

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 16208 OF 2025

1. Karan Maheshwari,
Age: 41 Years, Occu: Business
B-47, 47th Floor, Ahuja Towers
Rajabhau Anant Desai Marg,
Prabhadevi, Mumbai – 400 025.

2. Siddhi Ghatlia
Age 42 Years, Occu: Professional
Villa 370, Phase 2, Adarsh Palm
Meadows, Ramagondanahalli,
Whitefield, Bangalore – 560 066.

3. Samvit Kanoria,
Age 40 years, Occu: Service
Part Towers, 14, Ballygauge
Park Road, Kolkata – 700 019.

4. Sudarshan Malpani,
Age 50 Years, Occu: Service
802, Lodha Aria T J Road,
Ram Tekdi, Sewri, Mumbai 400 015.

5. Siddharth Mohan,
Age 51 years, Occu: Business
7, Joy Palasia, Indore 452 001 (M.P.)

..Petitioners

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2025.12.23
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Versus

1. Sandip Sharma
Age: Not known, Occu: Not known
44, Aravali Apartments Alaknanda,
New Delhi 110 019.

2. Sunil Damani,
Age: Not known, Occu: Not known
17, 12th Class, 1st Stage, Indira Nagar
Bangalore – 560 038.

3. Sushil Jalan,
Age 86 years, Occu: Business,
17-C, Woodlands, Pedder Road,
Mumbai 400 026.

4. Armin Captain
Age 70 years, Occu: Housewife,
4/5, Rustom Baug, Sant Savla Marg,
Byculla, Mumbai 400 027.

5. Hiralal Somany (Deceased)
Hence name deleted
Age: Not known, Occu: Business
32, Friends Colony (East),
Delhi 120 065.

6. Manoj Maheshwari,
Age 68 years, Occu: Business
B-47, 47th Floor, Ahuja Towers,
Rajabhau Anant Desai Marg,
Prabhadevi, Mumbai 400 025.

7. Kamleshkumar Maheshwari
Age: Not known, Occu: Business
507, Raheja Centre, 214, Nariman Point,
Mumbai 400 021.

8. Kartikeya Maheshwari
Age: Not known, Occu: Business
507, Raheja Centre, 214, Nariman Point,
Mumbai 400 021.

9. The Charity Commissioner
Dharmaday Ayukta Bhavan,
2nd Floor, Sasmira Building,
Sasmira Road, Worli,
Mumbai 400 032.

10. The Assistant Charity Commissioner,
Dharmaday Ayukta Bhavan, 2nd Floor,
Sasmira Building, Sasmira Road,
Worli, Mumbai 400 032.

...Respondents

Dr. Abhinav Chandrachud, with Pratik Dixit, Darshan Patankar and
Dixit Parmar, i/b Kaustubh D Patil, for the Petitioner.

Mr. Sanjay Jain, with Nakul Jain, Nivit Srivastava, Rohit Bamne and
Karuna Nikam, i/b Maniar Srivastava Associates, for the
Respondent No.2.

Ms. Nisha Mehra, AGP, for Respondent Nos. 9 and 10.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 9th DECEMBER 2025

PRONOUNCED ON : 23rd DECEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. The Petitioners who claimed to be the Trustees of the Saraswatibai Bishwambharlal Charityable Trust (“the Trust”) take exception to an order dated 14th August 2025 passed in Chamber Summons No. 1681 of 2018 in Charity Application No. 14 of 2016, whereby the learned Principal Judge, City Civil Court allowed the Chamber Summons and permitted the Applicants therein to carry out necessary amendment in the Charity Application and also produce additional documents, keeping open the issue of marking of documents as admitted in evidence.

3. Shorn of unnecessary details, the background facts can be stated as under:

3.1 Sushil Jalan (R3) filed a Change Report No. 4905 of 2012 to delete the names of Krishna Gopal Maheshwari, M. P. Patkar and

Badriprasad Sharma from Schedule-I of the Trust as Krishna Maheshwari and M. P. Patkar had allegedly resigned from the office of the Trustees/Manager and Badriprasad Sharma was reported dead.

3.2 By an order dated 9th January 2013, the said Change Report was accepted. In the meanwhile, Krishna Gopal Maheshwari filed another Change Report bearing No. 369 of 2013. Apart from the later Change Report, Respondent Nos. 3, 5 and 6 also filed a Change Report No. 370 of 2013.

3.3 Change Report No. 369 of 2013, the Petitioners alleged, was decided *ex parte* by an order dated 1st March 2013. The said Change Report was accepted and the names of Hiralal M. Somany, Sushil Jalan and Karan Maheshwari, were ordered to be deleted from Schedule-I of the Trust.

3.4 Aggrieved by the orders passed in the aforesaid Change Reports, the Appeals came to be filed before the Joint Charity Commissioner.

3.5 By judgment and order dated 28th January 2016 in Appeal No. 8 of 2013 filed against the order in Change Report No. 369 of 2013, the learned Charity Commissioner was persuaded to allow the Appeal by setting aside the order passed by the learned Assistant Charity Commissioner and remit the Change Report No. 369 of 2013 to the Assistant Charity Commissioner for fresh enquiry.

3.5 Being aggrieved, the Respondent, Sunil Damani (R2) preferred an Application, being Charity Application No. 14 of 2016 before the Principal Judge, City Civil Court under Section 72 (which came to be deleted by Maharashtra Act 55 of 2017 with effect from 10th October 2017) of the Maharashtra Public Trust Act, 1950 (“The Act, 1950”).

3.6 In the said Application, the Applicants took out Chamber Summons No. 1681 of 2018 seeking leave to amend the Application in accordance with the Schedule of amendment appended thereto, and produce the documents as well.

3.7 By an order dated 3rd December 2018, the learned Judge, City Civil Court rejected the said Application. The said order was assailed in Writ Petition No. 611 of 2019. By an order dated 4th March 2021, this Court was persuaded to set aside the said order and remit the said Chamber Summons for fresh decision with a direction to the learned Judge, City Civil Court to only take into account the relevancy and not the admissibility or otherwise of the documents sought to be produced by the Applicants.

3.8 Review Petition No. 26 of 2021, filed by the original Respondent Nos. 1, 2 and 4 was rejected by the learned Single Judge. However, it was clarified that the issue of admissibility of the documents can also be looked into by the City Civil Court at an appropriate stage.

3.9 Respondent Nos. 1, 2 and 4 carried the matter to the Supreme Court in SLP (C) Nos. 20565 and 20566 of 2021. While declining to interfere with the orders passed by this Court, the Supreme Court clarified that the City Civil Court will decide the matter without being influenced by any of the findings recorded while remanding the matter.

3.10 Post-remand, by the impugned order, the learned Principal Judge, City Civil Court, was persuaded to allow the Application for amendment, and to produce the documents observing, *inter alia*, that in the light of the allegations that a fraud was played on the Authorities under the Act, 1950 and record produced with the office of the Charity Commissioner was allegedly tampered with, the proposed amendment and the documents sought to be produced were necessary for adjudication of the Charity Application. The learned Judge, however, kept the issue of admissibility of the documents open for consideration.

4. Being aggrieved, the Petitioners-original Respondent Nos. 2, 3, 7, 8 and 9, have invoked the writ jurisdiction.

5. In the meanwhile during the pendency of Appeal No. 8 of 2013 before the Charity Commissioner, Sunil Damani (R2) filed a complaint with Economic Offenses Wing (“EOW”). As the EOW did not find any substance in the Report, Respondent No.2 filed a compliant before the Metropolitan Magistrate, 48th Court, Girgaon, wherein the learned Magistrate conducted an enquiry under Section 202; during the course

of which the documents were collected and statements of witnesses came to be recorded. On the strength thereof, the Applicants in Charity Application No. 14 of 2016 took out the Chamber Summons to amend the Charity Application raising additional grounds of challenge to the order passed by the Charity Commissioner in Appeal No. 8 of 2013 and produce relevant documents.

6. I have heard Dr. Abhinav Chandrachud, the learned Counsel for the Petitioner, Mr. Sanjay Jain, the learned Counsel for Respondent No.2 and Ms. Nisha Mehra, the learned AGP, for Respondent Nos. 9 and 10. With the assistance of the learned Counsel for the parties, I also perused the material on record including the schedule of amendment, and a tabular chart containing the documents sought to be produced on behalf of the Applicants.

7. Dr. Chandrachud, the learned Counsel for the Petitioners, would submit that the learned Principal Judge, City Civil Court committed a grave procedural irregularity in allowing the Chamber Summons as the power of admitting the additional evidence under Section 72 (1A) of the Act, 1950 (as it then stood) is regulated by the conditions which are akin to the conditions stipulated under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (“the Code”). Elaborating the submission, Dr. Chandrachud would urge, the question as to whether the documents sought to be produced were necessary for the City Civil Court to enable

it to pronounce the judgment, could have been decided only at the stage of final adjudication of the Appeal and not at any intermediate stage.

8. The learned Principal Judge, according to Dr. Chandrachud, also committed a manifest error in observing that the provisions contained in Order 41 Rule 27 are somewhat narrower than the provisions of sub-Section (1A) of Section 72 of the Act, 1950, as the Charity Commissioner is empowered to admit the additional evidence for any other “substantial cause”. Dr. Chandrachud would urge Clause (b) of Rule 27 Order 41 of the Code is couched in almost identical terms as the later part of sub-Section (1A) of Section 72 of the Act, 1950.

9. To buttress the aforesaid submissions, Dr. Chandrachud placed reliance on a judgment of the Supreme Court in the case of **Union of India Vs Ibrahim Uddin and Anr**¹ and a judgment of a learned Single Judge of this Court in the case of **Maria Felicidade Amaltina Mascarenhas Vs Joao Francisco Serrao Alias John Francisco Serrao**,² wherein the decision in the case of **Ibrahim Uddin (Supra)** was followed.

10. The lend support to the submission that the power to permit the parties to adduce evidence in the Application under Section 72 of the Trust Act, 1950, is not unregulated and the District Court has no

1 (2012) 8 SCC 148.

2 2021 (6) MhLJ 324.

authority to permit a party to adduce additional evidence unless the conditions stipulated in sub-Section (1A) of Section 72 are fulfilled, Dr. Chandrachud placed reliance on a judgment of a learned Single Judge of this Court in the case of **Laxman Babanrao Mali & Anr Vs Prabhakar Sambhu Chaudhari & Ors**,³ wherein this Court culled out the eventualities in which a party can be permitted to adduce additional evidence under Section 72(1A) of the Act, 1950. It reads as under:

“7. The perusal of the said provision, would thus reveal that an applicant shall not be entitled to produce any additional evidence either oral or documentary, before the Court, unless the Deputy or Assistant Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted or the Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause the Court thinks it necessary to allow such additional evidence.

8. It could thus be seen that the learned District Judge, can permit leading of additional evidence in following two eventualities.

i) Firstly, when the Deputy or Asstt. Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted by the Court.

ii) Secondly, when the learned Court comes to a finding that the said documents is required to be

3 2008 (2) MhLJ 215.

produced to enable it to pronounce judgment or for any other substantial cause the Court thinks it necessary to allow such additional evidence.”

(emphasis supplied)

11. Dr Chandrachud further submitted that though in the case of **Vasantrao S/o Vishwanathrao Mane & Ors Vs Apparao S/o Baibanna Sidore & Ors**⁴ another learned Single Judge of this Court has held that no special case was required to be made out as per Order 41 Rule 27 of the Code in order to adduce additional evidence, in view of the provisions contained in sub-Section (2) of Section 72, yet, the provisions contained in sub-Section 1A cannot be read in such a fashion as to render them otiose. It was emphasised that, in the case of **Vasantrao S/o Vishwanathrao Mane (Supra)**, the Court was primarily dealing with the restrictions in the matter of remand of the proceeding to the lower authority and, for that purpose, it was held that power was conferred on the District Judge to permit parties to adduce additional evidence, with a view to finally adjudicate the matter, rather than remanding it.

12. In opposition to this, Mr. Sanjay Jain, the learned Counsel for the Respondent No.2 would urge that, the objection as to the stage of the proceeding at which the City Civil Court could have permitted adducing of additional evidence was not at all raised before the learned Principal

4 2008 (3) MhLJ 242.

Judge. Mr. Jain laid emphasis on the fact that the Applicants were required to seek amendment in the Application and adduce documentary evidence as fraud was played on the Authorities under the Act, 1950, which came to light after the order was passed by the Charity Commissioner.

13. Therefore, the learned Principal Judge was fully justified in allowing the Chamber Summons taken out for amendment in the Application and to produce the documents on record. In any event, since the question of admissibility of documents is kept open for determination, the Petitioners would not suffer any prejudice, urged Mr. Jain.

14. Mr. Jain forcefully canvassed a submission that there is an essential distinction between the relevancy and admissibility of the documents. These two concepts cannot be used interchangeably and, if the distinction is not kept in view, it would lead to miscarriage of justice. To bolster up this submission Mr. Jain placed reliance on the decision of the Supreme Court in the case of **M. L. Sethi Vs R. P. Kapur**.⁵

15. Reliance was also placed on a judgment of a learned Single Judge of Delhi Court in **Sudhir Engineering Company Vs Nitco Roadways Ltd**,⁶ wherein it was enunciated that admission of a document in evidence is not to be confused with proof of a document.

⁵ (1972) 2 SCC 427.

⁶ 1995 SCC OnLine Del 251.

16. To appreciate the controversy in a correct perspective, which revolves around the exercise of jurisdiction to permit a party to carry out the amendment in the Application and adduce documents, it may be apposite to extract the provisions contained in Section 72 of the Act, 1950 (as it stood then). It read as under:

“72. Application from Charity Commissioner’s decision under Section 40, 41, 41C and 43(2)(a) and (c), 50A, 70 or 70A, etc.

(1) Any person aggrieved by the decision of the Charity Commissioner under Section 40, 41, 41C and 43(2)(a) and (c), 50A, 70 or 70A or on the questions whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust may, within sixty days from the date of the decision, apply to the court to set aside the said decision.

(1A) No party to such application shall be entitled to produce additional evidence, whether oral or documentary, before the Court, unless the Deputy or Assistant Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted or the Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause the Court thinks if necessary to allow such additional evidence.

Provided that whenever additional evidence is allowed to be produced by the Court, the Court shall record the reason for its admission.

(2) The Court after taking evidence if any, may confirm, revoke or modify the decision or remit the amount of the surcharge and make such orders as to costs as it thinks proper in the circumstances.

(3) Pending the disposal of an application under sub-section (2) all proceedings for surcharge shall be stayed if the person aggrieved makes out a prima facie case for a stay order.

(4) An appeal shall be to the High Court, against the decision of the Court under sub-section (2) as if such decision was a degree from which an appeal ordinarily lies.

Explanation.—In this section, the expression “decision’ shall include a scheme framed or modified under section 50A.”

17. A bare perusal of sub-Section (2) of Section 72 would indicate that, wide powers have been conferred on the Court. It is empowered to confirm, reverse or modify the decision impugned in the application. The jurisdiction of the Court, in an application under Section 72 has the trappings of an appellate power. Thus, though styled as an “Application”, a proceeding under Section 72 of the Act, 1950 partakes the character of an Appeal against an order passed by Charity Commissioner under Section 70 of the Act, 1950 in exercise of an appellate power against finding under Section 22 of the Trust Act, 1950, accepting or rejecting the change.

18. In the case of **Prabhakar Sambhu Chaudhary Vs Laxman Baban Mali & Ors**,⁷ a Full Bench of this Court examined the nature of the proceeding and jurisdiction exercised by the District Court under Section 72 of the Act, 1950. After referring to the judgments of the Supreme Court in the cases of **Tirupati Balaji Developers (P) Ltd and Anr Vs State of Bihar & Ors**,⁸ **Hari Shankar Vs Rao Girdhari Lal Chowdhury**,⁹ **Shankar Ramchandra Abhyankar Vs Krishnaji Dattatreya Bapat**¹⁰ and **M/s Sri Raja Lakshmi Dyeing Works and Ors Vs Rangaswamy Chettiar**¹¹ the Full Bench expounded the true import of an application under Section 72 of the Act, 1950, as under:

“31. The judgments of the Supreme Court, referred to above, by analogy, lead to irresistible conclusion that the superior forum i.e. District Court, while exercising jurisdiction, has powers to reverse, confirm, annul or modify the order of the forum appealed against and in the event of remand, the lower forum shall have to re-hear the matter and comply with such directions, as may accompany the order of remand. The superior forum i.e. District Court has power to issue corrective directions binding on lower forum. The District Court, dealing with an application under Section 72(1), does have right of hearing on law as well as facts. It answers the proposition that "an appeal is a process of civil law origin and removes a cause entirely subjecting the facts

7 2016(3) All MR 294.

8 (2004) 5 SCC 1.

9 AIR 1963 SC 698.

10 1969 (2) SCC 74.

11 AIR 1980 SC 1253(1).

as well as the law, to a review and retrial". There can, thus, be a little doubt that the District Court, exercising jurisdiction under Section 72, does exercise powers and deal with the matter as an appellate forum. Thus, an appeal to the High Court against an appellate order on an application presented to the District Court, is an appeal, but has not been labelled as Second Appeal."

(emphasis supplied)

19. Sub-Section (1A) of Section 72, began with a negative import. It implied that the District Court shall decide the Application on the basis of the material and evidence adduced before the Authorities under the Act, 1950. Thus, it provided that no party to such Application should be entitled to produce additional evidence before the Court unless the conditions stipulated therein were satisfied.

20. Sub-Section (2) of Section 72 provides that the Court after taking evidence, if any, may confirm, revoke or modify the decision or remit the amount of the surcharge and make such orders as to costs as it thinks proper in the circumstances. The expression, "the Court after taking evidence" is qualified by the words, "if any". It does not imply that the District Court has unbridled power to admit evidence in an Application under Section 72 unless the conditions stipulated in sub-Section (1A) of Section 72 are fulfilled.

21. If the provisions contained in Order 41 Rule 27 are compared and contrasted with the provisions contained in sub-Section (1A) of Section

72, it becomes evident that Clauses (a) and (b) of sub-Rule (1) of Rule 27 of Order 41 substantially correspond with the provisions contained in sub-Section (1A) of Section 72. Clause (aa) which came to be inserted by the 1976 Code of Civil Procedure Amendment Act, in Rule 27(1) of the Order 41, does not find mention in sub-Section (1A), of Section 72 of the Act, 1950.

22. The legal regime which thus governs the adduction of additional evidence in cases covered by Clauses (a) and (b) of Order 41 Rule 27(1) of the Code would be germane to determine the contours of the jurisdiction of the Court to admit additional evidence under sub-Section (1A) of Section 72.

23. In the case of **Ibrahim Uddin (Supra)**, on which a very strong reliance was placed by Dr. Chandrachud, the Supreme Court adverted to the stage at which an Application for additional evidence has to be determined. The observations in paragraphs 49 and 52 are instructive and, hence, extracted below:

“49. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires

the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court. (Vide: Arjan Singh V Kartar Singh (AIR 1951 SC 193) and Natha Singh V Financial Commissioner, Taxation (1976) 3 SCC 28.

... ..

“52. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.”

24. It would be contextually relevant to note that a Division Bench of this Court in the case of **Hasanate Taheriyah Fidayyah Vs Mahesh S/o**

Kishor Saran,¹² carved out a distinction in the matter of the stage at which an application for adduction of additional evidence is required to be determined under Clauses (a) or (aa), on the one part, and Clause (b), on the other part, under Rule 27(1) of Order 41. Following a judgment of the Division Bench of Himachal Pradesh High Court in the case of **Himanshu Vs Bishan Dutt and Ors**,¹³ the Division Bench enunciated the law as under:

“15. The Division Bench has held that if an application is filed under clause (a) or (aa), the same has to be decided at any stage of the appeal even before the stage of the final hearing of the appeal and it would be prudent if such an application is decided at earlier stage. However, the Division Bench held that the powers under clause (b) is to be exercised where even though the appellate court finds that it would be able to pronounce the judgment on the basis of the record of the trial court as it was, it might still consider that in the interest of justice something which remained obscure should be filled up, so that it can pronounce the judgment in a more satisfactory manner. It has further been held that the requirement has to be of the Court and the requirement is always to enable the court to pronounce the judgment or for any substantial cause. It has been further held that the legitimate occasion for the exercise of this jurisdiction is not any stage prior to the hearing of the appeal but the stage of the final hearing of the appeal. We are in respectful agreement with the view taken by the Division bench of Himachal Pradesh High Court. The requirement under clause (a) or (aa)

12 2014(2) MhLJ 884.

13 2006(3) Civil LJ 396.

for leading additional evidence is that of a party where for the reasons in clause (a) or (aa) could not file evidence at the stage of the trial. However, requirement under clause (b) is that of the court where it finds that additional evidence is required for the purpose of enabling it to pronounce the Judgment or for any other substantial cause. We, therefore, find that the application filed under Order 41, Rule 27 (1) (a) or (aa) could be decided at the stage prior to the hearing of the appeal. However, when the court finds that such an evidence is necessary for pronouncing the judgment or for any other substantial cause, the same has to be done at the stage of pronouncement of the Judgment. No doubt that the learned counsel for the tenant is justified in saying that the learned Single Judge vide order dated 3rd May, 2011 itself had directed that the application for leading additional evidence is to be decided first and thereafter decide the appeal on merits. However, it appears that the learned Single Judge did not find the benefits of going through the Judgment of the Apex Court in the case of Union of India vs. Ibrahim (supra) inasmuch as the said Judgment has been delivered on 17 July, 2012 whereas the order was passed by the learned Single Judge in the first round on 3.5.2011. However, in view of the Judgment of the Apex Court in the case of Union of India (supra) we will have to hold that exercise of the jurisdiction by the learned appellate Court in first deciding the application under Order 41, Rule 27 (1) (b) and subsequently deciding the appeal on merits was contrary to the settled principle of law. As such the findings of the learned Appellate Court as well as the learned Single Judge in that regard would not be sustainable.”

25. The Division Bench has thus held that an application filed under Order 41 Rule 27(1)(a) or (aa) could be decided at the stage prior to the hearing of the appeal and in view of the judgment of the Supreme Court in the case of **Ibrahim Uddin (Supra)**, the exercise of jurisdiction by the Appellate Court in first deciding the Application under Order 41 Rule 27 (1)(b) and subsequently deciding the Appeal on merits was contrary to the settled principle of law. Therefore, an abstract proposition that in all cases the Application for adduction of additional evidence be decided at the stage of the final decision of the Appeal itself cannot be accepted unreservedly.

26. On the aforesaid touchstone, reverting to the facts of the case at hand, first and foremost, it is necessary to note that the Chamber Summons contained a composite prayer. The Applicants sought leave to amend the Application. In support of the averments proposed to be incorporated by way of amendment, the Applicants intended to file the documents.

27. The position in law as regards amendment in the pleadings is well nigh settled. All the amendments which are necessary for the determination of real question in controversy between the parties are required to be permitted unless the amendment completely alters the character of the proceeding and has the potential to cause irretrievable prejudice to the adversary.

28. In the case at hand, the learned Principal Judge has recorded, in clear and explicit terms, that the investigation conducted in regard to the documents which were produced in support of the Change Report filed before the Assistant Charity Commissioner, there were allegations of fraud and forgery. The alleged fraud was not confined to the party to the proceeding or the documents *inter partes*. The learned Principal Judge found that, there were allegations which indicated that fraud was practiced on the Charity Commissioner and even the record maintained with the office of the Charity Commissioner was also forged. For instance, the documents sought to be brought on record by way of additional evidence indicated that there was interpolation in the inward register maintained with the office of the Charity Commissioner and the documents were entered with serial numbers followed by (a). In the light of such material, the learned Principal Judge, returned a finding that the proposed amendment and the documents were necessary for a just adjudication of the Charity Application.

29. In exercise of supervisory jurisdiction, this Court is not expected to re-appreciate and reweigh the material. Whether the learned Principal Judge has exercised the jurisdiction to allow the amendment and production of documents, within the parameters of the provisions contained in sub-Section (1A) of Section 72 of the Act, 1950, can only be examined.

30. Undoubtedly, in the case of **Ibrahim Uddin (Supra)**, the Supreme Court has enunciated that if the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored. Yet, in the facts of the case at hand, it appears that the learned Principal Judge has found that the alleged fraud in relation to the documents on the strength of which the orders were purportedly obtained, was unearthed post passing of the said orders, though the documents were in existence at an earlier point in time. Thus, the case at hand would not fall *stricto sensu* within the ambit of the later part of the sub-Section (1A), corresponding to Clause (b) of Rule 27(1) of Order 41 of the Code.

31. The matter can be looked at from another salient perspective. The Court cannot lose sight of the element of alleged fraud. It is trite fraud vitiates all actions. Where the Court finds that the allegations of practicing fraud on the office of the Charity Commissioner and in relation to the record maintained with the office of the Charity Commissioner, merits consideration, and *prima facie* there is material in the form of the documents collected and statements recorded during the

course of investigation, the Court cannot be denuded of the power to permit a party to the proceeding to amend the pleading, incorporate those allegations in the Application and produce material on the strength of which those allegations are sought to be substantiated. The matter cannot be looked thorough the prism of the necessity of those documents only to enable the Court to pronounce the judgment. Once the Court finds that the allegations of fraud warrant consideration and investigation, the stage of the proceeding at which the Court permits the adduction of evidence loses significance, nay, becomes secondary, for the challenge on the ground that an order is vitiated by fraud can be raised at any stage and in any proceeding, even collateral.

32. It is well recognized, a fraud vitiates all acts. A judgment or order obtained by playing fraud is a nullity and non-est in the eye of law. It can be challenged in any Court, at any time, in Appeal, revision, writ or even in collateral proceedings. (**S.P. Chengalvaraya Naidu Vs Jagannath**¹⁴ and **A.V. Papayya Sastry and Ors Vs Government of A.P. & Ors**)¹⁵

33. If considered from the aforesaid standpoint, no fault can be found with the impugned order. The learned Principal Judge was within his right in allowing the prayer for amendment and production of documents keeping open the point of admissibility of the documents.

14 1993 (6) SC 331.

15 (2007) 4 SCC 221.

Thus, in exercise of writ jurisdiction, this Court does not find any justifiable reason to interfere with the impugned order.

34. Hence, the following order:

: O R D E R :

The Petition stands dismissed.

Rule discharged.

No costs.

[N. J. JAMADAR, J.]