

Sequeira

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

***SECOND APPEAL NO. 460 OF 2015.
Along with
CIVIL APPLICATION NO. 989 OF 2015
(For stay)***

1. Dr.Rangnath Pandurang Joshi
Age : 61 years, Occupation : service
Residing at 44, Vidyanagari, Parvati,
Pune.

2. Madhukar Narhar Deshmukh
Age : 62 years, Occupation :Service,
R/at -74/b, Opp.Sarang Society,
Sahakarnagar No.2, Parvati,
Pune – 411 009.

3. Pune Vidyarthi Griha
A Society, Office at
1786, Sadashiv Peth,
Pune – 411 030
Through its Secretary-
Dr.Rangnath Pandurang Joshi
Age : 61 years, Occupation : service
Residing at 44, Vidyanagari, Parvati,
Pune 411 009

... Appellants
(Orig.Defendant
Nos.1, 3, & 4
respectively)

Versus

1. Hanmant Ganpati Bhosale
Age : 66 years, Occupation : retired
Residing at Pune Vidhyarthi Griha,

1786, Sadashiv Peth,
Pune – 411 030.

2. Ramchandra Laxman Shete
Age : 64 years, Occupation : service
Residing at Pune Vidhyarthi Griha,
1786, Sadashiv Peth, Pune – 411 030.

3. Krishnaji Narayan Shirkande
Age : 64 years, Occupation : service
Residing at C.T.C. No.218,
'Vidyabhavan' Barister Naith Pai
Nagar, Ghatkopar (East),
Bombay – 400 077

... Respondents
(Orig.Plaintiff
Nos.1 & 2 & Org.
Defendant No.2)

Mr.Ram Apte- Senior Advocate i/b Mr.Saurabh Oka, for Appellants
in S.A No.460 of 2015 and Applicant in C.A. No.989 of 2015.
Mr.S.V.Pitre, for Respondent Nos.1 to 3.

***Coram : N.M. Jamdar, J.
Friday, 5 August, 2016.***

Oral Judgment :-

By way of this Second Appeal, the Appellants challenge the judgment and order dated 2 May 2015 passed by the learned District Judge, Pune in Civil Appeal No.398 of 2014. By the impugned judgment and order, the learned District Judge allowed the Appeal filed by the Respondent No.1 and 2, the original Plaintiffs, and

restored the Civil Suit No.5314 of 2012, setting aside the order dated 14 July 2014 passed by the Civil Judge, Pune, rejecting the plaint.

2. The Respondents-Plaintiffs (Plaintiffs) filed a Regular Civil Suit No.5314 of 2012 in the Court of Civil Judge Senior Division, Pune on 12 June 2012. In the plaint the parties and the activities and functions of Defendant No.4 registered under the Maharashtra (Bombay) Public Charitable Trusts Act, were described. It was stated in the plaint that the Defendant No.4 (the Trust) consists of Governing Body, the Council and the General Body, consisting of senior life members of the Trust. The term of life member was stated to be upto sixty years, extendable by one to five years. It was averred in the plaint that the Plaintiffs are the Chairman and the Treasurer of the Trust. Defendant No.1 was described as the Secretary, Defendant Nos.2 and 3 were described as the senior life members of the Trust. The position of the Council and the manner of functioning of the governing body of the Trust was stated. It was averred that a meeting of the Council was called on 10 April 2012, but the said meeting was cancelled. Another meeting was called on 16 April 2012. It was then stated that the Defendant No.1 by his letter dated 20 April 2012 informed that the meeting of the Council is called on 28 April 2012 at 4.00 p.m. Plaintiffs narrated their version of the manner in which the meeting proceeded. It was stated that the meeting started under the chairmanship of Plaintiff No.1,

when the meeting started, the Plaintiff No.1 informed that the meeting is cancelled and the remark was made in the register. It was asserted that in the said meeting no business was transacted. It was contended that therefore the Plaintiff No.1 was shocked to know that, after he had left the meeting, Defendant Nos.1 and 3 claimed that the meeting was held under the Chairmanship of Defendant No.2 and certain decisions were taken in the said meeting. Thereafter particulars of another meeting dated 26 May 2012 were specified and the incident that occurred during that meeting. The suit was thus filed taking exception to the decisions taken in the meetings. The Declarations were sought for in the suit that the meetings held on 28 April 2012 conducted by Defendant Nos.1 to 3 and the Resolution Nos.4719 to 4730, are illegal. A declaration was also sought regarding the Resolutions passed in the meeting dated 26 May 2012 and regarding the resolution of alleged removal of Plaintiff No.2 from the post of the Treasurer. Permanent injunction restraining the implementation of the Resolutions was also sought and interim reliefs were prayed for pending the suit.

3. In this suit, on 22 April 2014, an application was filed by the Appellants under Order VII Rule 2 of the Code of Civil Procedure. It was contended by the Appellants that what were challenged in the suit were the resolutions passed in the meeting held on 20 April 2012 and 26 May 2012 and all the reliefs that are sought pertain to

administration of the Trust. It was contended that the Governing Council has the powers of exercising general control and supervision over the administration of the Society and the administration is controlled by the Council. Section 2(8) of the Maharashtra Public Trust Act, 1950 defining the term 'management' and the definition of the term 'trustees' was referred to. It was contended that the Change Reports have already been filed in respect of the resolutions passed in the meetings dated 28 April 2012 and 26 May 2012, which will be inquired into by the Charity authorities. It was asserted that the suit is barred under Section 80 of the Bombay Public Trusts Act, 1950. It was accordingly prayed that in view of the provisions of Order VII Rule 2, the Plaint needs to be rejected. The Plaintiffs filed their Say to the application filed by the Appellants under Order VII Rule 2. It was contended by the Plaintiffs that the Resolutions are illegal and *non-est* in the eyes of law and the suit was filed to vindicate the civil rights of the Plaintiffs. It was asserted that no relief is claimed against the Trust and therefore, the suit is maintainable and merely because change reports are filed, it will not bar the jurisdiction of the Civil Court.

4. The application below Order VII Rule 11 (d) was heard by the learned Civil Judge Junior Division, Pune. The learned Civil Judge, after the perusal of the plaint, opined that the suit was instituted by the Plaintiffs in their capacity as the chairman and the treasurer and

the Appellants were joined in their capacity as secretary and senior life members. The learned Civil Judge, held that the suit was filed challenging the resolutions which related directly to administration of the Trust and the contention of the Appellants that the suit was filed for vindication of their civil rights, could not be accepted. The learned Civil Judge, relying on various decisions that were cited, allowed the application filed by the Appellants and rejected the plaint by order dated 14 July 2014. The Plaintiffs thereafter filed a Civil Appeal no.398 of 2014 in the District Court, Pune. The learned District Judge held that the suit was maintainable as it was filed for vindication of the civil rights of the Plaintiffs. The learned District Judge accordingly by judgment and order dated 2 May 2015 allowed the Appeal and restored the Suit. It is against this order the present Second Appeal is filed.

5. By order dated 23 June 2015, notice was issued to the Respondents after framing the following substantial question of law.

'(1) Whether the suit claiming the reliefs touching the administration of the Public Trust was barred by the provision of Section 80 of the Bombay Public Trusts Act, 1950? and

(2) Whether the suit was maintainable without permission of the Charity Commissioner, as required under Section 50 of the Bombay Public Trusts Act, 1950?'

After the notice was served, by order dated 11 July 2016 the Second

Appeal is placed on board for final disposal, for consideration of the questions of law framed. Appeal is admitted on the above questions. Taken up for hearing forthwith.

6. I have heard Mr.R.S.Apte, the learned Senior Advocate for the Appellants and Mr.S.V.Pitre, learned counsel for the Respondent Nos.1 to 3, the Plaintiffs.

