IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 87 OF 2016

AKHIL BHARTIYA MARATHI NATYA
PARISHAD AND ANR ...Applicants

Versus

SHRI. PRAMOD RUKHABSAO
BHUSARI AND ORS ...Respondents

....

Ms. Jyoti Chavan, Advocate for the Applicants.
Mr. Jitendra M. Pathade, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 18th FEBRUARY, 2016

P.C.

1. Heard Ms. Jyoti Chavan, learned Counsel for the applicants and Mr. Pathade, learned Counsel for respondent No.1, at length. On the oral motion made by Ms. Chavan, rest of the respondents are deleted as respondent No.1/orig. Plaintiff is the contesting respondent.

2. Rule. Mr. Pathade waives service on behalf of respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the application is taken up for final hearing.

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicants, hereinafter referred to as 'defendants', have challenged the judgment and order dated 21.1.2016 passed by learned Judge, presiding over Court room No.1 of the Bombay City Civil Court at Bombay on preliminary issues in S.C. Suit No.78/2016. By that order, learned trial Judge overruled the objections raised by the defendants and held that the City Civil Court has jurisdiction, but, suit is bad for non-joinder of necessary parties. Learned trial Judge directed the plaintiff to implead the four life trustees within two weeks. If he fails to do so, the Court will pass appropriate order in the suit.

4. Ms. Chavan submitted that in paragraph-3 of the impugned order, learned trial Judge recorded the submission advanced on behalf of respondent No.1, hereinafter referred to as 'plaintiff', that he was the Vice-President of the Executive Committee of the Trust, but, he is illegally removed in the meeting when said subject was not on the agenda of the meeting and plaintiff has only challenged that illegal resolution affecting his civil right. In support of this submission, the plaintiff relied

upon following decisions :

[i] ***Kedar Shivkumar Kale v. Digamber Shridhar Mhapsekar, BCR-2007-4-325; and***

[ii] ***Namgonda Jingonda Patil v. Appasaheb Bapurao Walwekar, (2000) 102 BOMLR 142,*** to contend that the suit is maintainable.

5. In paragraph-5 the trial Judge recorded the submission of the plaintiff that the plaintiff who was Vice-President of the Trust was removed by the other trustee in the meeting of Regulatory body though said subject was not on the agenda of the meeting and with permission of the Chairman that subject was discussed and resolution was passed. Thus according to the plaintiff said resolution is illegal, improper or bad in law. It was further submitted that said resolution was highhandedly passed by other trustees out of bias putting unfounded allegation against him.

6. Ms. Chavan submitted that however learned trial Judge observed in paragraph-5 that said question is not required to be decided right now. She further invited my attention to paragraph-14 of the impugned order, where after

considering the decisions in ***Kedar Kale (supra)*** and ***Namgonda Patil (supra)*** observed that the facts obtaining in the present case are akin to the facts in the case of ***Kedar Kale*** (supra). She, therefore, submitted that without recording any finding as to whether said subject was on the agenda of the meeting of 13.9.2015, learned trial Judge held that the suit is maintainable.

7. Mr. Pathade supported the impugned order. He submitted that though the contentions were specifically recorded in paragraphs-3 and 5 of the impugned order, learned trial Judge observed in paragraph-5 that the question is not required to be decided right now. In other words he submitted that specific contentions were advanced before the learned trial Judge to the effect that the plaintiff was removed as Vice-President of applicant No.1 without following due process of law and said subject was not on the agenda of the meeting. Reliance was also placed upon two decisions ***Kedar Kale (supra)*** and ***Namgonda Patil (supra)***. He submitted that as learned trial Judge has not recorded any finding on this, the impugned order may be set aside. He further submitted that

the parties will appear before the learned trial Judge on 22.2.2016 and learned trial Judge may be directed to dispose of the issue in a time bound manner.

8. In view thereof, by consent of the parties, Civil Revision Application is disposed of in following terms :

[i] The impugned order dated 21.1.2016 is set aside. The learned trial Judge will decide the preliminary issues afresh.

[ii] Parties agree that they will appear before the trial Court on 22.2.2016 and for that purpose no fresh notice be issued to them. Learned trial Judge is requested to deal with all contentions advanced by the parties and decide the preliminary issues as expeditiously as possible and preferably within two weeks from the date of appearance of the parties. All contentions of the parties in that regard are expressly kept open.

[iii] After deciding this preliminary issues, learned trial Judge will proceed to decide the Notice of Motion taken out by the plaintiff for interim relief, subject to decision

on preliminary issues.

[iv] Ms. Chavan states that the applicants will not obstruct respondent No.1 from attending Natya Sammelan as a member of applicant No.1 Akhil Bhartiya Marathi Natya Parishad. Statement made by Ms. Chavan is accepted.

[v] Rule is made absolute accordingly with no order as to costs.

[vi] In view of disposal of main CRA, Civil Application No.110/2016 does not survive and the same is disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)