

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 54 OF 2019**

Indukumar Ladhabsai Momaya & Ors	...Appellants
<i>Versus</i>	
Jayantilal Ladhabsai Momaya & Ors	...Respondents

**WITH
CHAMBER ORDER (L) NO. 13618 OF 2021**

Kalpesh Hansraj Shah (Dharamshi)	...Appellants
<i>Versus</i>	
Ladha Mansi Momaya (Deceased)	...Respondents

Mr Devang D Parmar, i/b Bharat H Mehta, for the Appellants.
Mr Kalpesh Shah, Appellant No. 5 present in person.
Mr Vineet Jagtap, i/b Niranjani Jagtap & Co, for the Respondents.

**CORAM G.S. Patel &
 M.G. Sewlikar, JJ.**
DATED: 9th June 2022

PC:-

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1. The Appeal arises from two orders dated 17th December 2014 and 12th January 2015 made by the learned Single Judge (Mrs Roshan Dalvi, J) in Trust Petition No. 4 of 2014.

2. The eight Appellants before us were the original Petitioners. Before the learned Single Judge, they sought a declaration that the appointment of Respondents Nos. 1 and 2 as Trustees of the subject Trust was invalid and that the 1st Petitioner, Indukumar L Momaya be appointed as Trustee.

3. By the impugned order, the learned Single Judge dismissed the Trust Petition.

4. The 5th Appellant is Mr Kalpesh Shah. He appears in person. He has previously been assigned an Advocate, whom he has purported to discharge. The Registry-level committee has previously not found him capable of arguing in person. Rather than waste time on those issues, we have in our discretion, permitted him to address. His submissions on Affidavits are borderline fantastic. He claims that he is entitled to several hundreds of crores of rupees from Trust funds and that he wants to be put in such funds. This is not the subject matter of the Trust Petition to begin with.

5. The additional problem here is that we do not see how Kalpesh Shah can independently argue an Appeal when he and seven other Appellants are duly represented by an Advocate, Mr Bharat Mehta. There is no possibility of Appellants being independently represented. All Appellants must be represented by a single Advocate. If any Appellant wishes to separate from the group of Appellants, he must file his own Appeal or must be transposed as a Respondent. Alternatively, he must make an arrangement to have the other Appellants transposed as Respondents. What Kalpesh

Shah proposes, that he will argue the Appeal regardless of what the other Appellants want and regardless of the fact that there is an Advocate for all the Appellants, is impossible and impermissible.

6. Now we find that the two of the Appellants, viz., the 1st Appellant, Indukumar Momaya, and the 2nd Appellant, Riddhish Momaya, have in writing stated that they do not wish to prosecute the Appeal at all.

7. Mr Mehta's junior says that there are no instructions from Appellants Nos. 3, 4, 6, 7 and 8. Mr Bharat Mehta himself is extremely unwell and is unable to attend to the matter. At this stage, we do not even know whether Mr Mehta is in a position to give a discharge in favour of any other Advocate or whether Appellants Nos. 3, 4, 6, 7 and 8 also wish to withdraw from the Appeal.

8. Consequently, before we can hear Kalpesh Shah on any aspect of the matter, the position of the other Appellants will need to be ascertained. We will have to adjourn this matter by three weeks until 29th June 2022. By that time, we expect Mr Mehta or his junior to have obtained instructions from the other Appellants.

9. We make it clear, so that there is no ambiguity that—

- (a) If all the other Appellants excluding Kalpesh Shah wish to withdraw, we will permit Kalpesh Shah to argue the Appeal alone and delete the names of the other Appellants;

- (b) If the other Appellants (except for Appellants Nos. 1 and 2) wish to prosecute the Appeal, then all of them including Kalpesh Shah will have to be represented by a single Advocate and there will be no possibility at all of Kalpesh Shah arguing independently or in person;
- (c) In the alternative to (b) above, i.e., if the other Appellants wish to prosecute the appeal and Kalpesh Shah does not want to align with them or be represented by a common advocate, he will have the option of being transposed as a Respondent or of separately filing of his own Appeal (subject to limitation and delay issues).

10. List the matter for orders, high on board on 29th June 2022.

(M.G. Sewlikar, J)

(G. S. Patel, J)