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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.46 OF 2016

1. Heramb s/o Sarveshwar Kulkarni APPLICANTS
Age – 55 years, Occ – Agriculture
R/o Namalgaon, Post – Kurla,
Taluka and District – Beed

2. Pramod s/o Sarveshwar Kulkarni
Age – 53 years, Occ – Agriculture
R/o Namalgaon, Post – Kurla,
Taluka and District - Beed

VERSUS

Shri Ganpati Mandir Devsthan Sarvajanik RESPONDENT
Vishwast Mandal, Namalgaon
Through President,
Shri. Trimbak Ashruba Shelke
Age – 60 years, Occ – Agriculture
R/o Namalgaon,
Taluka and District - Beed

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Mr. Aditya N. Sikchi, Advocate for the applicants
Mr. Ameya N. Sabnis, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th MARCH, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Applicants – defendants in Regular Civil Suit No.448 of

2015 pending before Civil Judge, Junior Division, Beed, are before this court in revision challenging order dated 24th February, 2016 passed by 5th Joint Civil Judge, Junior Division, Beed on Exhibit-16.

3. Exhibit-16 was an application purportedly lodged in pursuance of Order VII, Rule 11 of the Civil Procedure Code contending that suit has been instituted through president of Shri Ganapati Mandir Devasthan Sarvajanik Vishwast Mandal, Namalgaon, a public trust who has no legal right to institute proceedings and moreover there is litigation pending before Assistant Charity Commissioner in respect of his change report. Suit has not been instituted by all the trustees and that consent of Charity Commissioner, as contemplated under the provisions of the Bombay Public Trusts Act, 1950, has not been obtained and therefore, suit is not maintainable and as such, is liable for rejection having regard to Order VII, Rule 11 of the Civil Procedure Code.

4. The application had been resisted by the plaintiff stating it is not necessary that a suit should be filed by all the trustees and before filing the suit, resolution had been passed authorizing the president and the pendency of the change report would hardly

be a reason for rejection of the plaint and that permission pursuant to section 50 of the Bombay Public Trusts Act, 1950 is not necessary.

5. Learned judge, in paragraph No.5 of the order has observed that the judgment in the case of *"Namdeo Pandurang Khedkar V/s Shahi Gupta Masjid, Chandrapur"* reported in *2014 (4) Mh. L. J. 209* relied upon on behalf of the defendants is distinguishable and may not hold institution of present suit. It has further been considered that the suit having been instituted after passing of the resolution, it would not be necessary to join in all the trustees as parties.

6. In addition to aforesaid, learned advocate for the plaintiff has referred to that primary concern being saving property of the trust from damage being caused, technicalities for a public trust would not obstruct a legal recourse.

7. Mr. Sikchi, learned advocate, during the course of submissions, has purportedly contended that the suit has not been instituted in "district court" and as such, the same is not maintainable. Mr. Sikchi has vehemently submitted that "court" as defined under the Maharashtra Public Trusts Act means a "district court". The suit has not been instituted in the district

court but it has been instituted before civil judge senior division.

8. Learned advocate purports to place reliance on a decision of this court in the case of *"Sidramappa Nagappa Abdulpurkar V/s Guru Mahasivsharani"* reported in *2002 (3) Bom.C.R. 145*. Facts involved in said case are quite apart from those in the present matter, for, it was a suit for declaration and injunction challenging order by charity commissioner declaring trust to be public trust. The other relief claimed had been "the will" on the basis of which trust had been held to be the public trust to be declared as *void ab initio* and further a declaration had been sought that the property be declared to be a private trust property. The court has observed in paragraphs No.9 and 12 of said judgment thus -

> " *9. The moot question, therefore, that arises is whether the plaintiffs can be said to be persons having interest in the public trust. The Act defines the expression "person having interest". Indubitably, the plaintiffs are not the trustees. Therefore, the next question that arises is whether it is possible to fathom that the plaintiffs are the beneficiaries of the Public Trust in any manner. To my mind, there is nothing on record to indicate that the plaintiffs are beneficiaries of the Public Trust in any manner, for nothing is brought to my notice in that behalf. On the other hand, the plaintiffs claim that they would be entitled to enjoy the said property as a private trust and have sought declaration in that behalf. Understood thus, it is not possible to take the view that the plaintiffs are persons having interest in the Public Trust as such. A fortiori, it was not for these plaintiffs to obtain prior permission of the Charity Commissioner as per section 50 read with section 51 of the Act.*

