

(2014) 12 BOM CK 0112

In the Bombay High Court

Case No : Review Petition No. 13 of 2013 in First Appeal No. 450 of 2013

Anil Motiram Kalyankar

APPELLANT

Vs

Shree Jogeshwar Mahadev Mandir Trust

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 72(4)
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 2 MhLj 221

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Abhishek Pungliya, Advocate for the Appellant; Dilip Bodake, Advocate for the Respondent

Judgement

A.P. Bhangale, J.—Heard submissions at the bar.

2. The grievance of the review applicants is that this Court while deciding first appeal did not entertain it, as if it is a second appeal, considering only substantial question of law which arose before the Court, as according to him second appeal cannot be decided without formulating substantial question of law. The order without formulating and considering substantial question of law is contrary to law as such substantial question of law was not considered while disposing of the first appeal.

3. The review petition is opposed on the ground that there is not any valid ground for review in the absence of any apparent error on the face of record. The review petition is also opposed on the ground that the review applicants and the respondents were directed to go before the Jt. Charity Commissioner, Pune Region, Pune, on 11/11/2013 at 11.00 a.m., after this Court directed the Jt. Charity Commissioner, Pune Region, Pune, to apply his mind to the facts of the case before insisting upon the proposed draft scheme, suggesting modifications.

4. The learned counsel for the review applicants made reference to the order

passed by the learned Single Judge of this Court in Review Petition No. 13 of 2013, whereby the review petition was admitted and posted for final hearing. The learned counsel also relied upon the ruling in Shivprasad Shankarlal Pardeshi, since deceased by his heirs Vs. Leelabai Badrinarayan Kalwar since deceased by her heirs and others, , whereby the Division Bench of this Court referred to Section 72(4) of the Bombay Public Trusts Act, making reference to restrictions and limitations imposed in view of Section 100 of Civil Procedure Code while entertaining a second appeal. The observations were made to the effect that appeal under Section 72(4) of the Bombay Public Trusts Act would lie to the High Court only if the High Court is satisfied that the case involves a substantial question of law. In other words appeal u/s. 72(4) of the Bombay Public Trusts Act is subject to limitations as are indicated u/s. 100 of Civil Procedure Code and there is no wider jurisdiction upon the High Court while hearing such an appeal, though styled as a First Appeal.

5. This submission is opposed by the learned counsel for the respondent on the ground that there is a Supreme Court ruling in James Joseph Vs. State of Kerala, . The Apex Court while considering practice and procedure in appeal proceedings in juxtaposition to the limitations and restrictions in principle of Section 100 of Civil Procedure Code held that limitations cannot be read into any appeal provision if it is not expressly or impliedly provided for in statute concerned.

6. While considering these rulings, it must be stated that the appellant did not canvas of framing any substantial question of law at the time of hearing of the first appeal, disposed of by this Court. The arguments were fully heard with reference to the judgment and order dated 5/4/2013 passed by the learned Principal District Judge, Pune, in Miscellaneous Application No. 868 of 2010 as the first appeal was preferred against the dismissal of the said miscellaneous application. This Court after recording its reasons concluded that the Charity Commissioner is required to apply his mind to the facts stated before him as also to apply his mind as to whether the facts are correctly stated and duly verified. Since Charity Commissioner concerned is required to observe principles of natural justice and obliged to give opportunity of hearing to trustees and the persons interested in the management and administration of a public charitable trust. It was specifically stated that it would not be just and proper on the part of the Charity Commissioner just to peruse the affidavit-in-support of the application and then to pass the orders which are essentially required to be in the nature of judicial orders. That being so it was open for the parties as observed by this Court to approach the Jt. Charity Commissioner, Pune Region, Pune and place before him all the facts which are relevant for the purposes of just and proper decision in the matter, in accordance with law. When facts in dispute are required to be decided, it is necessary to offer opportunity to rival parties to lead evidence as they may choose or to arrive at judicial decision on facts, in accordance with law.

7. Admittedly the review applicants did not move the higher forum to challenge the judgment and order whereby the matter was remanded for fresh consideration by the Jt. Charity Commissioner, Pune Region, Pune. Having considered the submissions and record placed before me, I do not find any apparent error in the record or error of law or facts so as to warrant interference in the reasoned judgment and order already passed by this Court.

8. It is made clear that it is for the Jt. Charity Commissioner, Pune Region, Pune, to consider all submissions on facts that may be advanced in the proceedings and shall arrive at a decision in accordance with law, without being impressed by observations made herein.

9. Hence there is no merit is found in the review petition. It is dismissed with costs.