Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 452 OF 1989
WITH
CIVIL APPLICATION (ST) NO. 2457 OF 2018
WITH
CIVIL APPLICATION NO. 5636 OF 1989

Pimpri-Chinchwad Municipal Corporation & Ors. .. Appellants

Versus

Lokmanya Medical Foundation, Public Trust & Ors. .. Respondents

.....

- Mr. Sandeep Shinde a/w Mr. Jayvardhan Hajare, Ms. Riddhi Gurav, Advocates for Appellants.
- None present for Respondents.

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 27, 2026

JUDGMENT:

**1.** Heard Mr. Shinde, learned Advocate for Appellants. None present for Respondents.

**2.** This Second Appeal assails order dated 10.02.1989 passed by the IV Additional District Judge, Pune (for short '**Appellate Court**') in Civil Appeal No.436 of 1987, copy of which is appended at page No.14 of Second Appeal. Special Civil Suit No.410 of 1984 was filed by Plaintiffs in the Court of II Joint Civil Judge, Senior Division Pune seeking declaration that the Plaintiff institution is a charitable trust and exempted from payment of property taxes under Section 132(2)



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of the Bombay Provincial Municipal Corporation Act, 1949 (for short '**BPMC Act**').

**3.** By Judgment dated 27.03.1987, Suit was dismissed by Trial Court refusing to declare Plaintiff as Charitable Trust. By Judgment dated 10.02.1989, First Appeal filed by Plaintiff was allowed by the learned IV Additional District Judge, Pune that Plaintiff institution was exempted from payment of property tax under Section 132(2) of the BPMC Act. Hence Defendant Corporation filed the present Second Appeal.

**4.** Appellant is original Defendant No.1 - Municipal Corporation and Respondent Nos.1 to 8 are original Plaintiff Nos.1 to 8. Plaintiff No.1 is the Institution / Trust which runs the hospital and Plaintiff Nos.2 to 8 are its trustees. For brevity, parties are referred to as Plaintiffs and Defendants hereinafter.

**5.** Civil Application (ST) No.2457 of 2018 filed on 19.11.2026 is filed by Defendant Corporation seeking direction to Plaintiff to deposit the entire amount towards "Property Taxes" excluding general tax till date of filing of the Application and to continue to pay Property Taxes till final disposal of present Second Appeal. Civil Application No.5636 of 1989 is filed by Defendant for seeking stay on execution of the impugned judgement dated 10.02.1989 passed by the Appellate Court.



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**6.** On 17.06.1989, this Court admitted the Second Appeal and framed the following substantial questions of law:-

(i) Whether the First Appellate Court was right in holding that the Plaintiff trust is entitled for exemption clause in taxes of Section 132 of BPMC Act merely because it is registered as a charitable trust?

(ii) Whether the Plaintiff trust which is registered as a charitable trust is entitled for exemption from paying property taxes as per the provisions of Section 132 of BPMC Act, though it is not carrying out any of the charitable activities in its real sense?

(iii) Whether the impugned decree passed by the First Appellate Court is binding on the Appellant – original Defendant in view of the question of maintainability of the Suit under Section 406 read with Section 2(29) of the BPMC Act?

**7.** Briefly stated, Plaintiff No.1 institution - Lokmanya Medical Foundation is a Public Charitable Trust registered with the Charity Commissioner, Pune. Plaintiff No.1 runs a hospital and College. Plaintiff's hospital had accommodation for 50 indoor patients at the then time and 15 separate departments giving free medical treatment



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to patients. Plaintiff Trust is also involved in providing medical services in rural areas viz., health education, conducting camps for ENT treatment, providing conveniences such as research centre, ambulance service, blood banks, etc., to patients at meagre rates. It is stated that the building housing Plaintiff's hospital is predominantly used for charitable purposes only and not for any other business / profitable purposes. Plaintiff's hospital runs on grant-in-aid received from Government and donations received from the public.

**7.1.** As per section 132(2) of the Bombay Provincial Corporation Act, 1989, Charitable institutions are exempted from payment of property tax. Inspite of this situation, Defendant - Corporation vide notice dated 04.09.1982, demanded house tax of Rs.11,860/- plus Rs. 297/- towards fee tax, Rs. 7920/- towards education cess plus surcharge of Rs.1980/- and Rs.5/-towards notice charges totalling to Rs. 22,082/-. Plaintiffs replied to the notice on 16.12.1982 requesting exemption. On 16.03.1983 Defendant No.1 threatened that taxes would be recovered by attaching Plaintiff's hospital property. Defendants informed Plaintiffs on 2l.03.1983 that Plaintiff is not a charitable institution / hospital and therefore it cannot be exempted from paying taxes.