7. Mr.Apte, the learned senior advocate for the Appellants, in short, submitted : The suit is filed for declarations relating to administration of the Trust. The main challenge in the plaint is to the resolutions passed in on 28 April 2012 and 26 May 2012. The decisions taken in these meetings relate purely to the administration of the Trust. The relief claimed in the suit has nothing to do with personal rights of the Plaintiffs. The decisions taken in the meeting are routine administrative decisions and the extension has been given to two persons as the life members. Post of Treasurer is abolished and consequently, the Plaintiff No.2 had to resign. These resolutions cannot be said to affect any personal rights of the Appellants. Once no personal right of the Appellants has been affected and what is challenged relates to administration of the Trust for which Change reports are already filed, this suit is barred under Section 80 of the Maharashtra Public Trusts Act. Permission of the Charity Commissioner is necessary under Section 50 of the Act. In the

impugned order the learned District Judge has merely quoted various decisions and has concluded that the suit is maintainable as it is for vindication of personal rights, without there being any discussion as to how the personal rights of the Appellants are affected. Both the Plaintiffs have now crossed the age permissible under the Trust regulations and therefore, due to passage of time the suit has become infructuous and this needs to be taken note while dealing with the matter for rejection of the plaint. The Appeal, therefore, is required to be allowed.

8. Mr.Pitre, the learned counsel for the Respondents, in brief, submitted : The Plaintiff No.1 was the Chairman of the Trust and in spite of adjourning the meeting, the Appellants forcibly carried on with the meeting and granted extensions to the life members, illegally. This was in complete defiance of the orders passed under the authority of the Plaintiff No.1 as Chairman and it has affected his personal rights. The manner in which the meetings were conducted is entirely illegal. The Plaintiff No.2 has been removed from the post of treasurer and therefore, his personal right is affected. Even though the Plaintiffs have crossed the age stipulated under the Trust Act, the Suit has not become infructuous as the Appellants continue to enjoy the benefits derived from the illegal resolutions. The impugned order, is therefore correct.

9. Before proceeding to consider and analyse the plaint, the statutory frame-work needs to be noticed. The Pune Vidyarthi Griha, the Trust, is a public charitable trust governed by provisions of Maharashtra (Bombay) Public Trust Act, 1950, the Act. The Act defines a 'public trust' to mean an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, math, a wakf, church, synagogue, agiary or other place of public religious workshop, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose. 'Trustee' has been defined to mean a person in whom either alone or in association with other persons, the trust property is vested and the term includes a Manager. Chapter IV of the Act deals with registration of the public trusts. Section 22 deals with the change in the entries recorded in the Register kept under section 17. An elaborate methodology is provided for carrying out the change in the Register. Authorities are established under the Act for the said purpose. Section 50 of the Act relates to a suit by or against or relating to public trusts or trustees or others. Section 50 lays down the contingencies in which permission of the charity commissioner is necessary for instituting such a suit. Section 80 of the Act lays down that save as expressly provided in the Act, no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided by any officer or authority under the Act, whose decision has been made final or

conclusive.

10. The scope of Section 80 of the Act, was considered by the Apex Court in the decision of *Church of North of India Vs. Lavajibhai Ratanjibhai & ors.* ⁻¹. In or about 1895, some missionaries had established a religious institution at Valsad, in Gujarat. The institution was registered as a religious society under the Societies Registration Act, 1860. The Church so established was also registered as a public trust, under the Act. It was known as 'The Church of Northern India'. Some time around February 1970, a resolution was passed by members effecting dissolution of the society. The Plaintiffs therein filed a civil suit in the civil court in Bharuch. The Church was impleaded in the suit. A plea was raised that jurisdiction of the civil court was barred under section 80 of the Act. The Apex Court exhaustively considered the provisions of the Societies Registration Act, as well as the Bombay Public Trusts Act. It was held that the Act is a special law which confers jurisdiction to adjudicate upon the Charity Commissioner and other authorities under the Act. The Act has been enacted in public interest to safeguard the properties vested in the trusts and that its control and management is not defeated by persons having control over it. It was held that the provisions of the Act and the scheme is a complete code in itself. It provides for a dispute resolution machinery, as persons interested in the affairs of the trust can put forth their

1- (2005) 10 S.C.C. 760

grievances before the Charity Commissioner, who is competent to go into the questions so raised. Considering the fact that the Act is a complete code in itself, in view of the exclusion of jurisdiction as laid down under section 80, the Civil Court will have no jurisdiction to decide suits relating to matters which the Charity authorities will have power to adjudicate. In the case of *K. Shamrao and others Vs. Assistant Charity Commissioner* - ², question that arose for consideration before Apex Court was whether the Charity authorities when they adjudicate a dispute are a Court. The assistant charity commissioner authorities have the powers of a civil court, including the power of summoning witnesses, compelling production of documents, examining witnesses on oath and coming to a definite conclusion on the evidence adduced and the arguments submitted. The Apex Court held that the Charity authorities, while determining the question under Chapter IV of the Act, act as a Court.

11. Therefore, the position of law emerges from these two decisions is that the charity authorities are a Court and the proceedings before it have a trapping of judicial proceedings and the bar of Section 80 applies, if the Charity authorities have jurisdiction over a subject to decide the matter judicially, as the Act is a complete code in this regard.

² - [(2003) 2 SCC 445]

12. In the case of *Dhulabai V. State of M.P. and other* - ³, the Constitution bench laid down principles regarding exclusion of jurisdiction of the civil court. The Apex Court held that where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

It was also held that it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

13. The learned counsel for the parties have cited various decisions wherein the issue arose regarding the bar of section 80 of the Act. In some of the cases the property of the trust was involved, while in some of the cases issue was whether a person was a tenant of the trust and was being rightly evicted. It is not necessary to refer to these decisions because the position of law laid down in those factual situations, is not in debate.

3 - AIR 1969 Supreme Court 78

14. The first decision which is closest to the factual matrix at hand is the decision rendered by the learned Single Judge (S.W.Puranik, J.) in the case of *Dinanath Ajabrao Ingole and another Vs. Shetkari Shikshan Prasarak Mandal, Wardha and others* – ⁴. In this case, a suit was filed by the plaintiffs therein alleging that the defendants who were president and vice president of the trust, were removed yet the defendant Nos.1 and 2 filed a change report. A declaration was sought that plaintiffs be declared as duly elected president and secretary. An issue arose as to whether the civil court could go into the question whether the plaintiffs therein could be said to be validly elected as president and secretary. The learned Single Judge held that the inquiry will have to be conducted by charity commissioner under section 19 of the Act and after the inquiry, entries will be recorded under section 20 of the Act and after the findings are given, such entries are final and conclusive. Learned Single Judge noted that the change reports were pending for decision. Learned Single Judge held that what is the substance and nature of the claim made in the suit will have to be considered. Learned Single Judge after analysing the plaint, held that the issue that the plaintiffs therein are duly elected president or secretary and that defendants are no longer members and Secretary, could not be determined by the civil court and had to be determined by the charity commissioner and accordingly bar of Section 80 of the Act would become operative.

4 - AIR 1983 Bombay 404

15. Similar issue arose in the case of *Namgonda Jingonda Patil Vs Appasaheb Bapurao Walwekar & others* – ⁵. In this case a grievance was made by the plaintiff therein that the signatures were taken forcibly at various places in the resolution even though he had declined to sign since he had undergone an operation. An objection was raised that the civil court did not have jurisdiction to entertain the suit. The issue was decided against the plaintiffs and in the revision, the parties approached this Court. The learned Single Judge (H.L.Gokhale, J., *as his lordship then was*), after noting the rival contentions, did not accept the contentions of the plaintiffs, relying on the decision in the case of *Dinanath Ingole*. Learned Single Judge, held that the suit was initiated to vindicate the civil rights. In this decision however, learned Single Judge even though relied upon the decision of *Dinanath Ingole* to the effect that the plaint will have to be considered in its entirety, however did not refer to the final conclusion arrived at in *Dinanath Ingole* that the controversy as to whether a person continued to be an office bearer, was something for the charity commissioner to decide and not for the civil court.

16. Similar issue came up for consideration in the case of *Kedar Shivkumar Kale Vs Digamber Shridhar Mhapsekar & ors.* - ⁶. The

⁵ - 2000(Supp.) Bom.C.R. 582

⁶ - 2007(4) Bom.C.R.325

proceedings reached in this Court at an interlocutory stage wherein the city civil court, Greater Bombay had granted an order of injunction. An appeal from order was taken up for consideration by the learned Single Judge of this Court (*A.M.Khanwilkar, J., as his lordship then was*). Out of several contentions that were considered, one of the contention was that the suit was not maintainable in terms of section 80 of the Act. Learned Single Judge relied upon the decision in the case of *Namgonda Patil* and held that similar contention was considered and negatived and the Court has held that the suit is instituted in relation to vindication of civil rights, is not barred.

17. In the case of *Gaud Saraswat Brahmin Temple Trust & ors. Vs Vasudeo P.Shetye @ Kamlesh P.Shetye & ors.* - ⁷, issue was whether the challenge to a resolution which held that the plaintiff was not qualified to be appointed and continued as a managing trustee, could be tried in a civil suit. The learned Single Judge, (*Mridula Bhatkar, J.*) held that the plaintiff therein being managing trustee falls in the definition of section 2(10) of the Act and the declaration sought of continuation as managing trustee and the removal thereof, could not be said to be simplicitor declaration of civil rights. Accordingly it was held that the suit is barred under section 80 of the Act.

18. The latest decision in the identical factual matrix is the case of

⁷ - 2010 (3) Bom.C.R.499

Social and Cultural Association and others Vs. State of Maharashtra and others – ⁸. In this decision a civil suit was filed challenging a resolution wherein membership of the plaintiff therein was cancelled. The learned Single Judge, (*A.I.S.Cheema, J.*) held that section 50 of the Act covers a beneficiary and declaration of any right in favour of or against the trustees or beneficiaries is covered under the provisions. Learned Single Judge held that the right claimed in the suit was not a individual right and right to membership cannot be said to be divorced from the trust and the right emanates from being member of the trust. Learned Single Judge held that this dispute will have to be resolved when objections are considered to the change report by the Charity authorities. The analysis of the above decisions would indicate that the suit which seek to enforce a right under the Act or which relates purely to administration of a public trust, would not be maintainable in a civil court. A civil suit is maintainable if it is filed for vindication of the personal or civil rights. The question is whether the present suit can be stated to be filed for vindication of personal rights.

19. Turning now to the averments in the plaint in the present dispute. In the plaint the Plaintiffs have described themselves as the Chairman and Secretary of the Trust. Thereafter the powers of the Chairman and the Governing body are enumerated. Plaint thereafter proceeds to narrate the manner in which the meetings

⁸ - [2014(4) Mh.L.J. 174]

were held on 28 April 2012 and 26 May 2012. A grievance is made that the authority of the Plaintiff No.1 as a Chairman was defied. It is alleged that extensions were granted to the Appellant Nos.1 and 2 without there being an authority of law and the Plaintiff No.2 was removed as a treasurer of the Trust. The prayers made in the plaint read as under -

a) *It may kindly be declared the alleged meeting dated 28-04-2012 conducted by the defendants 1 to 3 under the Chairmanship of Shri K.N.Shirkande and the alleged resolutions no.4719 to 4730 and minutes of the said meeting are absolutely illegal, unlawful, bad in law and non est in the eyes of law.*

b) *It may kindly be declared that business only regarding the items no.2, 3, 4 and 5 of the agenda was transacted in the meeting of the Council dated 26-05-2012. It may further be declared that any other resolution allegedly passed then items no.2, 3, 4 and 5 of the agenda mentioned above is illegal, unlawful and non est in the eyes of law.*

c) *It may kindly be declared that the alleged resolution of removing the plaintiff no.2 from the post of 'Treasurer' in the meeting dated 26-05-2012 is illegal, and bad in law.*

d) *The defendants no.1 to 3 may kindly be restrained permanently from implementing the said alleged resolutions no.4717 to 4730 and minutes of the alleged meeting dated 28-04-2012 and the alleged resolutions passed in the meeting dated 26-05-2012 of the Council.*

e) *This Hon'ble Court may kindly stay and/or grant injunction against the defendants 1 to 3 restraining them from implementing, enforcing and giving effect to the said resolutions no.4717 to 4730 pending hearing and final disposal of this suit.*

20. Mr.Pitre has crystalised the grievance of the Plaintiffs. According to him the grievance made in the plaint is two fold. Firstly that the authority of the Plaintiff No.1 as a Chairman has been defied and illegal resolutions are passed. Secondly, the Plaintiff No.2 has been removed from the post of treasurer. According to Mr.Pitre these aspects relate to the personal rights of the Plaintiffs.

21. The summary of the resolutions passed in the meetings which are under challenge is placed on record by Mr.Apte, to which there is no dispute.

'Resolutions passed in the meeting dated 28 April 2012.

