

**(2007) 11 BOM CK 0035**

**In the Bombay High Court**

**Case No :** Writ Petition No. 6314 of 2007

Laxman Babanrao Mali and Bacchusing Kanhailal Pardeshi

APPELLANT

Vs

Prabhakar Sambhu Chaudhari, Kisan Vikramsa Kalal,  
Bhagatsing Mansing Padvi and Ld. Charity Commissioner

RESPONDENT

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**Date of Decision :** 21-11-2007

**Acts Referred:**

Bombay Public Trusts Act, 1950 — Section 72, 72(1A)  
Constitution of India, 1950 — Article 227

**Citation :** (2008) 1 ALLMR 836 : (2008) 2 BomCR 217 : (2008) 110 BOMLR 44 :  
(2008) 2 MhLj 215

**Hon'ble Judges :** B.R. Gavai, J

**Bench :** Single Bench

**Advocate :** N.B. Suryawanshi, for the Appellant; Surekha Mahajan, for the Respondent

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**Judgement**

B.R. Gavai, J.—Rule. Rule made returnable forth with. Heard by consent.

2. By way of present petition, the petitioners, challenge the order dated 3rd November, 2007, passed by the learned 2nd Adhoc Addl.District Judge, Shahada below Exh.53 in Trust Application No. 01/2007 and below Exh.17 in Trust Application No. 02/2007, vide which both the applications of the present petitioners below Exhs.17 and 53 for leading the additional evidence, have been rejected.

3. It appears that there is a long standing dispute between the present petitioners and the respondents over the management of one Peoples Education Society. It appears that the change reports are filed by both the petitioners as well as the respondents, contending that in the elections the said society, their respective groups have been elected as the members of of the Managing Committee. After the orders were passed by the learned Asstt.Charity Commissioner, the matter went to the Jt.Charity Commissioner. Thereafter, the proceedings have reached before the learned District Judge u/s 72 of the

Bombay Public Trust Act, 1950 (hereinafter referred to, as "the said Act"). In the said proceedings, both the applications below Exhs.17 and 53 came to be filed by the present petitioners for production of certain documents. It is the contention of the petitioners that though these documents were produced on record before the learned Asstt. Charity Commissioner, they were not considered by the said authority and, therefore, in the interest of justice it was necessary to permit the present petitioners to brought on record the said documents, so as to effectively decide the dispute. However, the said applications have been rejected by the learned District Judge, by the impugned order, on the ground that since the said documents were not considered by the learned trial court, it was not permissible for the petitioners to apply for consideration of the said documents at that stage.

4. Shri N.B.Suryawanshi, learned Counsel for the petitioners, submits that the impugned order is contrary to the provisions of Section 72 of the said Act. He, submits that the learned District Judge is empowered to permit the party to produce additional evidence to enable it to pronounce judgment or for any other substantial cause the court thinks it necessary to allow such additional evidence.

5. Smt. Surekha Mahajan, learned Counsel appearing on behalf of the respondents, vehemently opposed the petition. It is submitted that though the petitioners had an ample opportunity to prove the said documents at the stage of the proceedings before the learned Asstt.Charity Commissioner and the Jt.Charity Commissioner, they failed to avail the said opportunity and they could not be permitted for the first time to prove the said documents before the learned District Judge at such a belated stage. She, therefore, submits that the impugned order warrants no interference in the extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India.

6. Section 72(1A) of the said Act, reads thus:

Section 72(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 judgement or for any other substantial cause the Court thinks it 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.

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

9. It can further be seen from the orders passed by the learned Asstt. Charity Commissioner or Jt. Charity Commissioner, that they refused to admit the afore said documents. As such, the said documents could have been permitted to be produced by the learned District Judge in view of the first eventuality.

10. Insofar as the second eventuality is concerned, the learned District Judge has not observed anything as to whether such documents are required by it, to enable it to pronounce the judgment or not, or as to whether there was any other substantial cause which would permit such additional evidence or not.

11. In that view of the matter, I find that the learned District Judge has failed to exercise the jurisdiction vested in it under Sub-section (1A) of Section 72 of the said Act.

Rule is therefore made absolute in terms of prayer Clause (b).

12. The matter is remitted back to the Ad-hoc District Judge-2, Shahada for consideration of the applications below Exh.17 and 52 in the light of the observations made above.

13. The said applications be decided within a period of three (3) weeks from today.

14. It is reported that this Court had fixed a time limit for deciding the trust applications by 31st January, 2008. However, in view of the subsequent events and in view of the order passed by this Court, the period is extended till 28th of February, 2008.