**7.2.** Therefore, on 21.03.1983 Plaintiffs deposited amount of Rs. 7000/- and on 25.03.1983, further amount of Rs.15082/- under



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protest and instituted Civil Suit seeking a declaration that Plaintiff's hospital / institution is a charitable entity registered under the Public Trust Act and is exempted from payment of any property taxes under Section 132(2) of the BPMC act.

**8.** Mr. Shinde, learned Advocate for Defendant No.1 – Corporation would submit that the impugned judgment passed by the Appellate Court is baseless, bad in law, passed without due consideration of material on record and deserves to be set aside. He would submit that the First Appellate Court erred in holding that Plaintiff's institution is solely used for charitable purposes and hence entitled to exemption from payment of property tax. He would submit that Appellate Court failed to appreciate that activities carried out by Plaintiff in the institution building in question were not at all charitable activities and merely registration of its trust being a charitable trust did not automatically entitle it to seek benefit of exemption from payment of property tax under Section 132(2) of the BPMC Act and the same amounts to evasion of taxes since activities carried out by Plaintiff's hospital are not charitable in its real sense.

**8.1.** He would argue that Appellate Court failed to appreciate that exemption from payment of property taxes cannot be extended to cases where the predominant activity carried out by the institution / trust is commercial / profitable in nature even though if the said trust



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was registered as a charitable trust. He would submit that the test for determination of liability to pay property taxes is the nature and measure of the activities and services provided by the trust hospital to distinguish itself from a commercial activity so as to be entitled to exemption from payment of property tax. He would submit that by virtue of its registration as Charitable trust Plaintiff No.1 has taken undue advantage thus leading to evasion of property taxes. In sum and substance he would submit that Plaintiff No.1's hospital charges humongous fees for treatment of indoor and outdoor patients and therefore it stands outside the purview of exemption entitled under Section 132(2) of the BPMC Act. He would persuade me to consider the evidence on record which has been duly appreciated by the trial Court in the first instance.

**8.2.** He would submit that the First Appellate Court ought to have held that it was an attempt to evade payment of property taxes by Plaintiff under the guise of its registration as a charitable trust, though the voluminous evidence on record showed and established that activities carried out by the said trust were not in the nature of charity but were profiteering and it was not entitled for any of the reliefs as prayed. He would submit that the First Appellate Court ought not to have disturbed the well reasoned findings recorded by the trial Court. He would submit that the First Appellate Court failed to appreciate



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that for seeking exemption from payment of property tax it is obligatory on the institution or trust to establish that its functions and operations are solely charitable and not merely its registration as a Charitable Trust and in the instant case the Plaintiff - trust failed to establish that its functions are solely charitable and failed to establish the basic ingredient and requirement of Section 132 of the BPMC Act which expressly bars exemptions.

**8.3.** He would submit that the First Appellate Court failed to appreciate that it is only such a Judge as mentioned in Section 406 of the BPMC Act who could decide the question regarding the payment of municipal taxes which impliedly includes the right to seek exemption as contemplated under Section 132 of the BPMC Act and not any other Court or authority. He would submit that in the instant case Plaintiff - trust has not approached the said forum and chosen to file civil Suit which in law cannot decide the real question in dispute and/or which has no jurisdiction to try and decide the question in dispute under the Act and on this ground alone the impugned Judgment and decree of the Appellate Court is liable to be quashed and set aside.

**9.** I have heard Mr. Shinde, learned Advocate for Appellant and perused the entire record of the case with his able assistance. Submissions made by the learned Advocate at the bar have received due consideration of the Court.



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**10.** At the outset, it needs to be noted that Plaintiffs have sought a declaration that it is a Charitable Institution and as a consequence thereof exempted from payment of property tax with regard to its hospital building. They have not raised any dispute regarding payment of property tax and hence Section 406 of the BPMC Act would not apply.

**11.** In the present case, it is seen that the principal contention of the Defendant is that it is not enough for the Plaintiffs to show that it is a Charitable trust, but Plaintiffs must prove that it is also functioning as a Charitable institution because evidence led on record showed that Plaintiff makes profits and is gainfully running the hospital and therefore the declaration asked for ought not to have been granted by the First Appellate Court. The record shows that Plaintiffs led evidence of its witnesses and placed on record a multitude of documents evidencing the activities and operations of its hospital in support of its claim. However, the Defendant – Corporation did not lead any evidence in rebuttal to prove its claim / charge.

