

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 260/2009

1. MOHD. SOHRABUDDIN INAMDAR AND 5 OTHS
AHBAD COLONY, AMRAVATI

.. Petitioner/s

2. MOHD. MUMTAJODIN INAMDAR MOHD. BASHIRODDIN INAMDAR
R/O ZAKIR COLONY, AMRAVATI

3. MOHD. IFTAKHARUDDIN INAMDAR MOHD. BASHIRODDIN INAMDAR
R/O ZAKIR COLONY, AMRAVATI

4. SHABANA BANO MOHD. LIYAKUDDIN INAMDAR
R/O MOULANA AZAD COLONY, AMRAVATI

5. SHAFIKABANO MOHD. IFTEKHARUDIN INAMDAR
R/O ZAKIR COLONY, AMRAVATI

6. MOHD. ZAINULABEDDIN INAMDAR
R/O ZAKIR COLONY, AMRAVATI

VERSUS

1. KHAJA BABA EDUCATION TRUST LONI TAKLI
(PTR NO. F-8997-AMT) THR ITS PRESIDENT
JS DUBEY AND 7 OTHS
R/O SHIV SHAKTI NAGAR, AMRAVATI

.. Respondent/s

2. ABDUL GANII S/O ABDUL MUNAF
R/O CHAPRASIPURA, AMRAVATI

3. VISHWAS S/O JAWAHARLAL
R/O SHIV SHAKTI NAGAR, AMRAVATI
TQ. AND DISTT. AMRAVATI

4. IDRIS BAIG S/O ISMAIL BAIG
R/O CHITRA CHOWK, AMRAVATI

5. MOHD. SHABBIR S/O ABDUL MUNAF
R/O TAJNAGAR, AMRAVATI

6. MOHD. ILIAS S/O MOHD. SHABBIR
R/O TAJNAGAR, AMRAVATI
TQ. AND DISTT. AMRAVATI

7. ASSISTANT CHARITY COMMISSIONER, AMRAVATI DIVN.
AMRAVATI

8. CHARITY COMMISSIUONER, MAHARASHTRA MUMBAI

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.G. Bhangde, Senior Counsel with Mr. V.V. Bhangde, Advocate for
the appellants.
Mr. Anjan De, Advocate, for the respondent nos. 1 to 6.

CORAM : SMT. VASANTI A. NAIK, J.
DATE : AUGUST 4, 2009.

Heard Shri Bhangde, the learned senior
counsel for the appellants, and Shri A.K. De for the
respondents.

Change Report proceedings were filed by the
appellants reporting trustees before the Assistant Charity
Commissioner. It was the case of the appellants that
there was a change in the managing committee of the
trust in view of the election held on 25/2/2004. Change
Report was presented on 2/6/2004. On the first date of
hearing i.e. on 8/6/2004, one Shri A.P. Bordiya,
Advocate, filed Vakalatnama on behalf of the
respondents, at Exh. 3. A pursis was also filed at Exh. 4
and it was stated in the pursis that the respondents have
no objection for acceptance of the Change Report. Most
of the outgoing trustees had affixed their signatures on
Exh. 4. On 10/6/2004, the reporting trustees filed an

application for condonation of delay in filing the Change Report. Ultimately, the Change Report was accepted by the Assistant Charity Commissioner by the order dated 15/6/2004.

On 23/7/2004, an appeal was filed by the respondents/some of the outgoing trustees, before the Joint Charity Commissioner. The Joint Charity Commissioner, however, by an order dated 24/12/2004, dismissed the appeal filed by the respondents. A further appeal was carried to the District Court, which was allowed by the judgment dated 9/6/2009, which is challenged in this second appeal.

It is necessary to note that in the appeal filed by the respondents before the Joint Charity Commissioner, it was not the case of the respondents that they had not affixed their signatures on Exh. 4. It was also apparent from the record that the entire record was available to the respondents, but the respondents had not raised this specific objection in the appeal memo filed before the Joint Charity Commissioner though the existence of Pursis Exh. 4 was known to the respondents. Though there was no ground raised in the appeal memo, the Joint Charity Commissioner considered the submission of the respondents about the dispute relating to their signature on Exh. 4. The Joint Charity Commissioner compared the admitted signatures of the outgoing trustees/respondents, with their signatures on the pursis and held that the submission raised by the

outgoing trustees at the time of hearing of the appeal was liable to be rejected. The District Judge, however, allowed the appeal vide the judgment dated 9/6/2009 and remanded the matter to the Assistant Charity Commissioner for a fresh decision on the change report filed by the reporting trustees.

In the aforesaid background, the second appeal is **admitted** on the following substantial questions of law :

- (1) Whether, in the facts and circumstances of the case, the outgoing trustees/respondents had waived their right, if any, to dispute their signatures on pursis, Exh.4 ?
- (2) Whether the Joint Charity Commissioner was entitled to compare the writings and signatures on exh. 3 and exh. 4 with the admitted writing of the outgoing trustees, under Section 73 of the Evidence Act?

C.A. No. 538/2009

Since the appellant has made out a strong prima facie case, there would be stay to the judgment passed by the District Judge-2, Nagpur on 9/6/2009 till the decision of the second appeal, as also to the entry taken in the Schedule I in the Public Trusts Register, after passing of the judgment dated 9/6/2009.

Civil application is allowed and disposed of.

At this juncture, Shri A.K. De, the learned counsel for the respondents, requests for grant of early hearing of the second appeal.

The hearing of the second appeal is expedited.

Second appeal is to be heard finally on 9th of September, 2009.

Call for record and proceedings.

Filing of private paper book is dispensed with.

Shri A.K. De waives notice of hearing on behalf of the respondent nos. 1 to 6.

JUDGE

RMP