

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7219 OF 2015

**Jankalyan Foundation
Through it's President
Mr. Abdul Kuddus Abdul Kadar Yadagir and ors. : Petitioners
versus
Jankalyan Foundation
A Public Trust
Through it's Authorized Representative
Mr.Sanjeev Janaki Chaudhari and ors. : Respondents.**

**Mr. S A I Ansari for the Petitioners.
Mr. Jaydeep Deo for the Respondent No.1.**

**CORAM : R. M. SAVANT, J.
DATE : 08th September 2015**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 25/06/2015 passed by the learned District Judge-3, Solapur by which order the Misc. Civil Appeal No.65 of 2015 filed by the Respondent No.1 came to be allowed and resultantly the order dated 26/03/2015 passed by the Trial Court allowing the Application (Exhibit 5) filed in Regular Civil Suit No.576 of 2014 by the Petitioners/Plaintiffs came to be set aside.

2 The Petitioners are the original Plaintiffs who have filed the suit in question for injunction restraining the Respondent No.1 herein from collecting the user charges for the 11 toilet booths which are situated in the city of Solapur. It is the case of the Plaintiffs that Solapur Municipal Corporation has

entered into a contract with it for pay and use of the toilet booths in question. On the ground that the Respondent No.1 i.e. the original Defendant No.1 in the suit is interfering with the said process of collecting the payment for the use of the toilets, that the suit in question came to be filed seeking injunction.

3 In the said suit an application for temporary injunction came to be filed by the Plaintiffs for restraining the Defendant No.1 from collecting the user charges for the said toilet booths. It seems that initially an objection was raised on behalf of the Defendant No.1 i.e. the Respondent No.1 herein as regards the maintainability of the suit on the touchstone of Sections 50 and 80 of the Bombay Public Trust Act, 1950. The said objection seems to have been rejected by the Trial Court by holding that the suit as filed for the reliefs claimed is maintainable. The Respondent No.1 herein i.e. the Defendant No.1 filed its reply to the said application for injunction. It was the contention of the Defendant No.1 in the said reply that it is a public trust registered in Bangalore and therefore is a separate entity with whom the Solapur Municipal Corporation has entered into the agreements for collection of the user charges of the 11 toilet booths which have been constructed by the Respondent No.1 pursuant to the agreements which were entered into between the Solapur Municipal Corporation and the Defendant No.1.

4 The Trial Court considered the said application (Exhibit 5) and by

its order dated 26/03/2015 has allowed the said application. The Trial Court seems to have proceeded on the basis of the change report which was filed in respect of the Plaintiff-Trust by which change report the name of the President one Shri Abdul Kuddus Abdul Kadar Yadgir was sought to be incorporated. The Trial Court curiously did not go into the aspect as to whether the Plaintiff Trust has any right to collect the user charges and whether there was any agreement between the Plaintiffs and the Solapur Municipal Corporation in respect of the construction of the toilet booths and pursuant thereto the collection of the user charges. The Trial Court as indicated above by its order dated 26/03/2015 has allowed the application for temporary injunction.

5 The Defendant No.1 i.e. the Respondent No.1 herein carried the matter by way of Appeal being Misc. Civil Appeal No.65 of 2015 against the said grant of injunction. The Lower Appellate Court on a re-appreciation of the material on record and especially the six agreements which were on page Nos.105, 110, 227, 240, 253 and 267 as also having regard to the fact that the said agreements were executed prior to the registration of the Plaintiff-Trust i.e. prior to 15/02/2006 as also the letter of the Solapur Municipal Corporation dated 07/02/2015 came to a conclusion that the Plaintiff has not produced a single document to connect itself with the said toilet booths whereas the Defendant No.1 has produced the copies of about six agreements entered into between it and the Solapur Municipal Corporation which agreements were all

prior to existence of the Plaintiff Trust. The Lower Appellate Court further held that the change in the management of the Plaintiff Trust is not going to affect the legal position, as the said change has to be ignored as there is no agreement between Solapur Municipal Corporation and the Plaintiff Trust. The Lower Appellate Court has also rejected the contention urged on behalf of the Plaintiff that the said agreements cannot be connected with the 11 toilet booths. The Lower Appellate Court held that on the perusal of the plaint and the agreements, the said contention of the Plaintiff could not be accepted. The Lower Appellate Court was of the view that the Trial Court has missed the basic aspect about the existence of the two distinct legal entities and the fact that the agreements were produced by the Defendant No.1 and not the Plaintiff.

6 In my view, the adjudication by the Trial Court was on a wrong premise of the change in the management of the Plaintiff Trust which the Lower Appellate Court has rightly observed has no connection with the grant of the relief of temporary injunction. The Lower Appellate Court has therefore for cogent reasons upset the order passed by the Trial Court. In my view, having regard to the reasons mentioned by the Lower Appellate Court, which are based on the material on record and especially the six agreements which have been adverted to herein above, as also the letter dated 07/02/2015 addressed by the Health Officer of the Solapur Municipal Corporation to the Police Inspector Sadar Bazar, Solapur, the order passed by the Lower Appellate Court

does not warrant any interference at the hands of this Court in its writ jurisdiction. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed order.