

CIRCULAR NO. 258

Subject :- Recognized agent through whom a party may appear in an inquiry under the Bombay Public Trusts Act, 1950, Circular No. 23 Dated 10th August, 1952.

In accordance with the Circular No.23 it was mentioned that the Chartered Accountant or any other person, (other than a Pleader) can appear in any inquiry under the Bombay Public Trusts Act, 1950 as recognized Agent only on production of a Power of Attorney on properly stamped paper. Many subsequent decisions of various Courts have now mollified the effect of the Circular on various grounds and hence the Circular should be treated as cancelled. Reasons which can be summarised from the various decisions of the Courts are given herebelow for easy reference and guidance of all the Regional Officers.

2/- Firstly although Rule 7 of the Bombay Public Trusts Rules, 1951 prescribes that a party may appear in person or by his recognized agent or by a pleader duly appointed to act on behalf, the term "Recognized Agent" as mentioned in Order 3 Rule 1 of the Civil Procedure Code-1905 was not distinguish when original circular was issued. Subsequently as per decision of the High Court of Bombay in the case of Ashwin Shambhu Pran Patel V/s National Rayon Corporation Ltd. (AIR 1955 Bombay 262=57 DLR 209) order 3 does not deal with the right of audience in the Court, right to address the court, or a right to examine or cross examine witnesses as there acts for a part of pleadings. Thus the said Order deals with restricted class of acts in connection with the litigation in the Court and it is with regarding to the restricted class of acts that Order 3 persists recognized agent to be appointed.

3/- There are several other decision which could be from the point of view of a distinction between recognized a pleader as per Order 3 of Civil Procedure Code.

4/- Section 32 of Advocates Act 1961 (Act No.25 of 1961) provides that any Court, authority or person may permit any person not enrolled as an Advocate under the Act to appear before it or in any particular case. it has been laid down in the case of Mohar H. Punjabi V/s Vachha & Company reported in 1983 Maharashtra Law Journal page 895 that although it is open to an authority to permit any person other than Advocate to appear, certain restrictions are to be observed before a party applies for such permission. Th

it to prevent persons not qualified for appearing. It is open to the authority to grant or withhold permission in its discretion or withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and variety of other circumstances must be gathered before grant or refusal of permission. The above words of Justice Krishna Iyer, (Harishankar Rastogi V/s Girdhari Sharma & another AIR 1978 Supreme Court 1919) are reproduced herein for guidance and accordingly it is to be borne in mind that the person who is to be permitted as a recognized agent to appear before any authority should be one who is not performing anything in the matter of a professional service in presenting the case of the party. While considering such applications for permitting a person other than an Advocate to appear before the authority it will be the reasons given by the party to show why it is not feasible or convenient for him to engage an advocate or person in his own case and it is only if the authority is satisfied of the reasons that authority may grant permission to the party to be represented by a person other than an Advocate.

5/- Although Deputy/Assistant Charity Commissioners are not Courts under the Bombay Public Trusts Act, 1950 for the purpose of evidence under the Evidence Act the above principle laid down by various decisions will have to be followed as such authorities are Courts within the hearing of Indian Evidence Act. It is thus clear that a professional person cannot be allowed to act or appear before the authority in judicial inquiries, irrespective of the fact whether any inquiry is mentioned or not in Rule 7 of the Bombay Public Trusts Rules, 1951. In accordance with Section 73, 73 A, 74, 74 A of the Bombay Public Trusts Act, 1950 it is obvious that the inquiries under various provisions of the Act are judicial inquiries and hence principles in the above authorities will have to be strictly followed./ The above instructions may, therefore, be followed in supersession of instructions contained in Circular dated 10th August, 1952.

(M.M. Tule)
Charity Commissioner,
Maharashtra State, Bombay.

Bombay
Dated : 11th December, 1986.