

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.28734 OF 2015

ORDER: (Per Hon'ble Sri Justice A. Shankar Narayana)

Petitioner No.1 is a Trust viz., M/s Satyanarayan Soni Seva Sansthan, Maharajgunj, Hyderabad (hereinafter referred to as 'Trust'), represented by its Secretary Basant Kumar Soni, who is petitioner No.2. They filed the instant writ petition seeking *Writ* of *Mandamus* to set aside the resolution/order, dated 02-08-2012, passed by the Scrutiny Committee, City Civil Court Legal Services Authority, Hyderabad, rejecting the representation dated 19-06-2012, for providing legal services and, consequently, to direct the City Civil Court Legal Services Authority, Hyderabad, for providing 'legal aid' to the Trust in the form of 'Court fee' of Rs.2,74,485/- for instituting suit which is subject matter of O.P. No.459 of 2013 filed *in forma pauperis* pending on the file of the Chief Judge, City Civil Court, Hyderabad.

2. Certain relevant facts are necessary for examining the relief claimed. The Trust is constituted through seven (7) trustees amongst whom, petitioner No.2 is one of the trustees. Amongst the trustees, one of the trustees viz., Hanumandas Soni, alleged to have

instigated chairman of the Trust viz., Satyanarayana Soni supported by other family members of Soni Family and the same lead to execution of a gift settlement deed of the Trust property in favour of Purshottamdas Soni, who is, admittedly, the younger brother of the chairman of the Trust. When unjust interference was said to have made by Purushothamdas Soni and taken possession of the Trust property, Board of trustees said to have passed a resolution, dated 20-01-2010, authorizing petitioner No.2 for taking appropriate action before the competent Court of law to protect the interest of the Trust.

3. It is stated that the petitioners filed O.S. No.147 of 2010 on the file of the learned I Senior Civil Judge, City Civil Court, Hyderabad, for injunction and the same is pending. It is stated that petitioner No.2 filed Application No.2081 of 2010 under Section 51 of the Bombay Public Trust Act before the learned Assistant Charity Commissioner, Nagpur, seeking permission to institute suit for declaration and consequential reliefs against the trustees of the Trust and by the order, dated 15-12-2011, permission was granted. Petitioners, claiming that source of income for the Trust is rental income derived from the Trust property and there is no other means or any other source to meet the legal expenses for instituting the suit to pay Court fee of Rs.2,74,485/- have approached the respondent making a request under Section 12 of "The Legal Services Authorities Act, 1987" (for short 'the Act').

The said request was rejected by the respondent by the order impugned.

4. It is stated that subsequent to rejection of their representation, dated 19-06-2012, the Trust has filed O.P. before the learned Chief Judge, City Civil Court, Hyderabad, under Order - XXXIII Rule -1 of the Code of Civil Procedure, 1908 (CPC) in O.P. No.459 of 2013 and the same is pending since long time due to non-cooperation and dilatory tactics adopted by the respondent and, therefore, constrained to move the instant writ petition invoking jurisdiction of this Court under Article 226 of the Constitution of India seeking the aforesaid relief.

5. Heard petitioner No.2, who appeared as party-in-person on his behalf and on behalf of the Trust (Petitioner No.1), and Sri J. Anil Kumar, learned standing counsel for the respondent, and perused the material on record.

6. Petitioner No.2, as party-in-person, would submit that the case of the Trust falls within the ambit of Clause (h) of Section 12 of the Act and since Sub-section (2) of Section 13 of the Act mandates filing of an affidavit as to the income would suffice to make him eligible to the entitlement of legal services under the Act, unless the concerned Authority has reason to disbelieve such

affidavit, the request to grant legal aid cannot be rejected, and, therefore, the impugned order is unsustainable.

7. The learned Standing Counsel for respondent No.2 supported the order impugned passed by the respondent.

8. For better appreciation, we would like to extract the order under challenge passed by the respondent which is thus:

“Perused the petition. The petitioner is a Trust, seeking free legal aid to file a civil suit and court fee exemption. The learned Government Pleader is sought legal opinion whether to provide free legal aid to a Trust, for which, he gave opinion that petitioner-Trust is not entitled for legal aid. Under Section 12 of the legal Services Authorities Act, 1987 there is nothing prescribed to provide free legal aid to Trusts etc.

Under the above facts and circumstances it is held that the request of the petitioner-Trust is not eligible for free legal aid, as sought for. Accordingly this petition for the free legal aid, is rejected.”

9. The criteria for giving legal aid are provided under Section 12 of the Act. Clause (h) of Section 12 of the Act reads thus:

“(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court

other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.”

10. Sub-section (1) of Section 13 of the Act deals with satisfaction of the concerned authority as to the person who satisfy all or any of the criteria specified in Clauses (a) to (h) of Section 12 of the Act, has a *prima facie* case to prosecute or to defend.

11. Sub-Section (2) of Section 13 of the Act vests power with the concerned authority either to believe as to the income of the person basing on the contents of the affidavit filed by him or to disbelieve such affidavit, if it finds reason to do so.

12. As seen from the order impugned, extracted in the above, the respondent has rejected the request of the petitioners on the ground that a Trust is not eligible for legal aid under Section 12 of the Act as there is nothing prescribed to provide free legal aid to the Trust or trustees etc.

13. We would like to state that the word ‘Trust’ is not occurring in Section 12 of the Act and the said provision refers to the word ‘person’. Clauses (a) to (h) refer to the ‘person’ occurring therein. The contention of the party-in-person is that the word ‘person’ includes a ‘juristic entity’

to sue and be sued falling within the ambit of Sections 12 and 13 of the Act. He has relied on the decision of the Hon'ble Supreme Court in **Union Bank of India v. Khader International Construction and others**^[1] for the proposition that the words 'person' occurring in Order - XXXIII of CPC includes not only natural person but other juristic persons also and requests this Court to apply the same analogy to the words 'person' or 'persons' occurring in Sections 12 and 13 of the Act respectively. Sections 12 and 13 of the Act read thus:

“12. Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is--

- a) a member of a scheduled caste or scheduled tribe;
- b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- c) a woman or a child;
- d) a mentally ill or otherwise disabled person;
- e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- f) an industrial workman; or
- g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile

Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or

- h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

13. (1) Persons who satisfy or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima-facie case to prosecute or to defend.

(2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.”

To assess whether the word ‘person’ occurring in Section 12 of the Act includes juristic person, we intend to refer to the object in enacting Sections 12 and 13 of the Act and the object of enacting Order - XXXIII of CPC. The object in enacting Sections 12 and 13 of the Act is that every person is not entitled *per se* to the legal services but only those sections of the society, weaker socially, economically and otherwise and even the victims of

sexual offences, psychiatric problems, juveniles etc., are covered within the ambit of the Section. In the present context, we would also like to refer to Rule 12 of National Legal Services Authority Rules, 1995 which lays down that 'any citizen of India' whose annual income from all sources does not exceed Rs.18,000/- shall be entitled to legal services under Clause (h) of Section 12 of the Act. The said provision is thus:

"12. The upper limit of annual income of a person entitling him to legal services under clause (h) of section 12, if the case is before the Supreme Court:- Any citizen of India whose annual income from all sources does not exceed Rs.18,000 [Rupees eighteen thousand] shall be entitled to legal services under clause (h) of Section 12 of the Act."

The very same language is employed in enacting Rule 16 of the Andhra Pradesh State Legal Services Authority Rules, 1995.

Rule '16' is thus:

"16. The Upper Limit of Annual Income of a person entitling him to Legal Services under Clause (h) of Section 12, if the case is before a Court, other than the Supreme Court:- Any citizen of India whose income from all sources does not exceed Rs. 15,000/- (Rupees fifteen thousand only) or such higher amount as may be notified by the State Government from time to time, be entitled to legal services under clause (h) of Section 12 of the Act."

Thus, the very expression “any citizen of India” occurring in Rules 12 and 16 of the National Legal Services Authority Rules and State Legal Services Authority Rules would, in our view, make it clear that the words ‘person’ occurring in Section 12 of the Act or ‘persons’ occurring in Section 13 of the Act can be construed to mean that only ‘individual’ or ‘natural person’ is eligible to seek legal services, but does not include ‘institutions’. Further, the Scheme of Order - XXXIII of CPC, in our view, appears to be different from the scheme of Section 12 of the Act. Order - XXXIII prescribes procedure to grant permission to sue without payment of requisite court fee prescribed under the Court Fees Act at the time of presentation of the plaint. But, at the conclusion of the trial, if an indigent litigant succeeds, the fee can be recovered from the opposite party and, if he fails, court fee would have to be paid by him, and if the suit or appeal abates on account of death of indigent plaintiff/appellant, court fee can be recovered from his estate and, thus, revenue is fully protected. Whereas, under Section 12 of the Act, once a certificate is issued providing legal services, there is no provision to recover such aid provided in terms of court fees. Hence, the decision relied on by the petitioners (Supra 1) would not render assistance to them.

14. Even looking from yet another angle, the instant writ petition lacks merit. It is clear from the affidavit

averments that the petitioners having suffered rejection order, dated 02-08-2012, approached the Civil Court by filing an application in O.P. No.459 of 2013, under Order - XXXIII of CPC, which is pending on the file of the learned Chief Judge, City Civil Court, Hyderabad, seeking permission to sue as an indigent person which is, admittedly, at the stage of enquiry. Instead of pursuing the said O.P., after a lapse of three (3) years from the date of passing the impugned order, approached this Court invoking the writ jurisdiction of this Court requesting to set aside the order passed by the respondent by a Writ of Mandamus. Having filed O.P. No.459 of 2013, instead of pursuing remedy before the Civil Court for the very same relief, it is not open for the petitioners to approach this Court invoking the writ jurisdiction. The writ petition is devoid of merit.

15. Therefore, the Writ Petition is dismissed. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, shall stand closed.

R. SUBHASH REDDY, J

**A. SHANKAR NARAYANA,
J**

December 22, 2015.
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[\[1\]](#) AIR 2001 SC 2277