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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.438 OF 2015
IN
NOTICE OF MOTION NO.2631 OF 2014
IN
SUIT NO.2150 OF 2014

WITH
CIVIL APPLICATION NO.623 OF 2015
IN
APPEAL FROM ORDER NO.438 OF 2015
IN
NOTICE OF MOTION NO.2631 OF 2014
IN
SUIT NO.2150 OF 2014

Bishop Dr.Elia P. Samuel	...Appellant
V/s.	
The Methodists Church in India & Ors.	...Respondents

Mr.S.K. Shinde i/b Mr.R.V. Govilkar for the Appellant.

Mr.A.Abdi with Mr.Dilip Shinde and Mr.Vishal Kasabekar i/b
Mr.Parmanand Motwani for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 8TH DECEMBER, 2015.

P.C. :-

1. By this appeal from order the appellant has impugned the order passed by the learned trial Judge dismissing the notice of motion filed by the appellant in the suit filed by the appellant herein (original plaintiff), in which the appellant has prayed that the resolutions of the Council of Bishops the Methodist Church in India

dated 27th June, 2014 suspending the appellant as Bishop of the Methodist Church in India and appointing the defendant nos.4 and 6 in his place for the Maharashtra and Gujarat respectively be quashed and set aside and for various other reliefs. The learned trial Judge has dismissed the notice of motion for injunction against the respondents on various grounds.

2. Mr.Shinde, learned counsel appearing for the appellant invited my attention to various provisions of Book of Discipline of the respondent no.1 and more particularly Articles 366, 376, 1263, 1264 and 1265 and would contend that the appellant could be suspended only by Executive Council and not by the Council of Bishops.

3. It is submitted by learned counsel that if this Court is not inclined to accept the submission of the appellant that the suspension of the appellant was in violation of the Book of Discipline, then the enquiry officer who has been appointed by the respondent no.1 should be substituted by any enquiry officer as may be appointed by this Court who may be a retired Judge of this Court. He submits that though the appellant is not attributing any bias against the enquiry officer appointed by the respondent no.1, it would be more appropriate if an enquiry is conducted by an independent person to be appointed by this Court.

4. Mr.Abdi, learned counsel for the respondents invited my attention to some of the provisions of the Book of Discipline and more particularly Articles 1265 and 208(d) and would submit that the appellant being Bishop is also governed by the Book of Discipline and thus cannot challenge the authority of the respondent no.1 to appoint an enquiry officer. He submits that the respondent no.1 has already

appointed an advocate practicing in the Supreme Court as an independent enquiry officer and thus the same should not be substituted by this Court at the instance of the appellant. He submits that the appointment of the enquiry officer is within the powers of the respondents exclusively under the provisions of the Book of Discipline and thus no interference with the power of the respondents to appoint the enquiry officer is warranted by this Court.

5. Learned counsel for the appellant placed reliance on the affidavit in reply filed by the appellant himself as Bishop in Appeal From Order No.393 of 2004 in the High Court of Gujarat at Ahmedabad and submits that the appellant himself had contended that as per the provisions of Article 1265, the Council of Bishops is the "Competent Body" to hold enquiry against a Bishop and the said body is also authorized to suspend a Bishop. He submits that the appellant thus cannot be allowed to raise a plea contrary to his own plea in the affidavit filed before the Gujarat High Court in the cross-objection in Appeal from Order No.393 of 2004. Insofar as the first submission of learned counsel for the appellant that this Court shall interfere with the order of suspension passed by the respondents is concerned, it is strongly opposed by the learned counsel for the respondents.

6. It is not in dispute that the appellant is under suspension since 27th June, 2014. There was no stay of the said suspension order granted by the City Civil Court by way of ad-interim order at the time of passing the order in the notice of motion filed by the appellant. Even in the present appeal from order, though this Court has granted a stay of the enquiry, the order of suspension dated 27th June, 2014 has not been stayed.

7. The respondents have already appointed an enquiry officer on 17th November, 2014. Whether any enquiry could be initiated by the respondents against the appellant or not, the same can be decided by the learned enquiry officer. This Court has not expressed any views on the merits whether the suspension order in the facts and circumstances of the case was valid or not. This Court has also not expressed any views whether the respondents are empowered to appoint any enquiry officer under the Book of Discipline relied upon by the respondents against the appellant and the appellant would be at liberty to challenge the powers of the respondents to conduct an enquiry against the appellant before the learned enquiry officer.

8. If any such issue is raised by the appellant before the learned enquiry officer, the enquiry officer shall decide the said issue along with other issues as may be raised by the parties before him. Since the said order of suspension is in force since 27th June, 2014 and in view of the fact that the enquiry officer has already been appointed, in these circumstances, I am not inclined to accept the submission of learned counsel for the petitioner that the order of suspension dated 27th June, 2014 passed by the Council of Bishops shall be stayed by this Court at this stage.

9. Insofar as the second submission of Mr.Shinde, learned counsel for the appellant that without prejudice to the contention of the appellant that the respondents had no power to appoint any enquiry officer, the enquiry officer be substituted is concerned, I have heard learned counsel appearing for the respondents on this issue at length. Since this Court has not expressed any views as to whether the respondents had power to appoint any enquiry officer or not in the

facts and circumstances of this case, I do not propose to decide the issue whether the enquiry officer appointed by the respondents is validly appointed or not.

10. I am of the view that the party who is facing enquiry should be given a fair opportunity to appear before the enquiry officer. It is made clear that without attributing any bias or *mala-fide* against the enquiry officer appointed by the respondents, it would be more appropriate if a retired Judge of this Court is appointed as an enquiry officer. The appellant has an apprehension that the enquiry officer appointed by the respondents may not be partial. Though I do not accept this allegation or attribute any bias against the enquiry officer, I am of the view that an independent person shall be appointed as an enquiry officer in this case which would not cause prejudice to any party.

11. Shri Justice P.D. Kode, a former Judge of this Court residing at Flat No.702, 7th Floor, Building No.56/B, Chintamani Judges Co-operative Housing Society Limited, Behind Anik Bus Depot, Pratiksha Nagar, Sion Koliwada, Mumbai – 400 022 is appointed as an enquiry officer. The learned enquiry officer shall make an endeavor to dispose of the enquiry proceedings expeditiously with the co-operation of both the parties and not later than three months from today. It is made clear that the fees and expenses of the learned enquiry officer shall be borne by both the parties equally at the first instance. It is also made it clear that no aspersion on the integrity of the learned enquiry officer appointed by the respondents is cast. It is also made clear that this order shall not be treated as a precedent by the appellant or by the respondents or any members of the respondents in future insofar as substitution of

the enquiry officer is concerned by this Court.

12. At the request of learned counsel for the respondents, the operation of this order is stayed for a period of four weeks from today.

13. The appeal from order is accordingly disposed of in aforesaid terms.

14. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)