1) *Resolution No. 4717 :- Information of the donations received during the period from 16th April 2012 to 27th April 2012.*

2) *Resolution No. 4718:- Extension of five years beyond the age of 60 years was granted to Mr. M. N. Deshmukh as a Life Member.*

3) *Resolution No. 4719:- Extension of five years beyond the age of 60 years was granted to Dr. R. P. Joshi as a Life Member*

4) *Resolution N0. 4720 :- Allotment of work as Heads of Branches & their Assistants of the Institution.*

- 5) *Resolution N0. 4721 :- Allotment of work as Heads of Departments & their Assistants of the Institution.*
- 6) *Resolution N0. 4722 :- Decision to transfer two Life members-viz. Prof. Rajendra Kaduskar & Mr.Sanjay Gunjal from Pune to Mhasrul Branch (Nashik) of the Institution.*
- 7) *Resolution N0.4723 :- Formation of different committees of the Institution.*
- 8) *Resolution N0.4724 :- Details of Bank accounts & their operators of the Institution.*
- 9) *Resolution N0.4725 :- Extension of life workership of Dr.S.P.Kinjawdekar, Dr.Shripad Joshi & Dr.V.V.Upasani as Life workers for a period of 3 years i.e. from 16 July 2011 to 15 July 2014 with retrospective effect.*
- 10) *Resolution N0.4726 :- Approval was given for the construction of new building (2172.49 sq.mtrs.) for PVG's College of Engineering & Technology, Pune.*
- 11) *Resolution N0.4727 :- Congratulations to Head Mistress of Vidya Bhavan School, Ghatkopar (Mumbai) Mrs.Panikar Sarla Narendran on receiving National Award for Teachers*
- 12) *Resolution N0.4728 :- Congratulations to Head Mistress of Shishu Niketa School, Sadashiv Peth (Pune) Dr. Mrs.Gauri*

Namjoshi on receiving National Award for Teachers.

13) Resolution N0.4729 :- Appointment of Mrs.Sunita Atul Bhide as Head Mistress of Vidya Bhavan School No.2, Ghatkopar (Mumbai) of the Institution.

14) Resolution N0.4730:-Appointment of Mr.Dnyanu Vishnu Yadav as Supervisor of Vidya Bhavan School No.2, Ghatkopar (Mumbai) of the Institution.

Resolutions passed in the meeting dated 26 May 2012.

1) Resolution No. 4731 : - Information of the donations received during the period from 28th April 2012 to 25th May 2012.

2) Resolution No. 4732:- As per Clause 4(1) of the constitution Co-option of Mr. M. B.Naik (Ex-Chairman) as a Member of the Council from the category of retired life members for a period 1 year i.e. from 26th May 2012.

3) Resolution No. 4733:- Confirmation of life membership of Dr. N. S. Walimbe by reducing his period of probation as per the Clause 8(d) of the constitution.

4) Resolution N0. 4734 :- As per Clause 4(1) of the constitution Co-option of Dr. N. S.Walimbe as a member of the

*council from the category of Jr.
life members for a period 1 year i.e.
from 26th May 2012.*

*5) Resolution N0. 4735 :- Removal of Mr.R.L.Shete from
the post of treasurer as it was not
required and which is also not a
Mandatory post as per the
constitution.*

*6) Resolution N0. 4736 :- Congratulations to Secretary
Dr.R.P.Joshi, life member
Mr.Anand Kulkarni, Past student
Mr.M.K.Vaidya & Adv.Mr.Ankush
Garje for excellent work done
concerned with Chandegaon
Project.*

*7) Resolution N0.4737 :- Revision of fee rates of pre-
primary section of Vidya Bhavan
School, Ghatkopar (Mumbai).*

*8) Resolution N0.4738 :- To close down Keshav Maharaj
Shishu Niketan (Primary section
-Marathi medium), Panchavati
(Nasik).*

*9) Resolution N0.4739 :- Due to abolition of post of
treasurer, Mr.R.L.Shete should sign
as a Director (Life Member)
instead of Treasurer while
operating Bank Accounts.*

*10) Resolution N0.4749 :- Approval for taking loan of Rs.
11 crores and cash credit of Rs.
1 crore from, "The Thane Janta
Sahakari Bank" & authorise
secretary Dr.R.P.Joshi &
Chairman Shri H.G.Bhosale to*

sign the documents.

