

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.1035 OF 2014

Saraswati Vidyaprasarak Trust and others ... Applicants
Vs.
Ashwin Laxmikant Vasavada ... Respondent

Mr. Ratnakar D. Rashankar i/b. Mr. Ameet A. Palkar for Applicants.
Mr. P. K. Dhakephalkar, Senior Advocate a/w. Mr. Amol Mhatre i/b. Mr. Dilip Shinde a/w. Ms Gauri Raghuwanshi for Respondent.

CORAM : R. G. KETKAR, J.
DATE : MARCH 11, 2016

P.C. :

Heard Mr. Rashankar, learned Counsel for applicants and Mr. Dhakephalkar, learned Senior Counsel for respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the judgment and order dated 04.02.2014 passed by the learned Joint Civil Judge, Junior Division, Thane below exhibit-13 in Regular Civil Suit No.1344 of 2012. By that order, the learned trial Judge rejected the application exhibit-13 made by the applicants, hereinafter referred to as defendants, raising objection as to the maintainability of the Suit under Section 9-A of C.P.C.

3. Respondent, hereinafter referred to as plaintiff, has instituted Suit inter alia praying for declaration – (a) that the alleged meeting held on 31.01.2012 is illegal and unlawful; (b) that defendants have infringed the legal rights of the plaintiff and denied the principle of natural justice and for perpetual injunction restraining the defendants from preventing the plaintiff from exercising and discharging his duty as a trustee and

taking part in the meeting of the trust. Plaintiff has instituted Suit principally on the ground that he is one of the trustees of defendant No.1 and was expelled from the defendant No.1 trust by passing resolution on 31.01.2012 in the meeting of Board of Trustees without following due process of law.

4. During the pendency of the Suit, defendants filed application exhibit-13 for framing preliminary issue on the ground that Suit is barred in view of Sections 50, 51, 56-B and 80 of the Maharashtra Public Trusts Act (for short 'Act'). Apart from that, the Court of Civil Judge, Junior Division (wrongly cause title is shown as "Civil Judge, Senior Division"), where the Suit is instituted, has no jurisdiction to entertain and try the Suit in view of Section 2(4) of the Act. Section 2(4) of the Act defines the expression "Court" to mean the Court as far as Greater Bombay is concerned is the City Civil Court and elsewhere, the District Court. On these two grounds, defendants prayed for dismissal of the Suit. The learned trial Judge considered the decisions in the case of *Naresh Amritlal Shah Vs. Kantilal Chunilal Shah*, 2001 Vol.103(1) Bom.L.R. 482 and *Kedar Shivkumar Kale Vs. Digamber Mhapsekar*, 2007 (6) ALL MR 65. By the impugned order, the learned trial Judge rejected the application on the ground that plaintiff has instituted Suit for vindicating his civil rights.

5. In support of this Petition, Mr. Rashankar strenuously contended that in view of Section 2(4) of the Act, Suit instituted by the plaintiff in the Court of Civil Judge, Junior Division is not maintainable. He invited my attention to the prayers made in the Suit. He submitted that the learned trial Judge in paragraph 14 recorded that the Change Report No.111 of 2012 was rejected by the Charity Commissioner. He submitted that it is factually incorrect as the change report was

dismissed in default and not on merits. Subsequently, defendants made application for recalling the order of dismissal in default. By order dated 12.06.2015, the restoration application was allowed and the order dated 08.01.2013 passed in Change Report No.111 of 2012 was set aside and the change report was restored to its original stage. He, therefore, submitted that the change report is still pending before the Charity Commissioner. The said change report is submitted in pursuance of the resolution dated 31.01.2012 expelling the plaintiff.

