order dated 01.04.2005. According to petitioner, acceptance of change report is without following due process under Section 22 of MPT Act, 1950. The notice of change report was not given to outgoing Trustees. The change report is allowed in undue haste. Since Appeal was time barred, petitioner had filed application praying to condone delay. The learned Joint Charity Commissioner rejected application observing that there is abnormal and inordinate delay in filing Appeal, which is not properly explained.

8. The petitioner then filed Miscellaneous Civil Application under Section 72 of MPT Act, 1950 before learned District Judge, who pleased to uphold order of learned Joint Charity Commissioner observing that although change is recorded on 28.03.2008, Appeal has been filed on 24.10.2008. The period of delay is not explained. Hence, delay cannot be condoned.

9. The Supreme Court of India in case of *Esha Battcharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others*¹ in paragraph no.21 has culled out broader guidelines for considering prayers for delay condonation. It is observed that substantial justice being paramount and pivotal, technical considerations should not be given undue and uncalled emphasis. It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation. The entire gamut of facts are to be carefully scrutinized and approach should be based on paradigm of judicial discretion, which is founded on objective reasoning and not on individual perception.

10. Applying aforesaid parameters in facts of present case it can be noted that although change report has been accepted in year 2005, there is hardly dispute that change has been recorded on 28.03.2008. According to petitioner, immediately after getting knowledge of aforesaid change, they applied for certified copy and filed application alongwith application for delay condonation. It is true that there is missing link of six months for want of specific statement as regards to date of knowledge. However, when petitioner has made specific statement that he had no knowledge about acceptance of change report, which is actually recorded on 28.03.2008, in absence of any contra material to show that they had knowledge about such entry, contention raised in application could not have been disbelieved. On

¹ (2013) 12 SCC 649.

prima facie evaluation of material, this Court finds that order accepting change is cryptic and stereotype. It does not depict enquiry as contemplated under Section 22 of MPT Act, 1950. Even notice to outgoing Trustees was not issued. It is not disputed that petitioners were interested persons and entitled to raise challenge to change report. *Prima facie*, this Court holds that on merits also objections to order accepting change report deserves consideration.

11. In that view of the matter, this Court holds that learned Joint Charity Commissioner as well as learned District Judge adopted hyper technical approach and refused to condone delay. Hence, following order:

ORDER

- a. Writ Petition is allowed in terms of prayer Clause (a).
- b. The learned Joint Charity Commissioner shall register Appeal under Section 70 of MPT Act, 1950 and decide same on its own merits without influenced by observations made hereinabove.
- c. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE