

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 3243 OF 2025
WITH
INTERIM APPLICATION NO. 4005 OF 2025
IN
SUIT NO. 23 OF 2025**

Niket Mehta

Applicant /
.. Defendant

IN THE MATTER BETWEEN:

Lilavati Kirtilal Mehta Medical Trust,

Through its Trustee Mrs. Charu Mehta and Ors. .. Plaintiffs

Versus

Niket Mehta

.. Defendant

-
- Mr. Atul Damle, Senior Advocate a/w. Mr. Dakshesh Vyas, Mr. Abhishek Prabhu, Ms. Jyoti Ghag, Mr. Shailesh and Ms. Ankit Singhal, Advocates i/by Dua Associates for Plaintiffs.
 - Mr. Pankaj Sawant, Senior Advocate a/w. Mr. Aloukik R. Pai, Mr. Saharsh Sakhare and Ms. Priyanka Rammurthy, Advocates i/by Aloukik Rajendra Pai for Defendant.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 03, 2025.

ORAL JUDGEMENT:

1. Heard Mr. Damle, learned Senior Advocate for Plaintiffs and Mr. Sawant, learned Senior Advocate for Defendant.

2. This Application is filed by Defendant for rejection of the Suit plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (for short '**CPC**') on the ground that suit is barred under Section 80 of the Maharashtra Public Trusts Act, 1950 (for short '**MPT Act**') for Plaintiffs having failed to comply with the statutory and mandatory provisions of Section 50 and 51 thereof before institution of the Suit

proceedings. Parties are referred to as Plaintiffs and Defendant for convenience.

3. Briefly stated, Plaintiff No.1 is a Public Trust amenable to the provisions of the MPT Act. Plaintiff Nos.2, 3 and 4 are the present Trustees of Plaintiff No.1 - Trust. Suit is filed on 19.12.2024 for recovery of Rs.17,20,88,896/- from Defendant who according to Plaintiffs' own case as pleaded in the Suit plaint was a permanent Trustee of Plaintiff No.1 - Trust from the year 2001 till 14.12.2023. The recovery of the above amount in the Suit proceedings is sought towards compensation for use by Defendant one Flat No.7 admeasuring 2849.66 sq. ft. on the 12th floor of Plaintiff No.1- Trust's hospital building as his residence from January 2007 to April 2015 and for use of office admeasuring 360 sq. ft. on the 3rd floor, A - Wing of Plaintiff No.1 - Trust's hospital building from January 2007 to January 2009 (for short "**the suit properties**"). Suit seeks recovery of proceeds due to the Trust for me of the aforementioned twin properties which are admittedly Trust properties.

4. Mr. Sawant, learned Senior Advocate for Defendant makes the following submissions in support of Application for seeking rejection of the Suit plaint under Order VII Rule 11(d) of CPC:-

- i. He would submit that Plaintiffs have admitted in the Suit plaint that Defendant was a Trustee of Plaintiff

No.1 - Trust; that several documents appended as Exhibits to the Suit plead admit and acknowledge that Defendant was a permanent Trustee of the Trust from 2001 to 2023; that it is not pleaded in the Suit plead that entry of Defendant in the twin suit properties for the contentious period was without knowledge of Plaintiff No.1 - Trust or its Trustees; that it is not Plaintiffs' case that Defendant claimed the suit properties adversely to the Trust neither Defendant has ever denied title of Plaintiff No.1 - Trust to the suit properties and most importantly on Plaintiffs' own showing which is borne out from the averments / pleadings in the Suit plead and Exhibits annexed thereto, Defendant was admittedly in occupation and possession of the suit properties during the aforesaid tenure in his capacity as Trustee of Plaintiff No.1 – Trust as he was overlooking the affairs of the Trust.

- ii. In support of his above submissions he has drawn my attention to the pleadings contained in paragraph Nos.2, 3, 10, 13 and 15 of the suit plead to contend that Plaintiff No.1 - Trust has clearly admitted in the suit plead that defendant is an erstwhile (illegal) trustee of the trust, that he was in (illegal) occupation

of suit properties from the year 2007 to 2015, that Suit is filed for recovery of compensation with interest from Defendant for illegally occupying the Trust properties during the above period as erstwhile (illegal) Trustee, that according to Plaintiffs the Defendant during this period as Trustee took undue advantage of his position and unlawfully occupied the suit properties; that the erstwhile Board of Trustee did not take any action against Defendant inspite of his such wrongdoing and his failure to vacate the suit properties and Defendant was admittedly in possession of the suit properties in contravention to law as the same is Public Trust property.

- iii. While relying upon the provisions of Section 51 of Indian Trust Act, 1882 in further support of Defendant's case regarding Plaintiff No.1 - Trust having acknowledged that he was a Trustee / permanent Trustee of Plaintiff No.1 - Trust, my attention is drawn to Exhibit "D" at page No.147, Exhibit "L-1" at page No.221, Exhibit "I" page No.226, Exhibit "O" at page No.249 and Exhibit "S" at page No.298 which are Exhibits annexed to the Suit plaint. These are letters / correspondence addressed by Plaintiff No.1 - Trust and

pleadings filed in the Supreme Court and this Court wherein Plaintiff No.1 - Trust has acknowledged Defendant to be the permanent Trustee / Trustee of Plaintiff No.1 – Trust / member of Board of Trustee of Plaintiff No.1 – Trust

4.1. As a sequitur of the above submissions on facts, Mr. Sawant would submit that since the Suit proceedings is filed on the basis of the aforesaid case made out by Plaintiffs for recovery of compensation from Defendant being an erstwhile Trustee of Plaintiff No.1 – Trust, the Suit as framed is clearly covered by the provisions of Sections 50 (i) and 50 (ii) of MPT Act and most specifically covered by Clauses “a”, “f” and “q” of the MPT Act. He would submit that there can be no doubt whatsoever for the Suit to be covered by the above provisions on the basis of the pleadings and Exhibits annexed to the Suit plaint and if that be so then under Section 51 of the MPT Act consent of the Charity Commissioner is mandatory before filing of such a Suit proceeding and most importantly the Charity Commissioner would be a proper and necessary party to such a Suit proceeding under Section 51(3) of the MPT Act.

4.2. He would submit that Defendant has never denied the title of Plaintiff No.1 – Trust to the suit properties and even according to Plaintiffs, he was admittedly occupying the suit properties in his

capacity as Trustee. He would submit that in paragraph No.15 Plaintiffs have pleaded breach of duties by Defendant acting as Trustee under Section 51 of Indian Trusts Act, 1882. He would submit that in these facts which are clearly and *prima facie* borne out from the Suit plaint and Exhibits thereto the Suit is not maintainable for want of permission of the Charity Commissioner in accordance with the provisions of Sections 50 and 51 of the MPT Act. That apart, he would submit that the present Suit as filed is vexatious in nature, seeking alleged unagreed compensation for a period more than 18 years ago and is filed merely to harass and pressurise the Defendant and to drain his resources. He would submit that the Suit is barred by limitation but he does not press the same, since it would be mixed question of facts and law.

4.3. In view of the aforesaid submissions, he would persuade the Court to dismiss the Suit plaint on the ground of non-maintainability for not having obtained the statutory consent of the Charity Commissioner for filing the present Suit in view of the cause of action invoked therein.

5. *PER CONTRA*, Mr. Damle, learned Senior Advocate for Plaintiffs opposes the Application on the ground that Advocate for Defendant is completely erroneous in understanding the scope and object of Order VII Rule 11(d) of CPC for seeking dismissal of the

present suit. He would submit that averments made in the Suit plaint are required to be read harmoniously to understand its underlying meaning and according to him the Suit plaint does not suffer from any defect, much less the rigours of Section 50 of MPT Act.

5.1. At the threshold, he would submit that consent of the Charity Commissioner for filing the present Suit proceeding is not required since it is Plaintiffs' specific case in the Suit plaint that Defendant is / was a trespasser in the suit properties and was not occupying the same as a validly appointed Trustee of Plaintiff No.1 - Trust during the contentious period. He would submit that by a well reasoned order dated 14.12.2023 passed by the Assistant Charity Commissioner in a Change Report filed by Plaintiff No.1 - Trust it is held that Defendant was never a validly appointed Trustee of the Plaintiff No.1 – Trust, hence, he would submit that as a consequence thereof, possession of Defendant of the suit properties during the contentious period was illegal as he was in illegal occupation thereof and therefore the Trust is within its right to file the present suit without obtaining consent of the Charity Commissioner.

5.2. He would vehemently argue that case of Plaintiffs is that Defendant is guilty of usurpation of Trust properties as a trespasser and therefore even if he claimed to be a Trustee, Plaintiff No.1 – Trust does not require permission of the Charity Commissioner to file the suit

in the facts of this case. He would persuade me to read the contents of paragraph No.51 of the Suit plaint which crystallites the case of Plaintiffs' against the Defendant. He would submit that there was no nexus or privity of contract between the Trust and Defendant to enable him to use and occupy the suit properties in any capacity, neither there was any legal or jural relationship between the parties.

5.3. He would submit that Defendant abused his position as Trustee and usurped the Trust properties for his personal use illegally without there being any legal relationship and thus he was always a trespasser on the suit properties. He would fairly submit that the New Board of Trustee took over Management of the Trust only in the year 2023 and unearthed substantial misappropriation of Trust funds and illegal activities committed by Defendant alongwith the erstwhile illegal Trustees of Plaintiff No.1 - Trust.

5.4. He would submit that in the preliminary Audit Report it is reflected that Defendant alongwith the erstwhile illegal Trustees of the Trust usurped Trust funds of more than Rs.1700 – 1800 crores and in one such instance of misappropriation, FIR is registered against them. He would submit that such necessary averments are made in the Suit plaint. He would submit that occupation of suit properties by Defendant has been held to be illegal by the Supreme Court in its order dated 11.05.2015 and it has been held that Defendant is liable to pay

compensation for the use and occupation of the suit properties which he agreed to vacate.

5.5. He would persuade me to read the relevant paragraph in the order dated 11.05.2015 in SLP (C) No.3772 of 2014 wherein it is recorded that Defendant has agreed to pay the market rate and maintenance charges for retaining possession of the suit properties. He would submit that despite this order, Defendant did not comply with the same which led to passing of a further order dated 21.01.2016 directing compliance of the earlier order to either vacate the suit properties by clearing the arrears and hand over peaceful possession or if wanting to continue in possession then pay monthly compensation at the rate determined by the Interim Board. He would submit that Defendant's statement is recorded in this order that he wanted to clear the arrears and vacate the suit premises which he ultimately vacated.

5.6. Mr. Damle has also invited my attention to Exhibits appended to the Suit plaint at page Nos.147, 221, 226, and the opinion at page No.230 to contend that the Defendant was in occupation of the Suit properties illegally during the contentious period for which recovery of compensation is sought for by the Trust. He would submit that since Defendant's occupation was admittedly illegal and unauthorized, permission of the Charity Commissioner is not required to file the Recovery Suit.

5.7. He would submit that the above relevant fact of unauthorised occupation came to light only recently due to the fraud and suppression by Defendant. He would submit that merely on the basis of the defence taken by Defendant, the Suit plaint cannot be rejected and the entire Suit plaint alongwith its Exhibits will have to be read holistically for maintainability of the Suit without permission from the Charity Commissioner. On the issue of limitation, he would submit that the factual disputes and discovery of cause of action are mixed questions of facts and law and they will have to be adjudicated in trial. He would submit that application under Order VII Rule 11(d) of CPC is nothing but a delaying tactic and abuse of the due process of law which should not be encouraged by the Court in the present case.

5.8. He would submit that Suit filed by Plaintiff No.1 - Trust does not seek administrative reliefs for example removal of Trustee or challenge to the Scheme of the Trust and hence the Suit is maintainable without seeking consent of the Charity Commissioner. He would submit that the suit seeks compensation for illegal occupation of Plaintiff No.1 - Trust's suit properties by an illegally appointed Trustee (Defendant) which is a civil wrong and therefore the Defendant cannot shield himself behind the cloak of Section 50 and 51 of the MPT Act.

5.9. He would submit that it is settled position of law that for filing a Suit against a person who is in adverse possession of the Trust

properties as a trespasser, licensee or tenant, consent of the Charity Commissioner is not required for institution of such a Suit. He would submit that in the present case, Suit has been instituted by Plaintiff No.1 – Trust against an illegally appointed Trustee for recovery of compensation for unauthorised occupation of the Trust properties by him.

5.10. He would submit that Defendant's contention that he occupied the suit properties in his capacity as Trustee is factually incorrect and legally untenable. He has drawn my attention to the order dated 14.12.2023 passed by the Assistant Charity Commissioner whereby the Change Report filed by Defendant was rejected and he was found to be an illegally appointed Trustee. He would therefore submit that Defendant's possession was never lawful and his liability to compensate Plaintiff No.1 – Trust arises as an unauthorized occupant / trespasser of the suit properties and not having occupied them in a fiduciary capacity. In support of his submissions, he has referred to and relied upon the decision of this Court (Coram : Sandeep V. Marne, J.) in the case of *Shri Hari Ashram, (through its Trustee) Vs. Vijay Jayantilal Patel and Anr.*¹.

5.11. He would submit that the prayer of Defendant in Interim Application under Order VII Rule 11(d) of the CPC is baseless and pleadings in the Suit plaint are only relevant, necessary and are duly

¹ Interim Application No.4436 of 2025 in Suit No.13 of 2025, decided on 03.10.2025.

supported by material on record. Hence, he would urge the Court to dismiss the Interim Application filed by Defendant in the interest of justice.

6. I have heard, Mr. Damle, learned Senior Advocate for Plaintiffs and Mr. Sawant, learned Senior Advocate for Defendant and with their able assistance perused the Suit plaint and its Exhibits. Submissions made by both the learned Advocates at the bar have received due consideration of the Court.

7. In proceedings under Order VII Rule 11 of CPC, the Court will have to see the averments made in the Suit plaint and the material appended as Exhibits to the Suit plaint for determination of the Application of Defendant. Plaintiff – Trust has filed the present Suit against Defendant and its case as pleaded in the arguments before me is that Defendant was always a trespasser and unauthorized occupant of the suit properties and by virtue of his position as a Trustee without having any relationship or brevity between the Trust and himself abused his position and enjoyed the suit properties. This is the thrust and conclusion of Plaintiffs' case as argued and found in paragraph No.15 of the Suit plaint to which my attention is drawn to by Mr. Damle. However what is stated in the Suit plaint by Plaintiffs qua the cause of action against Defendant needs to be looked into. Excerpts of six paragraphs in the Suit plaint are relevant in this context.

8. In paragraph No.2 of the Suit plaint, Plaintiffs have averred as follows:-

“2. ... The Defendant is an erstwhile illegal trustee of the said Trust, whose Change Report came to be rejected by the Ltd. Asst. Charity Commissioner vide Order dated 14.12.2023, thereby, removing the Defendant from the Trust and rejecting all the claims of the Defendant over the trusteeship or the Management of the said Trust”.

8.1. In paragraph No.4 of the Suit plaint, Plaintiffs have averred as follows:-

“4. The Suit is preferred, inter alia, by the Plaintiffs, to seek Recovery of Compensation along with interest till date from the Defendant, as the Defendant caused unprecedented losses to the Trust to him illegally occupying the said Trust’s Property during his tenure as an erstwhile illegal trustee.”

8.2. In paragraph No.6 of the Suit plaint, Plaintiffs have averred as follows:-

“6. Thereafter, vide a Criminal Conspiracy hatched by Mr. Vijay Mehta, the defendant and other erstwhile trustees, came to be illegally appointed as Trustees of LKMM Trust and these individuals kept on reappointing themselves and creating several layers of appointment by filing multiple Change Reports which were challenged by the Plaintiff No. 1. ...”

8.3. In paragraph No.10 of the Suit plaint, Plaintiffs have averred as follows:-

“10. Plaintiffs state that, the Defendant during his tenure, taking undue advantage of his position was unlawfully occupying (i) Flat No.7 admeasuring 2849.66 sq. feet, on the 12th floor of Lilavati Hospital and Research Centre as his residence and (ii) Office admeasuring 360 sq. feet on 3rd Floor of Lilavati Hospital and Research Centre (hereinafter referred to as the ‘said premises’) since 2007, as well as an office on the 3rd floor of the hospital since 20.1.2009.”

8.4. In paragraph No.15 of the Suit plaint, Plaintiffs have averred as follows:-

“15. That the Defendant was admittedly in possession and occupation of the 12th Floor of the Lilavati Hospital (“said property”) from 2007 to 2018, which is in complete contravention to the law, as the same is a public trust property. It is further submitted that the Defendant’s act of occupying the said property for personal use was teeth of Section 51 of the Indian Trusts Act, 1882 which is reproduced herein below:

“51. Trustee may not use trust-property for his own profit.

- A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.””

8.5. And in paragraph No.51 of the Suit plaint, Plaintiffs have averred as follows:-

“50. ... The Plaintiffs submit that there was no legal or jural relationship between the Trust and the Defendant of either a landlord/tenant or licensor/licensee. It is submitted that the said Mr. Niket Mehta abused his position as a Trustee and usurped the property of the Trust and hence no legal relationship has ever been created between the Trust and him and the Defendant i.e., Niket Mehta was always a trespasser upon the said premises.”

9. These are the fundamental averments on the basis of which the Suit is premised by Plaintiff No.1 – Trust. In support of these averments, Plaintiffs have relied upon several Exhibits which are annexed to the Suit plaint. Six Exhibits are relevant for the purpose of considering the present Application filed by Defendant under Order VII Rule 11 of CPC.

10. First such Exhibit is Exhibit ‘D’ appended at page No.147 of the Suit plaint. This is a letter issued by the Trust which is dated

30.03.2009 during the contentious period when Defendant was in occupation of the suit properties. It is addressed to Defendant and below the Defendant's name he is addressed as "permanent Trustee". This letter is issued in reply to the letter of Defendant dated 02.02.2009. It is addressed by Plaintiff No.1 – Trust to Defendant for the limited purpose of dealing with his letter dated 02.02.2009 as it records his occupation on the 12th floor of Lilavati Hospital building. It calls upon the Defendant to vacate the said premises and denies the case of Defendant of occupation. However what is intriguing is that Defendant No.1 is addressed as "permanent Trustee" of the Trust in this letter.

10.1. Next, Exhibit is Exhibit 'L-1' appended at page No.221 of the Suit plaint. This is a letter dated 15.09.2017 issued by Plaintiff No.1 – Trust to 9 individuals who are nomenclatured as Trustees of Plaintiff No.1 - Trust. Out of the 9 Trustees, Trustee at Sr. No.5 is the Defendant before me. This letter is addressed after the order is passed by the Supreme Court in respect of occupation of the suit premises by Defendant for his residential purposes calling upon him to vacate the same.

10.2. Once again what is intriguing is the fact that Defendant has been addressed to as "Trustee" of Plaintiff No.1 – Trust. In this letter, opinion received by the Trust is also quoted, copy of which is

appended at Annexure – II – page No.230 of the Suit Plaintiff wherein reference to the Defendant is as a “Trustee”.

10.3. Next relevant document for consideration is appended at Annexure – I – page No.226 of the Suit plaintiff. This is a letter dated 15.09.2017 addressed by the Secretary to Government of India (Retd) S. Lakshminarayanan, who is Principal Advisor to the Board of Trustees of Lilavati Hospital and Research Centre to Defendant wherein he has been described as Member of the Board of Trustees of Lilavati Kirtilal Mehta Medical Trust. In the said letter in unnumbered paragraph No.2, it is stated as follows:- *“As a respectable Trustee, you should understand that violation of the Hon’ble directives of Supreme Court of India can land you in very serious difficulties and the highest court of the land, if brought to their notice, may hold you guilty for ‘Contempt of Court’.*

10.4. Next, relevant Exhibit for consideration is the synopsis of the Contempt Petition filed against Defendant for committing civil contempt arising out of the order dated 21.01.2016 passed by the Supreme Court. In paragraph No.9 Defendant is referred to as being a Trustee.

10.5. Next, relevant document is letter dated 20.01.2009 addressed on behalf of Plaintiff No.1 – Trust appended at Exhibit ‘S’ – page No.298 of the Suit plaintiff wherein in paragraph No.2 while

addressing the Defendant it is stated that, “...*though you may have been discharging your obligations as a Trustee of the Trust generally and as authorised by the Board of Trustees, as a Trustee of a Public Charitable Trust, you could not have and cannot occupy and continue occupation of a part of the 12th floor of the Hospital for your and your family's accommodation and thereby derive personal benefit from the property belonging to the Trust.*” The said letter also describes the Defendant as permanent Trustee of Plaintiff No.1 – Trust.

11. In the context of the above contents of the Suit plaint which are *prima facie* clear and unambiguous and the Exhibits referred to hereinabove, it is *prima facie* evident that Defendant has been described and considered as a Trustee / permanent Trustee of Plaintiff No.1 – Trust for invoking action against him for recovery of compensation for his occupation of the suit properties belonging to the Trust during the contentious period.

12. In the above context, provision of Section 50 of the MPT Act therefore become relevant. Section 50 of the MPT Act reads as under:-

“[50. Suit by or against or relating to public trusts or trustees or others.—

In any case,—

(i) where it is alleged that there is a breach of a public trust, negligence, mis-application or misconduct on the part of a trustee or trustees,

[(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee,

alienee or any other person but not a person holding adversely to the public trust, trespasser, licensee or tenant,]

(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or

(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof,

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentions or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:—

(a) an order for the recovery of the possession of such property or proceeds thereof;

(b) the removal of any trustee or manager;

(c) the appointment of a new trustee or manager;

(d) vesting any property in a trustee;

(e) a direction for taking accounts and making certain enquiries;

(f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;

(g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

*(h) * * **

(i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem necessary;

(j) the settlement of a scheme, or variations or alterations in a scheme already settled;

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same;

(l) an order for winding up of any trust and applying the funds for other charitable purposes;

(m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust;

(n) *an order exonerating the trustees from technical breaches, etc;*

(o) *an order varying, altering, amending or superseding any instrument of trust;*

(p) *declaration or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or*

(q) *granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief or is necessary in the interest of the trust:*

Provided *that, no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof:*

Provided further *that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled:*

Provided also *that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under sub-section (4) of section 1].*

[Explanation.— In this section, “Court” means, in the Greater Mumbai, the City Civil Court and elsewhere, the District Court.].”

13. The title of Section 50 as can be seen from the above provision pertains to ‘Suit by or against or relating to public trusts or trustees or others’. It states that where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a public trustee or trustees and where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee or any other person but not a person holding adversely to the public trust, trespasser, licensee or tenant or for any

declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentions or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate to obtain a decree for the reliefs stated therein. Out of the said reliefs, clauses 'a', 'e', 'f', 'g' and 'p' would squarely apply to the case of Plaintiffs seeking compensation alongwith interest in respect of the suit properties belonging to the Trust from the Defendant.

14. Once Plaintiffs have described the Defendant as a Trustee / permanent Trustee in the Suit plaint itself as also on the basis of the supporting documents referred to and relied upon in the Suit plaint, there can be no manner of doubt that the Suit filed by the Plaintiffs is on behalf of Plaintiff No.1 – Trust for recovery of compensation from Defendant in his capacity as the erstwhile Trustee of Plaintiff No.1 – Trust and he having occupied the suit properties. Defendant is categorically described and addressed to as Trustee / permanent Trustee / erstwhile Trustee in the Suit plaint pleadings by the Plaintiffs. Hence, the submissions advanced by Mr. Damle, learned

Senior Advocate that in paragraph No.15, it is case of Plaintiffs that Defendant is a rank trespasser should only be considered as a sequitur and hence Defendant would be covered by the later part of Sub-clause 2 of Section 50 cannot be countenanced. If the averments made in the Suit plaint as described and alluded to hereinabove are read holistically alongwith the Exhibits appended thereto, it is *prima facie* clear and evident from a plain reading of the Suit plaint that the Suit is filed by Plaintiffs for recovery of compensation from the Defendant in respect of the Trust properties which were occupied by the Defendant in his capacity as a Trustee during the contentious period.

15. Once such a case is made out in the Suit plaint that Defendant was a Trustee / permanent Trustee / erstwhile Trustee of Plaintiff No.1 – Trust, then the Suit as filed by Plaintiffs is clearly amenable to the provisions of Section 50 of the MPT Act. The occupation of the suit properties by Defendant during the contentious period for which recovery of compensation is sought is admittedly on the basis of Plaintiffs' case as he being a Trustee of Plaintiff No.1 – Trust and he having misused his position as a Trustee. Though it is argued across the bar that occupation of suit properties by Defendant was as a trespass, the averments made in the Suit plaint and the averments in the various Exhibits which are alluded hereinabove do not justify the submissions made across the bar that it is the case of Plaintiffs that Defendant was a rank trespasser on the suit properties. If

that be so then there was no need for Plaintiff No.1 – Trust and Trustees on behalf of the Trust to address the Defendant as a Trustee / permanent Trustee / erstwhile Trustee in the pleadings contained in the Suit plaint as also in various Exhibits which are referred to herein above. Section 51 of the MPT Act hence become relevant in this context and it reads thus:-

“51. Consent of Charity Commissioner for institution of suit.—

(1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. [If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks fit is satisfied that there is a prima facie case, he] may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

[(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1), the persons applying for such consent may file an appeal to the Court, as if such order was an order passed by the District Court from which an appeal lies, within sixty days from the date date of the said order, which shall otherwise be final.]

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.”

16. The aforesaid Section states that consent of the Charity Commissioner for institution of suit is required. It states that if the persons having an interest in any public trust intend to file a suit of the nature specified under Section 50, they shall apply to the Charity Commissioner in writing for his consent and after hearing the parties and making such enquiries (if any), the Charity Commissioner may within a period of six months from the date on which the Application is

made, grant or refuse his consent to the institution of such suit. Once it is *prima facie* seen from the averments in the Suit plaint that Plaintiff No.1 – Trust have described Defendant as a Trustee / Ex-Trustee / erstwhile Trustee / permanent Trustee of the Trust, then in the same breath, Plaintiffs cannot contend that Defendant will have to be construed as a rank trespasser. The letter dated 20.01.2009 appended at page No.298 and alluded to hereinabove addresses the Defendant as permanent Trustee of Plaintiff No.1 – Trust and in paragraph No.2 which states that *“though you have been discharging your obligations as a Trustee of the Trust generally and authorised by the Board of Trustees, as a Trustee of of a Public Charitable Trust, you could not have and cannot occupy and continue occupation of a part of the 12th floor of the Lilavati Hospital building for you and your family's accommodation and thereby derive personal benefit from the property belonging to the Trust.”*

17. The aforesaid letters / Exhibits addressed to Defendant clearly show that according to Plaintiff No.1 – Trust, Defendant was acknowledged to have been discharging his obligations as a Trustee of the Trust generally and as authorised by the Board of Trustees and the only objection against him pertained to his occupation of the suit properties for which steps were taken.

18. In view of the above *prima facie* observations, findings and considering applicability of the provisions of Sections 50 and 51 of the MPT Act to the Suit plaint and the facts and circumstances of the present case wherein Defendant has unambiguously been described as Trustee / erstwhile Trustee / permanent Trustee for occupation of the suit properties and Plaintiffs desiring recovery of compensation from Defendant for his occupation of the suit properties as a Trustee / permanent Trustee / erstwhile Trustee, the consent of Charity Commissioner is required and without that having been obtained, there is non-compliance of the provisions of Section 50 read with Section 51 of MPT Act by Plaintiffs.

19. In that view of the matter, Interim Application No.3243 of 2025 filed by Defendant under Order VII Rule 11(d) of CPC on the grounds set out in the Application succeeds as it is concluded that the Suit ought to have been filed only after obtaining permission of the Charity Commissioner under Sections 50 and 51 of the MPT Act.

20. In view of the above, Interim Application No.3243 of 2025 stands allowed in terms of prayer clause 'a'. Suit plaint stands rejected.

21. Pending Interim Application No.4005 of 2025 is accordingly disposed.

[MILIND N. JADHAV, J.]

Ajay

Digitally signed
by AJAY
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Date: 2025.12.03
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