6. Mr. Rashankar further relied upon the following decisions:
 - a. *H. C. Patel (Prof.) and others Vs. Kaushik Desai*, 2006 (1) **Bom. C. R. 162** and
 - b. *Social and Cultural Association Vs. State of Maharashtra*, 2014 (3) **ALL MR 557**.
 - c. *Church of North India Vs. Lavajibhai Ratanjibhai*, (2005) 10 **SCC 760**;
 - d. *Maulana Mohamed Yusuf Ismail Vs. Madarsa Vejajulu Ulum Kuran*, 2001 (4) **ALL M.R. 211**; and
 - e. *Charu K. Mehta Vs. L. K. Mehta Medical Trust*, 2013 (1) **Bom.C.R. 23**.

7. He, however clarified that the decisions in the case of **Church of North India** (*supra*), **Maulana Mohamed Yusuf Ismail** (*supra*) and **Charu K. Mehta** (*supra*) are on the same point viz. maintainability of the Suit in view of the provisions of the Act.

8. On the other hand, Mr. Dhakephalkar supported the impugned order. He relied upon the decision of this Court in the case of **Kedar Shivkumar Kale** (*supra*) and submitted that plaintiff is the trustee of defendant No.1 Trust. It is the case of the plaintiff that without

following due process of law, plaintiff is expelled as a trustee. He submitted that basically, the grievance of the plaintiff is that the resolution passed is also in violation of the principles of natural justice.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The moot question is whether the Court of Civil Judge, Junior Division has jurisdiction to entertain and try the Suit. Mr. Rashankar mainly relied upon decisions in the case of **H. C. Patel** (*supra*) and **Social and Cultural Association** (*supra*) and submitted that decisions in the case of **Church of North India** (*supra*), **Maulana Mohamed Yusuf Ismail** (*supra*) and **Charu K. Mehta** (*supra*) are also on the same point. Hence, I will deal with **H. C. Patel** (*supra*) and **Social and Cultural Association** (*supra*).

10. In the case of **H. C. Patel** (*supra*), plaintiffs had instituted Suit inter alia claiming reliefs that defendant No.1, who is claiming to be the secretary and trustee of the second defendant should be removed from the post of the office bearer of the second defendant. It was further contended that the primary membership of the defendant from the second defendant institution, itself, be cancelled and consequently, defendant No.1 cannot claim to continue to be the member of the Managing Committee. In paragraph 14, the learned Single Judge of this Court held that prayers (a) and (b) are couched in such a manner that the plaintiffs are seeking to remove defendant No.1 from the membership of the defendant No.2 but in effect, he is seeking to remove defendant No.1 as trustee or manager of the public charitable trust and therefore, the learned Single Judge was of the opinion that the Suit as framed falls under Section 50(b) of the Act.

11. In the case of **Social and Cultural Association** (*supra*), plaintiffs had instituted Suit inter alia claiming that disputes between plaintiffs and defendants were regarding administration of the Trust and matters were pending. It was claimed that on 30.09.2007, election for the period 2007 to 2012 was held, which led to filing of two different change reports. Change Report No.961 of 2007 was filed by the plaintiffs and Change Report No.1088 of 2007 was filed by the defendants. The Change Report filed by the plaintiffs was rejected and that filed by the defendants was accepted. In paragraph 11 of the judgment, the Court dealt with the assertions made in the plaint. It was claimed that the elections were called on 02.09.2012 for the period from 2012 to 2017. In paragraph 5 of the plaint, it was stated that before declaring the election programme, just to keep power with them, the defendants illegally cancelled the membership of plaintiffs ten days before issuing the agenda on 16.07.2012. According to the plaintiffs, their membership was cancelled keeping the election in view, and thus, the cancellation of the membership is with the ulterior object and so should be declared as illegal. In paragraph 12 of the plaint, it was claimed that the act of the defendants in cancelling the membership was beyond the scheme settled. In the scheme, there was provision regarding cancellation of membership, however, the order passed cancelling the membership, was not as per the scheme. With such contentions, plaint prayer (A) was that resolution No.7 in the meeting of the Trust held on 16.07.2012 and consequent orders dated 17.07.2012 cancelling membership should be declared as illegal. In paragraph 12 of the judgment, Section 50(iv) and clauses (p) and (q) was reproduced. In paragraph 13 of the judgment, it was noted that the rights claimed by the plaintiffs were apparently not individual rights. It was further noted that change report regarding the election was already before the Charity Commissioner and plaintiffs had already raised objections. It was, therefore, observed that the dispute,

whether or not, the membership was legally or illegally cancelled, could be considered when objections regarding the election which followed, were considered in the change report. The learned Single Judge, therefore, held that the Suit is barred as per Section 80 of the Act. The dispute can be decided and dealt with even at the time of Change Report.

12. In the present case, paragraphs 4 and 15 and prayer clauses (a), (b) and (c) of the plaint read thus,

“4. As per clause 5(a) of the Trust Deed, in case any of the Trustees becoming insolvent or being convicted of any criminal offences involving any moral turpitude, it shall be lawful for the other Trustees to give notice to the Trust so become insolvent or be convicted that he or she is removed as Trustee and there upon such Trustees shall cease to be Trustee of the Defendant No.1. Clause No.5(b) further provides that if any of the Trustees or future Trustees who may be appointed shall die or removed from the office of the Trustees, it shall be lawful for surviving or continuing Trustees to appoint preferably a person or persons, who is legal heir or heirs of the Trustee or Trustees, who is found to be suitable for the post of Trusteeship. In terms of this clause the legal heirs of the deceased trustees should have been brought in as trustees in place of the deceased trustees. But without making any such efforts and seeking their consent for admitting them as trustees, the Defendant No.3 was interested to appoint his son, the Defendant No.6 as Trustee, which was objected by the Plaintiff.

15. The Plaintiff states that raising any objections and bringing the true facts before the Board of Trustees for taking necessary actions would not be an act detrimental to the interest and objectives of the Trust. On the other hand, acts and deeds of the Defendants particularly the Defendant No.2 to 4 and 6 to 9 are pernicious to the right and interest of the Trust. The Defendants are trying to gag opposition so as to usurp the Trust property for the profit and benefit of the family members of Defendant Nos.2, 3 and 4. The Plaintiff states that it is his fundamental right to protect and place his view and suggest corrective actions for securing and safeguarding the right and interest of the Trust. A Trust member need not necessarily agree and accept the view and opinion of other members. It is the inherent and unfettered legal right of member to take all such acts and deeds necessary to protect and safeguard the right, title, claim and interest of the Trust. Any attempt to muzzle the legal right of a member

tantamount to infringement of his civil right. In order to ventilate his grievances, the Plaintiff has no other forum than the Board of Trustees. But the Defendants acted vindictively against the Plaintiff for his exposure of the Defendants and their misdeeds. Such acts on the part of the Defendants would disentitle them to continue as members of the Trust. In order to pre-empt the Plaintiff's clients to set right the misdeeds of the Defendants, the Defendants have addressed a letter dated 01.02.2012 stating that in the meeting of the Board of Trustees held of 31.01.2012, they have passed a resolution expelling the Plaintiff from the Trusteeship. The Plaintiff states that he has not done any wrong but exercised his civil right in the paramount interest and welfare of the Trust in particular and the public at large in general. The activities of the Trust must be in consonance with the objective of the Public Charitable Trust without any expectation and motive to make person gain and profit. The Plaintiff states that he was not allowed to take part in the alleged meeting of 31.01.2012 and no chance of being heard was provided to the Plaintiff. The Defendants have thus violated the principles of natural justice. The so called meeting of Board of Trustees allegedly held on 31.01.2012 is illegal and unlawful and any acts or deeds in pursuance to the said meeting is bad in law and cannot be enforced and the Plaintiff cannot be denied of his right to take part in the functioning of the trust. By such act of the Defendants, they are trying to convert the Charitable Trust as a family business of Defendants No.2 to 4 and 6 to 9 and the Defendants are likely to take such steps to achieve their ulterior motive for making personal gain and profit at the cost of the interest and objectives of the Trust. Such acts and deed on the part of the Defendants would extinguish the very existence of the Trust will be extinguished. It is therefore just and absolute necessary in the interest of justice to protect the Plaintiff's civil rights and restrain the Defendants from preventing the Plaintiff from functioning and discharging his duty as at trustee and further restrain the Defendants to take any steps or actions which would be detrimental to the rights and interest of the Trust. The Plaintiff states that if the original trust deed is strictly followed, on the demise of Mr. L. V. Vasavda, his son Mehul Vasavda would have been admitted as a Trustee. Similarly as regards of the trustees expired, the Defendants should have admitted their respective legal heirs as trustees. But the Defendants did not act in accordance with the original trust deed and they framed a scheme to circumvent the public charitable character of the Trust with an oblique motive to transform the same as their private property of the Defendant No.2 to 4 and 6 to 9 by denying the legal right of the Plaintiff as an individual to take part in the functioning of the Defendant No.1. Being denied of such right, the Plaintiff is obliged to institute this suit in his individual capacity to protect his civil rights to enforce his legal right to take part in the

functioning of the Defendant No.1. Therefore, an order of preventive injunction as prayed for is absolutely necessary in the interest of justice and equity. Otherwise irreparable hardship, loss and injury would be caused to the Plaintiff, which cannot be compensated in terms of money. The Plaintiff has no other efficacious remedy except to approach this Hon'ble Court."

13. Prayers (a), (b) and (c) -

"(a) this Hon'ble Court be pleased to declare that the alleged meeting held on 31.01.2012 is illegal and unlawful.

(b) it be declared that any the defendants have infringed the legal right of the Plaintiff and denied the principle of natural justice to the Plaintiff.

(c) the defendants, their agents, servants, employees, associates, etc. be restrained by an order of injunction of this honourable court from preventing the Plaintiff from exercising and discharging his duty as a trustee and taking part in the meeting of the trust."

14. In paragraph 4 of the judgment in the case of **Kedar Shivkumar Kale** (*supra*), the learned Single Judge of this Court reproduced the prayers made by the plaintiff therein. In paragraph 5, this Court dealt with the submission based on Sections 50 and 80 of the Act and referred to the decision of **Namgonda Jingonda Patil Vs. Appasaheb Bapurao Walwekar, 2000 (Suppl.) BCR 582**. This Court held that when the Suit is instituted in relation to vindicating civil rights for declaration that the resolution was illegal, such suit was neither barred by Section 80 of the Act nor consent of the Charity Commissioner for institution of such Suit would be prerequisite.

15. As noted earlier, after passing of the resolution dated 31.01.2012, defendants have filed Change Report No.111 of 2012 before the Deputy Charity Commissioner, Thane Region, Thane and the same is still pending. In other words, the Change Report submitted by the defendants expelling the plaintiff as a trustee is not yet accepted. Understood thus, it cannot be said that plaintiff ceased to be trustee of

defendant No.1 Trust. As noted earlier, plaintiff has mainly challenged the resolution on the ground that without following due process of law, he has been removed as a trustee in breach of principles of natural justice. The plaintiff has also alleged violation of his civil rights. Having regard to the assertions made in the present Suit by the plaintiff, I do not find that the decisions relied by Mr. Rashankar advance the case of the defendants. In my opinion, the controversy is squarely covered by the decision of this Court in the case of **Kedar Shivkumar Kale** (*supra*).

16. Mr. Rashankar submitted that in view of Section 2(4) of the Act, the Court of Civil Judge, Junior Division has no jurisdiction to entertain and try the Suit. It is not possible to accept this submission. 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 the Act to be decided or dealt with by any officer or authority under the Act** and in respect of which the decision or order of such officer or authority has been made final and conclusive. In the present case, I have already held that plaintiff has instituted Suit for vindicating his civil rights for declaration that the resolution dated 31.01.2012 was an illegal and such Suit is not barred by Section 80. In view thereof, it cannot be said that the Court of Civil Judge, Junior Division has no jurisdiction to entertain and try the Suit. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)