

THE SUPREME COURT OF INDIA

Petition for Special Leave to Appeal (Civil) No. 9732 of 2011

(From the Judgement and Order dated 11-3-2011 passed by the High
Court of Judicature at Bombay in Appeal No. 256 of 2010 In Originating
Summons No. 1909 of 2009 In Suit No. 3091 of 2009)

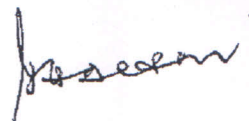
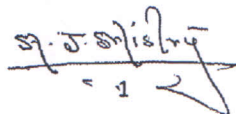
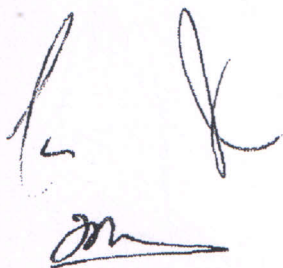
Parsi Punchayet Fund and Properties & Ors. ... Petitioners

Versus

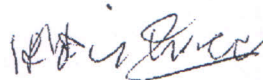
Jamsheed Kanga & Anr. ... Respondents

With a view to amicably settle the differences between the Petitioners and the Respondents the parties submit the following Memorandum of Compromise and request this Hon'ble Court to pass orders in terms of the same.

- 1) It is clarified that the issues in this litigation between the Petitioners and the Respondents are limited to the Doongerwadi Complex and the 2 Agiaries of the Petitioners and do not extend to any other property of the Petitioners.
- 2) It is clarified that the issues in this litigation between the Petitioners and the Respondents are not regarding the powers, rights or duties of the High Priests or their authority over religious matters. In the event of any disputed religious conduct by any priest within the aforesaid 2 Agiaries and / or Doongerwadi Complex, the opinion/s of the High Priests may be sought and considered.
- 3) The Petitioners state that they are Trustees of a Religious and Charitable Trust and have been vested with the Doongerwadi Complex (Towers of Silence) and the two Agiaries (Fire Temples).



A.R. Tiwari

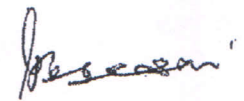
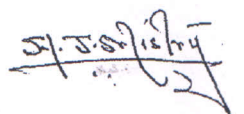


- 4) It is agreed that the Petitioners as Trustees shall permit and suffer the use of the Doongerwadi Complex by every Parsi Zoroastrian, who opts for the Dokhmenishini system, as a place for exposure of a deceased Parsi Zoroastrian and for the performance of Zoroastrian religious rites and ceremonies, carried out as per Parsi-Irani customs, by using a duly ordained Parsi Zoroastrian priest of his/her choice. Without in any manner limiting the aforesaid right of every Parsi Zoroastrian for appointing a priest of his/her own choice, only for Ervad Framroze Mirza and Ervad Khushroo Madon, an option will be given to these two priests to file an affidavit/undertaking that they will only perform the funeral and four days after death ceremonies and the Farrokhshi Ceremony for the Farvardin Parab each year, for the deceased members of their immediate family, who opt to be consigned to the Dokhmas (Towers of Silence) in accordance with the Dokhmenishini system. In the event of their failing to file such an Affidavit/Undertaking, they are not entitled to perform any religious rites and ceremonies at the Doongerwadi Complex and/or at the two Agiaries of the Petitioners. As a consequence, the ban notice dated 11.09.09 put up at the Doongerwadi Complex will be replaced with a notice in terms of Para 4 herein.
- 5) It is agreed that the Petitioners as Trustees are entitled to employ any duly ordained Parsi Zoroastrian priests of their choice at the Doongerwadi Complex and the 2 Agiaries vested in them.
- 6) It is clarified that the issue, as to how a duly ordained Parsi Zoroastrian priest ceases to be a priest, did not arise in this litigation between the Petitioners and the Respondents. It is also clarified that the issue of 'conversion' did not arise in this




A.R. Triandaz



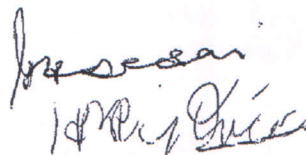

H. H. in Trust


litigation between the Petitioners and the Respondents. Any observations on these two issues shall be treated as *obiter* and shall not be binding on the Petitioners.

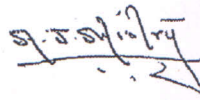
- 7) The Petitioners are not claiming the power to decide that a duly ordained Parsi Zoroastrian priest ceases to be a priest.
- 8) By and under the Deed of Trust of 25th September 1884 governing the Doongerwadi Complex (including the Sagdi) and the Godavara Agiary, as also the Jokhi Agiary, (collectively referred to as "the Trust Property") the Petitioners as Trustees have powers and duties pertaining to the religious and secular activities of this Trust. It is clarified that the Respondents do not seek to restrict these powers and duties to less than what the said Deed provides, and similarly the Petitioners as Trustees are not seeking to expand the scope of the Trustees powers and duties beyond the said Deed of Trust of 1884.
- 9) It is agreed that the Petitioners as Trustees have full power to regulate the performance of religious rites and ceremonies in the Doongerwadi complex and the aforesaid 2 Agiaries and accordingly can take suitable action including exclusion against any priest who, within the Trust Property, does any act contrary to religion or misconducts himself. The Petitioners as Trustees have powers and duties to ensure that a priest charge-sheeted or convicted of an offence involving moral turpitude should not be allowed to conduct prayers at the Doongerwadi complex and the aforesaid 2 Agiaries, unless such charge-sheet is dismissed or conviction set aside.
- 10) Suit (O.S.) No 511 of 2007 (Jamsheed Kanga V/s. Minoo Shroff), which is pending in the High Court of Bombay is dismissed as withdrawn.



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A.R. Tiandaz

11) The observations and findings in the impugned judgment dated 11th March 2011 relating to the conduct of Petitioners 2 to 8 are set aside.

12) The decision of the Division Bench on the issue of maintainability of the Originating Summons shall not act as a precedent in other matters.

13) Save and except as modified above, the Judgment of the Hon'ble Bombay High Court stands. In case of any inconsistency between the Terms of Settlement and the Order of the Division Bench of the High Court, the above Terms shall prevail over the said Order.

14) There shall be no order as to costs.

Note: The above Memorandum of Compromise is subject to withdrawal of SLP No. 6664 of 2011, presently pending in the Supreme Court of India. The said SLP will be withdrawn by the petitioners¹ in terms of the following statement:

"Since the judgement under appeal does not deal with the rights and powers of the High Priests, and there is a settlement between the Trustees of the Bombay Parsi Punchayet and the Respondents, the Petitioners¹ are herewith withdrawing their Special Leave Petition."

¹ i.e. the High Priests

Dated this _____ day of February, 2015

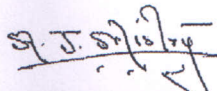
Parsi Punchayet Funds and Properties
Petitioner No. 1

Dinshaw R. Mehta
Petitioner No. 2 (Chairman)

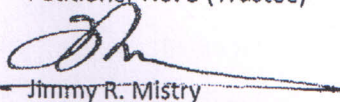
Jamsheed Kanga
Respondent No. 1

Homi Khusrokhhan
Respondent No. 2

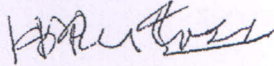
A.R. Tiwari



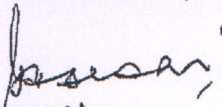
Arnawaz J. Mistry
Petitioner No. 3 (Trustee)



Jimmy R. Mistry
Petitioner No. 4 (Trustee)

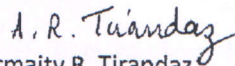


Khojeste P. Mistree
Petitioner No. 5 (Trustee)

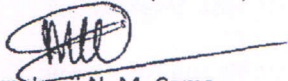


Yazdi H. Desai
Petitioner No. 6 (Trustee)

Noshir M. Dadrawala
Petitioner No. 7 (Erstwhile Trustee)



Armaity R. Tirandaz
Petitioner No. 8 (Trustee)



Muncherji N. M. Cama
Trustee of Petitioner No. 1

M/s. Karanjawala & Co.

Partner
Advocates for the Petitioners

M/s. Gagrat & Co.

Partner
Advocates for the Respondents

