

ITEM NO.301

COURT NO.6

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 3772/2014

(Arising out of impugned final judgment and order dated 04/02/2014 in CA No. 329/2014 in WP No. 735/2014 passed by the High Court of Judicature at Bombay)

KISHOR K MEHTA

Petitioner(s)

VERSUS

REKHA H SHETH & ORS

Respondent(s)

(With application for directions, exemption from filing official translation, modification and permission to file additional documents and office report)

WITH

SLP(C) NO. 3579/2010

[CHARU KISHOR MEHTA V. CHETAN P. MEHTA & ORS.]

(With application for condonation of delay in filing SLP and directions and vacating interim order)

SLP(C) NOS. 40005-40006/2012

[CHARU K. MEHTA V. LILAWATI KIRILAL MEHTA MEDICAL TRUST & ORS.]

(With application for directions, permission to file additional documents, seeking permission to implead more respondents)

SLP(C) No...../2013 CC 12917

[CHARU KISHOR MEHTA V. RANJIT VAGHANI & ORS.]

(With application for condonation of delay in filing SLP)

Date : 12/04/2016 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s)

Mr. Shanti Bhushan, Sr. Adv.
Mr. Yashank P. Adhyaru, Sr. Adv.
Mr. Kartik Seth, Adv.
Mr. Abhisar Bairagi, Adv.
Ms. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Mr. Pallav Palit, Adv.
For M/s. Khaitan & Co., Advs.

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| For Respondent(s) | Mr. Shyam Divan, Sr. Adv. |
| For RR 5 | Ms. Sangeeta Bharti, Adv. Mr. Krishanu Adhikary, Adv. Mr. Suhaas Ratna Joshi, Adv. Mr. Ajay Kumar, A.O.R. |
| For State | Mr. Mahaling Pandarge, A.G.A. Mr. Aniruddha P. Mayee, A.O.R. Mr. Sella Kumar, Adv. |
| For Interim Board | Mr. Rohit Sharma, Adv. Mr. B. Subrahmanya Prasad, A.O.R. |
| For RR 9 & 10 | Mr. Kush Chaturvedi, A.O.R. |
| For RR 1 | Dr. Ashwani Kumar, Sr. Adv. Mr. Ashish Kumar, Adv. Ms. Prerna Mehta, A.O.R. |
| For RR 6 | Mr. Jayesh K. Ashar, Adv. Mr. Sandeep Gupta, Adv. Mr. Tushar Titoriwala, Adv. Ms. Rekha Pandey, A.O.R. |
| For RR 17 | Ms. Yugandhara Jha, Adv. Mr. Kunal Verma, A.O.R. |
| For RR 3 | Mr. Niket V. Mehta in person Mr. Manoj K.Mishra, A.O.R. Mr. Umesh Dubey, Adv. Ms. Meghna Kalra, Adv. |
| For RR 11 | Mr. Vivek Tankha, Sr. Adv. Mr. Anil Kumar Mishra, A.O.R. |

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

SLP(C) NO 3772 of 2014

Heard Mr. Shanti Bhushan, learned senior counsel for the petitioner, Kishore K. Mehta, and Dr. Ashwani Kumar, Mr. Shyam Divan and Mr. Vivek Tankha, learned counsel for respective parties.

The challenge in this Special Leave Petition is to the interlocutory order in an application namely, Civil Application No. 329 of 2014 with Civil Application No. 328 of 2014 in Writ Petition No. 735 of 2014 dated 4th February, 2014, in and by which the Division Bench of the High Court pending writ petition filed by the 11th respondent herein who is none other than the wife of the petitioner ordered notice. While the 11th respondent's prayer in the writ petition was manifold, the present petitioner applied for interim relief to assert his status as a permanent Trustee of the Trust called Lilavati Kirtilal Mehta Medical Trust.

When this present Special Leave Petition was moved, pending disposal of the Special Leave Petition by an order dated 21st May, 2014, thought it fit to constitute an Interim Board of Trustees comprising of two undisputed permanent or life term Trustees namely, 11th respondent herein and the first respondent along with Mr. Justice J.N. Patel, Former Judge of the Bombay High Court who was also Former Chief Justice of the Calcutta High Court as the Chairman. It was specifically directed therein that he will have the power to convene meetings of

the Board of Trustees as and when it was required to be held for transacting any business including the passing of budgets. The Management of the Lilavati Hospital and the staff of the Trust were directed to cooperate and assist Justice J.N. Patel in the work of the Trust in all respects.

