

ITEM NO.34

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16077/2012

(From the judgement and order dated 13/04/2012 in OS No.2029/2011,
SN No.2964/2011 of The HIGH COURT OF BOMBAY)

CHARU KISHOR MEHTA

Petitioner(s)

VERSUS

LILAVATI KIRTILAL MEHTA MED.TRUST & ORS

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment
and prayer for interim relief and office report)

Date: 02/07/2012

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s)

Mr. Parag P. Tripathi, Sr. Adv.
Mr. Jayant Bhushan, Sr. Adv.
Mr. Ajay Bhargava, Adv.
Ms. Vanita Bhargava, Adv.
Mr. Abhijeet Swaroop, Adv.
for M/S. Khaitan & Co.

For Respondent(s)
No.1

Mr. Ranjit Kumar, Sr. Adv.
Mr. Sameer Parekh, Adv.
Mr. Somanadri Goud, Adv.
Ms. Sarabjot Walia, Adv.
Mr. Utsav Trivedi, Adv.
for Parekh & Co.

For R-2

Mr. Prateek Sekcaria, Adv.
Ms. Ranjeeta Rohatgi, Adv.

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For R-4, 5, 6 & 9

Mr. T.R. Andhyarujina, Sr. Adv.
Ms. Tasneem Ahmadi, Adv.
Mr. Ajay Kumar, AOR
Mr. Dhirendra Sinha, Adv.
Mr. Amit Pateria, Adv.

UPON hearing counsel the Court made the following
O R D E R

This special leave petition is directed against the final judgment and order dated 13th April, 2012, passed by the Division Bench of the Bombay High Court in Appeal (L) No.234 of 2012 in Originating Summons No.2029 of 2011 in Suit No.2964 of 2011, whereby while admitting the aforesaid Appeal, as also the Cross Appeal No.253 of 2012, the Division Bench refused to grant any interim stay or interim relief.

The Trust and some of the Trustees are duly represented on caveat.

Mr. Parag P. Tripathi, learned senior counsel appearing for the petitioner, Smt. Charu Kishor Mehta, submitted that there has been protracted litigation between the parties, which has also affected the working of the Trust and that one of the reasons for such litigation was the fact that the Trust Deed had not been interpreted in its fullness by any Court or other appropriate forum. Mr. Tripathi submitted that the purpose of filing the Originating Summons was that such an interpretation should

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be made, so that the disputes between the parties could be settled once and for all.

However, the learned Single Judge, who heard the Originating Summons, was of the view that though the proceedings were maintainable, they could not be decided without taking evidence and having regard to the various issues pending in various proceedings. He, accordingly, dismissed the Originating Summons, against which two appeals were preferred, one by the present petitioner and the other by the Trust and some of the Trustees.

The appeal preferred by the Trust and the Trustees is with regard to the finding of the learned Single Judge regarding the maintainability of the proceedings. The appeal preferred by the petitioner herein is with regard to the dismissal of the Originating Summons proceedings, despite the finding that the same were maintainable.

We are inclined to agree with the submissions advanced by Mr. Parag P. Tripathi that the Trust Deed requires interpretation one way or the other.

Since the matter is pending before the appeal court in the Originating Summons Suit, it would be appropriate if the documents could be interpreted by the appeal court, subject to the question raised on behalf of the Trust and the other Trustees regarding the maintainability thereof and whether the court can at all exercise its discretion in the matter.

Andhyarujina and Mr. Ranjit Kumar, learned senior counsel, and Mr. Prateek Sekcaria, learned counsel, we are of the view that the appeals should be taken up and disposed of within a time bound programme, so that there is no further delay in deciding the matter.

We, accordingly, dispose of the special leave petition with a direction to the Division Bench, which is in seisin of the two appeals, to take up the appeals and first of all to decide the appeal preferred by the Trust and the Trustees, for determining the maintainability of the proceedings taken by the petitioner, Smt. Charu Kishor Mehta, by way of Originating Summons. If the Division Bench comes to the conclusion that the proceedings are not maintainable, that will put an end, not only to the appeal preferred by the Trust and the Trustees, but also the appeal filed by Smt. Charu Kishor Mehta. If, however, the Division Bench comes to the conclusion that the proceedings are maintainable, then in that case, the Division Bench will consider whether it will exercise its jurisdiction and also proceed to interpret the Trust Deed executed by Kirtilal Mehta on 5th July, 1978.

In the interest of the Charitable Trust, which runs one of the best hospitals in Mumbai, and the public, who are the beneficiaries thereof, the exercise to be undertaken, should be completed within three months from the date of communication of this order.

We make it clear that any observation made in this order shall not in any way influence the outcome of the proceedings before the Division Bench.

There will be no order as to costs.

(Chetan Kumar)
Court Master

(Juginder Kaur)
Assistant Registrar