> *12. I have therefore, no hesitation in taking the view that, having regard to the facts of the present case, the suit as filed by respondents 1 to 11, who are third parties inasmuch as they are neither trustees or beneficiaries of the Public Trust, it was wholly unnecessary for them to obtain prior permission of the Charity Commissioner especially when the nature of reliefs claimed in the suit was for declaration that the subject Will was illegal and void ab initio. Unquestionably, such declaration or reliefs cannot be granted by the Charity Commissioner. The purpose underlying for obtaining prior permission is that the Public Trust is not put to avoidable expenditure by being embroiled in frivolous and vexatious litigation inter se the trustees or persons interested in the trust. Such is not the case on hand. In the present case, the plaintiffs are third parties and have sought declaration that the basis on which the Public Trust has been formed, that document itself is fraudulent and illegal. In that sense, the suit as filed by them was obviously to enforce their civil or personal rights. Accordingly, in such a situation, it would be wholly unnecessary to obtain prior permission of the Charity Commissioner. To my mind, the Appellate Court was right in allowing the appeal and remanding the suit for retrial.*"

9. Learned advocate purports to rely on a decision of this court in the case of *"Vadilal Nandlal Shah and Others V/s Ramesh Dharamdas Mehta and other"* reported in *Manu/MH/1248/2010* to lay stress on that a prior permission under section 51 for institution of suit is necessary. Said case deals with a factual scenario whereunder plaintiffs were not the trustees and were asserting right to worship and offer their prayers of Thakurji at Haweli in Ghatkopar and were not trustees. Said case does not appear to

carry forward purpose underlying the civil revision application.

10. While this is being so argued, it appears that Mr. Sikchi, learned advocate, has worked hard on the matter, however, the contentions have been countered on behalf of the plaintiffs respondents referring to that all the contentions raised can hardly be said to be *res integra* any longer, since plaintiffs who are trustees, as observed by the court, is enforcing civil rights of the trust and such a proceedings is not barred for want of permission from Charity Commissioner and further that such a suit is not required to be filed in court, as defined under section 2 (A) of the Maharashtra Public Trust Act, but can be filed before other forum. For said purpose, learned advocate Mr. Sabnis, who too appears to have done lot of homework, refers to and relies on a decision in the case of *"Vidarbha Kshtriya Mali Shikshan Sanstha V/s Mahatma Fuley Shikshan Samiti"* reported in *1986 Mh.L.J. 773*. He further refers to a decision in the case of *"Yamunabai Dhankude V/s Raosaheb Mohanlal Chimanlal Maniyar Trust"* reported in *2012 (2) Mh.L.J. 55* and refers to head note "C" and paragraph No.15, thereunder, reading thus -

> " ***C***. *Bombay Public Trusts Act S. 2 (4) and (10) – Perusal of the averments made in the plaint clearly shows that the suit is filed in the ordinary Civli Court and not under the "court" as defined under section 2 (4) – Suit is for injunction instituted on the basis of averments that the Defendants /*

Applicants are trying to disturb and obstruct the peaceful possession and enjoyment of the trustees and were obstructing the construction of compound wall which was being erected for safeguarding the trust property – Said suit is therefore, outside the purview of the said Act of 1950, though the trust are "persons having interest" under section 2 (10) of the said Act.

15. *In the aforesaid legal background, perusal of the averments made in the plaint clearly shows that the suit is filed in the ordinary Civil Court and not under the "court" as defined under section 2 (4) of the said Act of 1950. The suit is for injunction instituted on the basis of averments that the Defendants / Applicants herein are trying to disturb and obstruct the peaceful possession and enjoyment of the trustees representing the trust and were obstructing the construction of compound wall which was being erected for safeguarding the trust property. The said suit, is therefore, outside the purview of the said Act of 1950, though the trusts are "persons having interest" under section 2 (10) of the said Act as held by the Supreme Court in the case of Shree Gollaleshwar Dev and Others* **"**

11. Mr. Sabnis refers to a Division Bench judgment in the case of *"Amirchand Tulsiram Gupta V/s Vasant Dhanaji Patil"* reported in *1992 Mh.L.J. 275* particularly emphasizing head note, reading thus -

" *Bombay Public Trusts Act SS 50 and 51 – Suit by trustees for possession against trespasser – No permission under section 51 necessary. The trustee is the legal owner of the property and enjoys all the rights inherent in a natural owner of property and can sue to recover trust property. Section 50 cannot apply as a bar to the substantive right of the trustee to institute suit. No permission under section 51 is necessary in such a case. The amendment effected by Act No.20 fo 2971 as to include 'trustee' while defining in section 2 (10) the expression "person having* *interest" has no effect on the position of law as above."*

12. Having regard to nature of suit and the reliefs claimed thereunder, situation amply emerges that suit proceedings initiated by plaintiffs – respondents would not be liable to be truncated in exercise of power referable to Order VII, Rule 11 of the Civil Procedure Code, in the present matter under revisional power of this court. Observations of the trial court granting liberty to seek permission in view of aforesaid, as contended by learned advocate for the respondent is an otiose liberty appearing under the impugned order. However, it would be for the respondents to go about the same as may be advised.

13. Under the circumstances, revision is not being entertained and is dismissed.

[SUNIL P. DESHMUKH, J.]

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