

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2217 OF 2016

ORDER:

This revision petition under Article 227 of Constitution of India is filed challenging the order and decretal order passed in A.P.S.R.C.O.P.No.497 of 2010 dated 24.02.2016 by the Principal District Judge, Srikakulam.

The revision petitioner herein is the second respondent before the Trial Court and the first respondent herein is the petitioner before the Trial Court, while respondents 2,3,4 & 5 are the respondents before the Trial Court and they will hereinafter be referred, for convenience as arrayed before the Trial Court.

The facts of the case are that the petitioner Zilla Cricket Sangam represented by its Secretary Sri Janab Syed Mustak Mohammed filed petition before the Principal District Judge, Srikakulam, under Section 23 of A.P. Societies Registration Act, 2001, claiming permanent injunction restraining the 1st respondent/Srikakulam District Cricket Association represented by its In-charge President Dr. N.V. Naidu from using the name and registration number of the petitioner society or its registration number or both in dealing with respondents 3 to 5.

It is alleged that the petitioner/Zilla Cricket Sangam was registered on 12.07.1996 under A.P. Societies Registration Act with registration No.200/1996 with an object to develop cricket, encourage the poor and needy cricketers by giving necessary support in the game of cricket, recognize and acknowledge the services of the elders who have promoted the cause of cricket.

Further, as per bye-laws of the petitioner's society, the founder secretary at its inception was Sri Syed Mustak Mohamad who continued to be a member of the society. Sri Mustak Mohammad after assuming the responsibility of the Secretary of the petitioner's society neither submitted his resignation nor was removed from membership

in the year 1996 or by any proceedings of the society. There is no provision in the bye-laws of the society for removal of membership. Thus, Sri Syed Mustak Mohammad was continuing as a Secretary and member of the said society.

While the matter stood thus, the first respondent society/Srikakulam District Cricket Association falsely represented to be a registered society with registration No.200/96. The first respondent society indulged in jugglery of language by translating the name of the petitioner's society into English, began to function under the assumed name of "District Cricket Association, Srikakulam" for the last few years, though it has no legal entity, it was not a registered society. But the first respondent society mislead the office bearers of Andhra Cricket Association and induced them to believe that the said first respondent society is a genuine and original society.

The first respondent society had filed the annual list of members in the year 2009-2010 in the name of the petitioner society and also induced the registration department to believe that the members whose names are reflected in such annual list, are members of the society.

The third respondent/Andhra Cricket Association is a State Cricket Association functioning under the guidance of Board of Cricket Council of India (BCCI) and virtually each and every State has a Cricket Association working under the guidance of BCCI, the highest body at the Central level. The District Associations used to function under the guidance of State Cricket Association. As per the bye-laws of Andhra Cricket Association, the District Cricket Association has to be registered in accordance with the provisions of the Act, to ensure that there is no confusion in the identity of the District Cricket Association. The petitioner's association i.e. District Cricket Association, Srikakulam is working under the guidance of Andhra Cricket Association, but the first respondent's association has mislead

the Andhra Cricket Association and the series of letters correspondence exchanged between the 1st and 3rd respondents mischievously for unlawful gain.

It is asserted that the first respondent has no legal entity since as it was not registered and it is not an affiliated District Association to Andhra Cricket Association. Further the first respondent is not maintaining the accounts and it has not been conducting the meetings in accordance with the provisions of the A.P. Societies Registration Act, 2001 (hereinafter will be referred to as 'Act') and pointed out several irregularities in managing the first respondent society. Thus, the first respondent is not entitled to deal with the respondents 3 to 5 in the name of the petitioner.

The 2nd respondent filed counter denying material allegations *inter alia* contending that the petitioner is a non-existing person. It is stated that the District Collector, Superintendent of Police and other officials including Judicial Officers have participated in the various activities of the respondent's association. The petitioner is not entitled for equitable relief as he is guilty of suppression of facts. The English version of the bye-laws of the first respondent was signed by Sri Meer Mohammed who is none other than the father of Sri Syed Mustak Mohammed, the Secretary of the petitioner's society. It is specifically contended that Sri Syed Mustak Mohammed is no more a Secretary of the association for the year 2000 and thereby not entitled to invoke the jurisdiction of the District Court under Section 23 of the Act.

It is contended that the Secretary of the association was removed on certain allegations and thereby the said Sri Syed Mustak Mohammed ceased to be the member of the association and that the petitioner cannot claim any status as sports body which is run without any profit motto, whereas, the respondents 1 & 2 are discharging the duties unblemish to the satisfaction of the respondents 3 & 4 and thereby the petitioner cannot claim right over the first respondent

association.

It is stated that Srikakulam District Cricket Association is affiliated to State Association and on the request of the public at large in writing and corresponding with R-3 as a District Level Sports Cricket Association submitting bye-laws with registration certificate. On 25.07.1998 the present petitioner as the then Secretary of the Srikakulam District Cricket Association addressed letter to the second respondent for payment of membership fee which itself shows that he represented the present association and as such, the petitioner suppressed certain facts. On this ground alone, the petition is liable to be dismissed.

The bye-laws of the office term of the office of the Executive Committee was three years and subsequently amended as four years as per resolution dated 25.06.2006 by which time the first respondent was the Vice-President and the second respondent was the Joint Secretary of the Association. On 30.09.2010, the General Body meeting was convened and new office bearers were elected and have assumed charge and in the general body meeting 30 members have attended the meeting. Previously, the Superintendent of Police, Srikakulam was the President of the District Cricket Association and due to work load, he tendered his resignation on 28.08.2010 to the second respondent which was placed in the Executive Committee and his resignation was accepted on 29.08.2010. The association is registered with registration No.200/1996 with the Registrar of Societies and discharged its affairs effectively affiliating with State Association.

It is finally contended that, as per the bye-laws, the Secretary of the first respondent is a person to sue or be sued and there is no account in the name of the petitioner and the respondents are operating the said transaction. But the first respondent is the person who is operating the account and that the petitioner has no *locus standi* to file the petition and liable for dismissal and finally prayed for

dismissal of the petition.

The first respondent filed memo adopting the counter filed by the second respondent and further contended that, in the year 1996, Zilla Cricket Sangham, Srikakulam registered its body consisting of 21 office bearers and the petitioner was among them as Secretary. However, in the year 2000, on 22.03.2000 the then President of the Association dissolved the society, for which the petitioner was the Secretary. Later, a fresh body was elected. Thereafter regular correspondence is being made to the president who is the Superintendent of Police designate. After new body was constituted, the correspondence was between the Secretary of the first respondent society and this respondent.

After lapse of three years, on 14.04.2003, the petitioner in the capacity of ex-secretary addressed a letter to the respondent to provide financial assistance towards medical aid as he is suffering from fractures sustained in a freak accident, specifically mentioning his tenure as a secretary of SDCA for the period 1992-2000. The letter further contained the fact that another secretary was there in the association and that in his tenure, he served association very well and sought medical aid.

On the representation made by the petitioner, the Andhra Cricket Association sanctioned Rs.20,000/- to the petitioner. Subsequently, new body was formed with one Sri Satish Chakravarthi, as secretary and Sri N. Prabhakar Rao served as secretary and now the present secretary is Sri J.V. Bhaskar Rao and they have attended all executive and general body meetings of Andhra Cricket Association as the secretaries of Srikakulam District Cricket Association since 2000 respectively.

The third respondent asserted that there is one registered association with registration No.200/96, which is in-charge of game of cricket in Srikakulam District, affiliated with the third respondent and

the respondents 1 and 2 are the President and Secretary of Srikakulam District respectively. The respondents 1 & 2 did not misuse the funds of the society and the petitioner cannot own a society nor can claim any rights over society in his individual capacity. It is contended that the petition before the Principal District Court is filed to claim funds from the third respondent. It is also asserted that the petitioner/society left the society a decade ago because of his misconduct. By suppressing the said fact, he approached the Court. Thus, he did not approach the Court with clean hands and no injunction can be granted against the respondents 1 and 2 to correspond with the third respondent and prayed for dismissal of the petition.

The fourth respondent/Bank filed counter and mainly contended that the Bank discharging its duties as per the norms for operation of the bank account of their customers. Unless the petitioner has shown bonafides and legal rights, they cannot claim any relief against the respondent bank. The petitioner is also not having any right to direct the bank to act as per their directions without having any valid or legal right against the bank and no relief can be granted against the respondent No.4. Based on the above pleadings, the following issues were framed:

- 1) Whether the petitioner society/sangam is holding the Registration No.200 of 1996?
- 2) Whether the petitioner/sangam or 1st respondent association is affiliated to the 3rd respondent-Andhra Cricket Association?

During enquiry, on behalf of the petitioner, P.W.1 Sri Syed Mustak Mohammad and Sri B. Dhanunjayam as P.W.2 were examined, Exs.A.1 to A.7, Ex.X.1 and Exs.C.1 to C.6 were got marked. On behalf of the respondents 1 and 2, R.W.1 was examined, Exs.B.1 to B.15 and Ex.A.8 were got marked. On behalf of the third respondent, R.W.2 was examined, Exs.B.16 to B.34 and 36 were got marked. Ex.B.35 original pan card of 2nd respondent was got marked with

consent of both the parties.

After closing the trial and on hearing the arguments of the petitioner, the respondents 1 & 2 filed I.A.No.436 of 2015 under Order XIV Rule 5 of Civil Procedure Code to frame certain additional issues, which was dismissed by the said Court on 06.04.2015. Aggrieved by the said order, the respondents 1 & 2 preferred revision in C.R.P.No.2219 of 2015 before this Court and in pursuance of the order in C.R.P.No.2219 of 2015, the Trial Court framed the following additional issues:

- 1) Whether there is any cause of action to the petitioner to file the petition?
- 2) Whether the claim of the petitioner is barred by limitation?

Upon hearing arguments of both the counsel, the Trial Court partly decreed the suit granting permanent injunction restraining the first respondent from using the name of the petitioner's society and its registration No.200/1996, while negating the other relief claimed by the petitioner granting permanent injunction restraining the 1st respondent from dealing with the respondents 3 to 5.

Aggrieved by the decretal order passed by the Trial Court, the present revision petition, under Section 227 of the Constitution of India is filed by the petitioner/2nd respondent on various grounds, mainly contending that the Trial Court did not consider the scope of enquiry under Section 23 of A.P. Societies Registration Act and did not frame proper issues on the material facts formed by the defendant, which were denied by the respondent and by adopting technical approach granted the order under challenge.

The Trial Court also failed to consider the *locus standi* of Sri Syed Mustak Mohammad to file the present petition and the letters addressed to the Srikakulam District Cricket Association dated 03.12.1999 and thereby, committed a grave error in passing the decree

against the respondents 1 & 2.

It is further contended that the Trial Court did not consider the plea of the 2nd respondent in proper perspective and admitted that the 1st respondent is affiliated to the 3rd respondent/ Association and corresponding with the first respondent, the Court ought not to have granted a decree in favour of the petitioner against the respondents 1 & 2.

Learned counsel for the respondents Sri M.V. Suresh Kumar contended that the dispute is among the members of the association and not between the associations registered under the A.P. Societies Registration Act. Therefore, it would fall within the ambit of Section 23 of the Act. Learned counsel would further contend that the revision petitioner is not an aggrieved person and thereby he is incompetent to challenge the order passed by the Trial Court.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are:

- 1) Whether the dispute between the petitioner and the first respondent falls within the ambit of Section 23 of the A.P. Societies Registration Act?**
- 2) Whether the petitioner/second respondent is an aggrieved person. If so, is he competent to challenge the order passed by the Trial Court by way of revision before this Court?**
- 3) Whether the respondents 1 & 2 before the Trial Court are dealing with its affairs in the name of the Srikakulam District Cricket Association without any registration with the Registrar of Societies under the Act. If so, whether the respondent be restrained from using the name of the petitioner's society and its registration No.200/96?**

POINT NO.1

The petition was filed before the Trial Court under Section 23 of the A.P. Societies Registration Act, 2001 for grant of permanent injunction restraining the first respondent from using the name and registration number or both of the petitioner in dealing with the respondents 3 to 5 Andhra Cricket Association or fourth respondent Srikakulam District Cricket Association.

In the counter affidavit filed by the 2nd respondent, question of maintainability of the petition invoking Section 23 of the A.P. Societies Registration was raised, while questioning the *locus standi* of Sri Syed Mustak Mohammad, the alleged Secretary of the petitioner's/society. In view of the challenge regarding maintainability of the petition under Section 23 of the Act, to decide the dispute between two associations, the Trial Court should have framed an issue, as it would give rise to an issue under Order 14 Rule 1, since the petitioner denied the affirmed fact by the respondent herein regarding jurisdiction. But neither an issue was framed, nor a finding was recorded even incidentally.

Section 23 of Chapter IV of the A.P. Societies Registration Act, 2001 deals with disputes, dissolution and winding up societies registered under the Act. Section 23 of the Act prescribed the procedure for settlement of disputes in the event of any dispute arising out of the committee or its members of the society in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of Arbitration and Conciliation Act, 1996, or may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order as it may deem fit.

As seen from the material on record, *prima facie*, the dispute is between two associations registered under the Societies Registration Act and neither of the respondents are members of the

petitioner's society to assume jurisdiction under Section 23 of the Act. Therefore, the present petition is neither a petition to decide the dispute between committee and its members nor a matter relevant to the affairs of the society or any member of the society, but it is a dispute between two associations i.e. the petitioner Zilla Cricket Sangam with registered No.200/96 and the first respondent Srikakulam District Association which is allegedly unregistered, to prevent the first respondent to use the name of the petitioner or its registration number or both in corresponding with respondents 3 to 5.

When the question of jurisdiction was raised before the Trial Court or before this Court, the Courts have to decide the very jurisdiction of the Court. Otherwise, the order which is passed, if found without jurisdiction is a nullity. When such question was raised before Trial Court, the Trial Court would have framed an issue and would have examined the scope of Section 23 of the Registration Act and record its findings before the Trial Court. But the Trial Court proceeded with the enquiry in the matter without even framing any issue with regard to the issue recording thereon. Hence, this Court framed the following issue in view of the real controversy between the parties.

“ADDITIONAL ISSUE: Whether the dispute between the petitioner and the respondents falls within the ambit of Section 23 of the A.P. Societies Registration Act. If so, whether the petition is maintainable”

As I framed additional issue regarding the jurisdiction of the Trial Court I find that it is a fit case to remit the matter to the Trial, directing the Trial Court to afford opportunity to both the parties and record finding thereon.

POINT NO.2

The main contention of the petitioner/2nd respondent herein is that the 1st respondent/petitioner is not an aggrieved party and he is not entitled to file the revision petition under Article 227 of the Constitution of India.

Article 227 deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in *certiorari* jurisdiction and such power can also be exercised *suo motu*.

The powers of this Court under Article 226 under Constitution are wider, but limited to see that the Subordinate Courts or Tribunals acts within the limits of its jurisdiction and to see that the Subordinate Courts or Tribunals shall not transgress the limits of jurisdiction and this Court while exercising power under Article 227 of the Constitution of India has to keep the Tribunals and Subordinate Courts within their limits.

Here the revision petitioner was a party to the original petition (second respondent) and he is the secretary of the Srikakulam District Cricket Association. The order, if any passed against the first respondent he will also be an aggrieved person, because he was the Secretary of the Srikakulam District Cricket Association. Hence, the revision petitioner is competent to challenge the order passed against the association, being the Secretary and member of the association, since, the order is against the entire body of association. Therefore, I find no substance in the contention of the learned counsel for the

respondents Sri M.V. Suresh Kumar regarding competency of the revision petitioner to file revision under Article 227 of the Constitution of India. Accordingly the point is answered.

POINT NO.3:

Since, I find that the Trial Court did not decide the jurisdiction of the Trial Court, with reference to Section 23 of the A.P. Societies Registration Act, the an additional issue (referred supra) is framed and remanded the matter to the Trial Court. Therefore, I need not examine and record any specific finding on Point No.3.

In the result, the revision petition is allowed, setting aside the decretal order passed by the Trial Court in A.P.S.R.C.O.P.No.497 of 2010, remanding the matter to the Trial Court, directing the Trial Court to restore the petition to its original number in the register. Further, both the parties are directed to appear before the Trial Court on 09.09.2016 and on such appearance, the Trial Court has to afford an opportunity to submit their arguments regarding jurisdiction of the Court with reference to Section 23 of A.P. Societies Registration Act, record a finding and decide the matter afresh duly considering the evidence on record, as expeditiously as possible, preferably within four months from the date of receipt of order.

JUSTICE M. SATYANARAYANA MURTHY

Dated 18.08.2016

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