*11) Resolution N0.4741 :- Reaffirmation of all resolutions
(Resolution No.4717 to 4730)
resolved in the Council Meeting
held on 28/4/2012.*

*12) Resolution N0.4742 :- Pay fixation of Mrs. Prajakta
Ravindra Parekar working in
Shishu Niketan School, (Pune)
in the scale of Rs.5,200 -20,200
as per sixth pay commission.*

*13) Resolution N0.4743 :- To open a new Bank Account of
of PVG's college of Education
(Scholarship) in State Bank of
India, Meri Branch, Nasik.*

22. Summary as above would show that the resolutions relate to educational matters, allotment of work, formation of different committees, operating bank accounts, approval for buildings, appointments, revision of fees, decisions to close down school, approval for loan and pay-fixation. The resolutions on which Mr.Pitre has laid stress are regarding extension of five years granted to some of the life members and the decision regarding the post of the treasurer.

23. When a suit for vindication of a right is instituted it has to be ascertained if the right accrues under the Act and whether the Act itself provides complete machinery for determination of said right. If so then the right cannot be considered as a civil or personal right

outside the purview of the Act.

24. The first grievance of Mr.Pitre is that the authority of the Plaintiff No.1 Chairman was defied and the manner in which the resolutions were passed and extensions were granted to some of the members, was illegal. This cannot be called as an individual or civil right of the Plaintiff No.1. The Plaintiff No.1 did not convene the said meeting in his individual capacity nor participated in the meeting in that capacity, but did so as a chairman of the Trust. It is under the rules and regulations governing the Trust that the post of a chairman is created. In the plaint the Plaintiff No.1 has described himself as the Chairman of the Trust. The right of a chairman of Trust to control a meeting cannot be said to be an individual or a private right. As held in the case of *Social and Cultural, Association*, the right must arise outside of the Act. Change reports have been filed by the Appellants. Pursuance to the meeting the copies of the change reports have been placed on record.

25. The second ground urged by Mr.Pitre is as regards the removal of Plaintiff No.2 from the post of Treasurer. Heavy reliance is placed by Mr.Pitre on the decision in the case of *Namgonda Patil* and in the case of *Kedar Kale*. As far as the decision in the case of *Namgonda Patil* is concerned, learned Single Judge had no occasion to consider the decision of the Apex Court in the case *Church of Northern India*

as the decision in the case of *Namgonda Patil* was delivered on 7 March 2000 and the decision in the case of *Church of Northern India* was delivered by the Apex Court on 3 May 2005. In the case of *Church of Northern India*, the Apex Court dealt with the bar of jurisdiction of a civil court under section 80 of the Act, in *extensio*. The position of law therefore, will have to be analysed in light of the decision of the Apex Court in the case of *Church of Northern India*. Furthermore in the case of *Namgonda Patil*, learned Single Judge, relied on the decision in the case of *Dinanath Ingole*, however in the case of *Dinanath Ingole*, it was categorically held that the suit for declaration that the plaintiffs therein are continued to be office bearers, which was for the Charity Commissioner to decide, could not be decided in a civil court. Therefore, the decision in the case of *Namgonda Patil* is without noticing the ratio in the case of *Dinanath Ingole* as well as prior to the decision of the Supreme Court in the case of *Church of Northern India*. Similar is the position in respect of the case of *Kedar Kale*. In the case of *Kedar Kale* learned Single Judge simplicitor referred to the decision of *Namgonda Patil* and held that since similar issue was considered in the said decision and negatived, the contention raised had to be negatived. Therefore the decisions in *Namgonda Patil* and *Kedar Kale*, though based on decision of *Dinanath Ingole* was not in tune with the ratio of the *Dinanath Ingole*. Furthermore the law will have to be considered in light of the Apex Court decision in *Church*

of Northern India. Therefore the decisions relied upon by Mr.Pitre are distinguishable. On the other hand, in the case of *Gaud Saraswat*, it was categorically held that removal of a person as a trustee, who holds a post defined under the Act, will not mean that a civil right is affected. Identical view is taken in *Social and Cultural Association* wherein also issue arose regarding removal of some persons from a trust.

26. The post of treasurer itself is something created by the Trust. This is not a post created under general law nor the occupation and removal therefrom is in the realm of general law. This cannot relate to the civil or personal right of the plaintiff no.2. Furthermore in the present case resolution under challenge indicates that it was resolved to abolish the post of a treasurer and consequently, the Plaintiff no.2 had to resign. Whether the decision to abolish the post of a treasurer is incorrect or otherwise lies in the realm of the administration of the Trust.

27. The decisions in meeting, as per the provisions of the Act, have to be placed before the charity authorities for adjudication. Without the approval of the charity authorities the change reports are not accepted. Merely because a suit is filed prior in time than the submission of the change report, the scheme of the Act cannot be nullified. Change reports indicate that all decisions which have been taken in the meeting are for consideration before the Charity

Commissioner. Once the Charity Commissioner gives his decision by holding an inquiry under Chapter IV of the Act, the decision would then become final, subject to the further challenge as provided. The legality of the resolutions will have to be determined by the Charity Commissioner in the proceeding under the change reports. The legality of the resolutions which are challenged by the Appellants in the civil suit are under consideration before the Charity Commissioner and the Change report is pending. It is in this Change report a decision will be taken by the Charity Commissioner regarding the legality of the resolutions which decision would be final, subject to the challenge as provided under the Act.

28. Mr.Apte has rightly relied on the decision of learned Single Judge, (*R.M.S.Khandeparkar, J.*) reported in the case of *Mr.Maulana Mohamed Yusuf Ismail Vs. Madarsa Vejajulu Ulum Kuran & ors.*⁹ to contend that permission of the Charity Commissioner was necessary under Section 50 of the Act. If a suit is filed for enforcing a personal right, bar of Section 50 of the Act may not apply, however, where the suit relates to administration of the trust, the permission is necessary and the suit is barred, if the methodology under Section 50 and 51 of the Act, is not followed. As held above challenge in the suit relates to administration of the trust and is not in advancement of any personal rights. Therefore the bar under

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Section 50 of the Act will also apply.

29. To conclude, the substantial questions of law framed in the Second Appeal will have to be answered in favour of the Appellants.

30. Mr.Apte sought to advance an additional ground that since both the Appellants have now crossed the age stipulated under the Trust deed and even the permissible extended period, therefore, nothing remains in the suit and it can be disposed of invoking the powers under Order VII Rule 11. In support of his submission he relied on the decision of the Apex Court in the case of *T.Arivandandam V. T.V.Satyapal* ⁹. This submission cannot be accepted. The scope of Order VII Rule 11 cannot be stretched to this limit. Furthermore according to Mr.Pitre the cause of action survives. This will require factual adjudication. Therefore, on this ground urged the Second Appeal cannot be allowed.

31. Before parting, the grievance of Mr.Apte regarding the lack of any reasoning in the impugned order, must be addressed to. The learned District Judge has, in first few paragraphs reproduced the facts, thereafter has only reproduced the passages from various decisions and has directly concluded that since the suit is filed for vindication of personal rights, the civil suit is maintainable. The concept of personal right is not discussed, how the personal right is

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affected is also not discussed. While reversing the order of the trial Court, greater scrutiny was required. The grievance made by Mr.Apte is justified.

32. Consequently, the impugned judgment and order cannot be sustained. Appeal is required to be allowed. The judgment and order passed by the learned District Judge, Pune dated 2 May 2015 in Civil Appeal No.398 of 2014 is quashed and set aside and the order passed by the learned Civil Judge Junior Division, Pune dated 14 July 2014 below Exhibit 129 in Regular Civil Suit No.5314 of 2012, stands restored to file. Civil Application stands disposed of accordingly. No order as to cost.

33. At this stage, learned counsel for the Respondent makes a request that the position that is existing as on today regarding bank accounts be continued for some time as the Respondents are desirous of pursuing their challenge. Mr.Apte on instructions, submits that position as on today as regards the bank account will be maintained for a period of twelve weeks from today. This statement is accepted. Apart from this statement due to the dispute between the parties, the welfare of the Trust should not suffer, for this period of twelve weeks, no major policy decision would be taken.

(N.M. Jamdar, J.)