The said Interim Board thus continued till this date. In the meantime, subsequently, when we heard the respective counsel it came to light that the issue relating to the status of the petitioner as well as and other persons who claimed themselves to be the Trustees of the above referred to Trust was pending consideration before the Charity Commissioner of Mumbai in different Change Reports. It was also noted that of various Change Reports, Change Report Nos. 1466, 403, 1467, 1564 and 1565 of 2006 were crucial Change Reports which would determine the status of the petitioner as well as other persons whose claim to function as Trustees was the subject matter of consideration. We, therefore, in our order dated 9th September, 2014, held that as directed by the High Court in its earlier order passed by the High Court specifically directing the Charity Commissioner to dispose of

the Change Reports, the above referred to Change Reports some were not disposed of within the time stipulated by the High Court should be disposed of. Therefore, in order to ascertain the status of the petitioner as well as other persons, we thought it fit to direct the Charity Commissioner to specifically assign the task of disposing of the above Change Reports to one particular Assistant Charity Commissioner who has now passed his orders on 27th January, 2016, and disposed of five Change Reports.

Insofar as petitioner's status is concerned, Charity Commissioner has held as under in his order dated 27th January, 2016:-

"122. In the Trust Deed, of Section 14, for his convenience, by meaning the Reporting Trustee has taken said action. In fact, as per Section 47(1)(B), since the rights have been conferred to Hon. Charity Commissioner, to remove the Trustees, in Section 14 of Trust Deed, those rights are not conferred to the Trustees. Because any Charity Trust is not large than law definitely. Upon any Trust, while taking such action or before taking action, to that Trustee, opportunity should be given to state his say, since such intention is of the founder, in Section 14 of Trust Deed, those rights are not conferred to the Trustees. Because any Charity Trust is not large than law definitely. Upon any Trust, while taking such action or before taking action, to that Trustee, opportunity should be given to state his say, since such intention is of the founder, in Section 14 of Trust Deed, if the Trustee is out of India for more than 12 months'

period, then the rights to remove him are not conferred to her Trustees. As per Section 16 of Trust Deed, Shri Kishor is permanent life long Trustee. So also, the rights to remove him from the post of Trustee, as Section 47(1)(B) of Maharashtra Public Charity Trust, are there to Charity Commissioner. From the above all explanations, as per the principle of possibilities and impossibilities, when considered, objection holder Shri Kishor Mehta had obtained the permission for remaining absence, this has been proved by him, this becomes clear. Therefore, as regards to all above explanations, the answer of Issue No. 3 is negative and answer of Issue No.4 is being given positive/affirmative."

Inasmuch as the status of the petitioner has now been ascertained by the Statutory Authority namely, Assistant Charity Commissioner, we find that the function of the Interim Board need not be continued any further leaving it open for the Trust and its Trustees to take care of its functions. With that view, we disband the Interim Board constituted by our order dated 21st May, 2014, leaving it open for the Trust and its Trustees to take care of its interests and operation.

Having regard to the present order, which we now pass and dispose of the Special Leave Petitions, it is open for the High Court to dispose of the Writ Petition depending upon its diary. It is also open to anyone who is aggrieved by the

order of the Assistant Charity Commissioner dated 21st January, 2016, to work out their remedy in the manner known to law. We only request that in the interest of the Trust, the Charity Commissioner shall take appropriate steps for disposing of all other pending Change Reports as expeditiously as possible, preferably within six months.

In view of the disposal of the Special Leave Petition, all the pending applications stand disposed of.

While disbanding the Interim Board, we appreciate the constructive service rendered by Hon'ble Mr. Justice J.N. Patel and we direct the Trust to ensure that all his pending bills are settled within a period of four weeks.

By our order dated 30th March, 2016, pending further orders, we gave directions to extend the appointment of the Consultant/Medical Officers/Doctors till 31st December, 2016. In the light of the disposal of the Special Leave Petition, we only state that such extension shall continue to remain till 31st December, 2016 and the Trustees can take any decision for their further continuation by passing appropriate orders which will come into

effect only on and from 1st January, 2017.

CONTEMPT PETITION (CIVIL) NO.217 of 2016

No merit in the contempt petition. It stands closed.

REST OF THE MATTERS

De-tag the matters and list them in usual course.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER