

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.41 of 2012

Subhaniya Anjuman Islamia, Bilaspur (A Society Registered Under the Societies Registration Act, 1860) Acting through Secretary, Abdul Wadood Faridi, S/o Late Shri Abdul Rauf Faridi, R/o Main Road Koni, Tahsil & District-Bilaspur (CG)

---- Petitioner

Versus

1. The Chhattisgarh State Waqf Board, Acting Through its Chief Executive Officer, Sector 3, House No.C-10 Devendra Nagar, Raipur (CG)
2. Ferid Ahamad Qureshi S/o Wakil Ahamad Qureshi, aged about 50 years, Employee of Nagar Palika Nigam, R/o Nigam Colony, Maharana Pratap Square, Bilaspur (CG)
3. Collector, Bilaspur (CG)
4. Sub-Divisional Officer, Bilaspur (CG)

---- Respondents

For Petitioner	:	Mr. K.A.Ansari, Senior Advocate with Mr.M.S.K.Khokhar, Advocate
For Resp.No.1	:	Mr. Prateek Sharma, Advocate
For Res.No.2	:	None present
For Res.No.3 &4	:	Mr.Sameer Behar, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV ORDER

24/06/2016

- 1) Invoking revisional jurisdiction of this Court under Section 83(9) of the Waqf Act, 1995 (hereinafter called as “the Waqf Act”), the petitioner/plaintiff herein has filed the instant revision questioning the legality, validity and correctness of the order dated 25.8.2011 passed by the Chhattisgarh State Waqf Tribunal, Raipur, by which the plaintiff's application filed under Section 94/151 of the

CPC read with Order 39 Rule 1 of the CPC has been partly rejected.

- 2) The petitioner/plaintiff has filed the suit for declaration of title and permanent injunction under Section 83 of the Waqf Act seeking relief that decree for declaration be granted as the order dated 14.6.2011 passed by respondent/defendant No.1 is illegal, without jurisdiction and void. Further relief was claimed that defendants No.1 and 2 be restrained from interfering with functioning of the petitioner/plaintiff herein.
- 3) During pendency of this civil suit, order dated 29.7.2011 was passed under Section 71(3) of the Waqf Act by respondent No.1/defendant No.1 by restraining the petitioner/plaintiff society from operating two bank accounts.
- 4) Application under Section 94/151 read with Order 39 Rule 1 & 2 of the CPC was filed by the petitioner/plaintiff that temporary injunction in the mandatory form be granted to take back the order dated 29.7.2011. The aforesaid application was partly allowed by learned Waqf Tribunal and the petitioner society has been permitted to withdraw a sum of ₹ 10,000/- per month for day-to-day expenses by the impugned order.
- 5) Against which, the present civil revision has been preferred.
- 6) Mr.K.A.Ansari, learned Senior Advocate with Mr.M.A.K. Khokhar, learned counsel for the petitioner, would submit that the aforesaid

order passed by learned Waqf Tribunal is contrary to law. The Waqf Tribunal has committed jurisdictional error in rejecting the application in part.

- 7) On the other hand, learned counsel for respondent No.1 would defend the order and submit that order dated 29.7.2011 has not been assailed in the suit preferred before the Waqf Tribunal and therefore, no temporary injunction can be granted, as such, the revision deserves to be dismissed.
- 8) A bare perusal of the suit filed by the petitioner/plaintiff would show that the petitioner/plaintiff has neither claimed any relief of declaration that memo dated 29.7.2011 is null and void nor claimed relief of permanent injunction against the memo dated 29.07.2011 restraining the petitioner/plaintiff from operating the account and only temporary injunction in mandatory form has been sought by way of interim relief.
- 9) In the matter of **Dorab Cawasji Warden v. Coomi Sorab Warden and others**¹, Their Lordships of the Supreme Court have laid down the law regarding grant of temporary injunction in mandatory form as under:-

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts

¹ (1990) 2 SCC 117

that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines, Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a *prima facie* case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

- 10) Further, Their Lordships of the Supreme Court in the matter of **Metro Marins v. Bonus Watch Co. (P) Ltd.**², followed in **Rikhabsoo Nathusao Jain v. Corporation of the City of Nagpur and others**³ have held as under:-

“9. Having considered the arguments of the learned counsel for the parties and having perused the documents produced, we are satisfied that the impugned order of the appellate court cannot be sustained either on facts or in law. As noticed by this Court, in the case of *Dorab Cawasji Warden v. Coomi Sorab Warden (supra)* it has held that an interim mandatory injunction can be granted only in exceptional cases coming within the exceptions noticed in the said judgment. In our opinion, the case of the respondent herein does not come under any one of those exceptions and even on facts it is not such a case which calls for the issuance of an interim mandatory injunction directing the possession being handed over to the respondent. As observed by the learned Single Judge the issue whether the plaintiff is entitled to possession is yet to be decided in the trial court and granting of any interim order directing handing over of possession would only mean decreeing the suit even before trial. Once the possession of the appellant either directly or through his agent (caretaker) is admitted then the fact that the appellant is not using the said property for commercial purpose or not using the same for any beneficial purpose or the appellant has to pay huge amount by way of damages in the event of he losing the case or the fact that the litigation between the parties

² (2004) 7 SCC 478

³ (2009) 1 SCC 240

is a luxury litigation are all facts which are irrelevant for changing the status quo in regard to possession during the pendency of the suit.”

- 11) Likewise, in the matter of **Mohd. Mehtab Khan and others v. Khushnuma Ibrahim Khan and others**⁴, Their Lordships of the Supreme Court have held that grant of mandatory interim relief requires the highest degree of satisfaction of court; much higher than a case involving grant of prohibitory injunction and states as under:-

“18..... The interim relief granted to the plaintiffs by the appellate Bench of the High Court in the present case is a mandatory direction to hand over possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the court; much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power, the governing principles whereof would hardly require a reiteration inasmuch as the same which had been evolved by this Court in *Dorab Cawasji Warden v. Coomi Sorab Warden* (supra) has come to be firmly embedded in our jurisprudence.”

- 12) Since the petitioner has not claimed any relief in the civil revision for declaration or permanent injunction against the order dated 29.07.2011, no relief larger than what has been claimed in the suit can be granted in the application for interim relief following the law laid down by Supreme Court in above mentioned judgment, I do not

⁴ (2013) 9 SCC 221

find any jurisdictional error in the order impugned passed by the Waqf Tribunal.

- 13) Consequently, the revision being without substance is liable to be and is accordingly dismissed leaving the parties to bear their own cost(s). The Waqf Tribunal is directed to conclude the trial expeditiously preferably within a period of four months from the date of receipt/production of copy of this order.

Sd/-
(Sanjay K Agrawal)
Judge

B/-