**12.** On perusal of record of the case and detailed witness statement of Dr. Vaidya appended at page No.71 of Second Appeal, it is seen that Plaintiff trust is involved in doing the work of giving medical relief and also medical education to the people at large. It is seen that there are about 35000 families of the industrial workers attached to this trust. It



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is seen that Government pays only Rs.5 per family per year to the trust under the contract. It is seen that against this amount of Rs.5, the trust is rendering effective services to the employees under the ESIC Scheme like running a casualty centre where emergnecy or otherwise accident cases from the industries are treated where about 500 to 600 cases per month are handled. It is seen that Plaintiff trust conducts family welfare camps and centres recognized by the government totally free of charges. It is seen that about 700 cases are treated every year in such camps and centres. It is seen that at that time there were 60 beds in the hospital, out of which were 15 reserved for maternity ward and offered free of charge. It is seen that Plaintiffs give free Medical aid to the people according to their families' earning for which they have special schemes and schedule of charges for different income groups. It is seen that Plaintiffs have been conducting various Medical camps from time to time and giving medical aid and treatment, also running family planning centres recognized by the government. It is seen that Plaintiffs also conduct exhibitions, lectures, allied education for medical purposes and run ambulance service alongwith X-ray and pathological investigation facilities. All this is borne out of oral and documentary evidence which is proved in accordance with law by the Plaintiffs and is not disturbed or shattered by the Defendant – Corporation.



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**13.** Furthermore, it is seen that Defendant contended that Plaintiff trust charges some amount to patients and earns some profit from the medical shop. In that regard, it is observed that it is an admitted fact that Plaintiff charged Rs.1/- per kilometer for its ambulance service. Apart from aforesaid observations, it is seen that the First Appellate Court also verified the fact that Charity Commissioner as an appropriate authority had already held that Plaintiff is a charitable trust. It is also seen from the evidence which is appreciated by the Appellate Court that Plaintiff trust / hospital is run on grant-in-aid, donations and meagre income from the patients which is why it was running in loss as per recorded witness statement of Dr. Vaidya.

**14.** It is evident from the record that Defendant's contention that Plaintiff did not provide free treatment to anyone and charges higher rates for medical treatment does not, by itself, negate the charitable nature of the Plaintiff's activities. Defendant did not lead any evidence in support of this charge. Therefore, Defendant's contention that Plaintiff institution is not a charitable trust is unsustainable. This is particularly so because Plaintiff has produced the rate card in evidence demonstrating that only nominal charges are levied on patients. On the contrary, Defendant have neither substantiated its allegations by producing any supporting evidence nor rebutted the evidence adduced by Plaintiff. Defendant did not even step into the witness box before



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the Trial Court to establish its allegations. It is a settled principle of law that an Appellate Court cannot permit a party to introduce new evidence at the appellate stage to fill the lacunae in its case, particularly when Defendant had failed to step into the witness box before the Trial Court to rebut the evidence adduced by the Plaintiff.

**15.** In view of the above observations and findings, I am of the opinion that answer to the first and second question of law is in the affirmative. The Appellate Court was right in holding that Plaintiff trust is entitled for exemption under Section 132(2) of BPMC Act not merely because it is registered as a charitable trust but on account of its wholly charitable activities according to its deed of settlement. It is seen that the Appellate Court has correctly observed that there is abundant evidence on record to prove that Plaintiff trust was doing charitable work and the work is as per the Trust Act.

**16.** Insofar as the third question of law is concerned, I am of the opinion that the impugned decree passed by the First Appellate Court is binding upon the Appellant–original Defendant. As regards the question of maintainability of the Suit under Section 406 read with Section 2(29) of the BPMC Act, it is evident that, although the dispute involved in the Suit relates to tax and assessment, the Plaintiff has instituted the Suit seeking a declaration that the Plaintiff institution is a charitable trust. Therefore, the Suit is clearly maintainable.



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**17.** In that view of the matter, the judgment passed by the First Appellate Court does not suffer from any legal infirmity and therefore I answer all three substantial questions of law as framed for adjudication vide order dated 17.06.1989 in the affirmative. Hence, the judgment dated 10.02.1989 passed by the First Appellate Court is upheld by this Court.

**18.** Second Appeal is dismissed and disposed in the above terms. In view of disposal of Second Appeal, pending Civil Applications are also disposed thereof.

[ MILIND N. JADHAV, J. ]

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