



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO.11835 OF 2012.

Charu K. Mehta :: Petitioner.

Versus

Prabodh Mehta & Ors. :: Respondents.

Mr. Carl Tamboli a/w. Mr. R.N. Ali i/b. T. Jariwala & Associates,
Advocates for the Petitioner.

Mr. Pratik Sakseria i/b. Vidhi Partners, Advocate for Respondent No.1.

Mr. A.D. Vhatkar, AGP for Respondent Nos. 2 and 3.

CORAM	=>	B.R. GAVAI, J.
DATE	=>	9TH JANUARY, 2013.

P.C. :-

Heard.

[2] Present Petition has been filed by the petitioner basically challenging the order dated 26th November, 2011 passed by the learned Joint Charity Commissioner, Greater Mumbai Region, Mumbai (In short, “the Joint C.C.”) in Application No.5 Of 2008 pending before it.

[3] There are several rounds of litigations between the parties. The learned Single Judge of this Court (Coram : Ranjit More, J.) *vide* order dated 11th July, 2008 passed in Writ Petition No.4787 Of 2008 had directed the learned Joint C.C. to proceed with the enquiry U/Section 41(D) of “The Bombay Public Trust Act, 1950” initiated by Respondent No.4 in the said Petition, independently and on its own merits on regular basis and decide the same as expeditiously as possible and in any case within a period of three months from the date of receipt of said order.



[4] It is the contention of the petitioner that, though this court has directed the learned Joint C.C. to proceed with the enquiry on the regular basis and decide it within a period of three months, matter is not yet decided and proceeding is adjourned from day-to-day on one or other grounds. On 5th October, 2012 when the matter was listed before the Court, the learned Joint C.C. passed an order thereby granting time to Respondent No.1 herein to file evidence of respondent No.1's witness stating that, no further adjournment will be granted to the said respondent and matter will be proceed further, without evidence of the respondent. It is the contention of the petitioner that, despite of this specific order dated 5th October, 2012, the learned Joint C.C. has again granted an adjournment on 26th November, 2012 and posted the matter on 3rd December, 2012. In these circumstances, the petition has been filed.

[5] Since the Petition is purely against the *interlocutory* order, I was inclined to dispose of this Petition by directing the learned Joint C.C. to dispose of the proceeding within a stipulated period. However, Mr. Pratik Sakseria, learned counsel appearing on behalf of Respondent No.1 stated that, Petition cannot be disposed of in as much as Rule is not granted and, therefore, Respondent No.1 has not *affidavit* in reply.

[6] Since the petition cannot be disposed of finally on account of objection taken by the learned counsel for Resp.No.1, I am inclined to pass the *interim* order as per the operative part for the reasons given hereunder.

[7] It is not in dispute that, the learned Single Judge of this Court (Coram : Ranjit More, J.) *vide* order dated 11th July, 2008 passed in Writ Petition No.4787 Of 2008 directed the learned Joint C.C. to proceed with the enquiry on regular basis and decide the same as expeditiously as possible and in any case within a period of three months from the date of receipt of said order. However, for various reasons, the proceeding could not be disposed of within the stipulated time and the matter is still at the stage of evidence of Respondent No.1's witness.



[8] Order passed by the learned C.C. on application Exh.No.96 on 5th October, 2012 reads as thus :-

Heard. Time is granted to the respondent subject to condition that no adjournment will be granted on next date and matter will be proceeded further without evidence of respondent. Put up on 26/11/12 at 2.30.

Order passed by the learned C.C. on application Exh.No.87 on 26th November, 2012 reads as thus :-

It appears that ample opportunity was granted to the opponent to file evidence *affidavit*. On last occasion it was made clear that no further adjournment will be granted. Hence, considering the fact that witness is from Belgium and only one week time is sought, last chance is granted subject to cost of Rs.3000/- to be paid to the applicant. Opponent to file *affidavit* on 3/12/12.

[9] It is not in dispute that, when the matter was adjourned on 3rd December, 2012, matter could not be taken up as the Presiding Officer was busy in other matters. It is also not in dispute that, despite of grant of several chances, respondent No.1 has not yet filed the *affidavit* of his witness.

[10] It is the contention of Respondent No.1 that the proceedings before the learned Joint C.C. could not be completed since there was *ad interim* order of Stay of the proceeding passed in L.P.A. and pendency of matter before the Hon'ble Apex Court.

[11] I am of the *prima facie* view that, in the present matter Respondent No.1 has been attempting to prolong the hearing of Application No.5 Of 2008 pending before the learned Joint C.C. on one *pretext* or another. It is further to be noted that, today also when I was inclined to dispose of the Petition by directing the learned Joint C.C. to decide the matter within stipulated time, it was objected on the ground that, Rule is not issued; as such *affidavit* is not filed by Respondent No.1. It is to be noted that, when the matter came up before this court on 19th Dec.,2012,



the learned Single Judge of this Court (Coram : B.P. Dharmadhikari, J.) has refused to interfere at that stage and granted liberty to the petitioner to renew their request if the Joint C.C. is not in a position to take up the matter on 24th December, 2012. If Respondent No.1 so desired, he could have filed *affidavit* in reply very well by now. However, for the reasons best known to the Respondent No.1, he has not filed it.

[12] In that view of the matter, though I could have very well disposed of present Petition by directing the learned Joint C.C. to decide the proceeding within the stipulated time, I am inclined to pass the following order in the interest of justice. Hence, order :-

ORDER

(i) Rule.

(ii) The learned Joint Charity Commissioner, Greater Mumbai Region, Mumbai is directed to decide the matter, as directed by this Court (Coram : Ranjit More, J.) in its order dated 11th July, 2008 passed in Writ Petition 4987 Of 2008 as expeditiously as possible, in any case within a period of three months from today.

(iii) At this stage, the learned counsel for Respondent No.1 seeks stay to the order. However, taking into consideration the overall conduct of Respondent No.1 in prolonging the proceedings before the Joint Charity Commissioner, I am not inclined to grant the prayer, as sought for. Hence, prayer is rejected.

(B.R. GAVAI, J.)