IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 432 OF 2016

Rajesh Chunilal Meghani ..Appellant
V/s.
The Andheri Recreation Club and ors. ..Respondents

Mr. Priyadarshan V. Shah for the Appellant.
Mr. Ram S. Apte, Senior Counsel a/w. Mr. Rajkumar S. Mishra i/b Mr. R.K. Mishra & Co. for Respondent Nos.1 to 3 and 14.
Mr. Dilip H. Shukla for Respondent Nos.4 to 6.

CORAM : M. S. SONAK, J.
Date of Reserving the order : 06 APRIL 2017.
Date of Pronouncing the order : 12 JUNE 2017.

JUDGMENT:

1] Heard learned counsel for the parties.

2] The challenge in this appeal is to the impugned orders dated 30 January 2016 and 26 February 2016 made by the City Civil Court at Bombay rejecting the plaint in appellant's Suit No.3602 of 2015 under Order 7 Rule 11 (d) of Code of Civil Procedure, 1908 (CPC).

3] The appellant is the original plaintiff and the respondents are the original defendants in Suit No. 3602 of 2015. The cause of action as pleaded in the suit is suspension or attempted suspension of the appellant from the membership of respondent

No.1 Club, which is admittedly a public trust registered under the Maharashtra Public Trusts Act, 1950 (MPT Act).

4] By the impugned orders, learned Trial Judge has accepted the case of the respondents that the reliefs applied for by the appellant stand covered under the provisions of Section 50 of the MPT Act and therefore, the suit as instituted, without prior written consent of the Charity Commissioner was not maintainable. Learned Trial Judge, in the impugned orders, has basically relied upon the provisions contained in sections 50,51 and 80 of the MPT Act to hold that the Civil Court lacks jurisdiction to entertain a suit of such nature in the absence of prior written consent of the Charity Commissioner.

5] Mr. P.B. Shah, learned counsel for the appellant, submits that learned Trial Judge, after making the impugned order dated 30 January 2016, has made yet another order dated 26 February 2016, purporting to invoke the provisions of section 80 of the MPT Act. He submits that the impugned order dated 30 January 2016 and the impugned order dated 26 February 2016 contradict each other, because, the impugned order dated 30 January 2016 proceeds on the basis that the suit, but for the absence of prior written consent from the Charity Commissioner is maintainable. Whereas, the impugned order dated 26 February 2016, proceeds on the basis that even otherwise, the suit is not maintainable in terms of section 80 of the MPT Act. Mr. Shah submits that the reasoning in both the impugned orders is infirm and accordingly, both the impugned orders, deserve to be set aside in this appeal.

6] Mr. Shah, without prejudice to the aforesaid, further submits that the respondents have pointed out no provisions under the MPT Act where under the appellant can obtain redressal from any of the authorities under the MPT Act in the matter of reliefs as prayed for in the suit. Mr. Shah, therefore, submits that in case the impugned order dated 26 February 2016 made by the learned Trial Judge is upheld, a situation will arise whereby, the appellant, will be deprived of the opportunity of seeking redress, both, before the Civil Court as well as the authorities under the MPT Act. Mr. Shah, therefore, submits that unless the respondents satisfy this court that the appellant is entitled to at least seek redressal from the authorities under the MPT Act, it would be improper to sustain the impugned orders, thereby, foreclosing all opportunities of redressal to the appellant. Mr. Shah, relying upon decision of the Hon'ble Supreme court in ***Sahebgouda (dead) by Lrs. And ors. Vs. Ogeppa and ors. - (2003) 6 SCC 151,*** submits that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred. Rather, such provisions, must be strictly construed and the onus lies on the party seeking ouster of the civil court's jurisdiction.

7] Mr. Shah submits that the reliefs as prayed for in the suit are to redress the appellant's personal and private rights. He submits that such a suit is therefore, maintainable, even in the absence of prior written consent of the Charity Commissioner. In this regard, Mr. Shah relies upon decision in ***Vidarbha Kshatriya Mali Shikshan Sanstha by its President Shri Wasudorao Dattaji Sonar vs. Mahatma Fuley Shikshan Samiti, Amravati through its President Ruprao Bhimrao Yawale – 1986 Mh.L.J. 773; The Breach Candy Swimming Bath Trust and ors. vs. Dipesh Mehta***

and ors. - (Order dated 29th October 2015 in Notice of Motion No. 1022 of 2014 in Suit No. 573 of 2014), Vinayaka Dev, Idagunji and ors vs. Shivaram and ors. - (2005) 6 SCC 641 and ***Gerald Shirley and ors. Vs. Dipesh Mehta of Mumbai Indian – 2014 (14) Bom.C.R. 778.***

8] Mr. Shah submits that merely because the appellant has applied for reliefs of declaration or injunction, that by itself, does not attract the provisions of section 50(iv) or (p) of section 50 of the MPT Act. Mr. Shah submits that the main relief applied for in the plaint is with regard to setting aside of the order/resolution which suspend or purported to suspend the appellant. Clearly, therefore, the suit is to seek redressal in the matter of personal or private rights of the appellant. To such a suit, neither the provisions of section 50 nor section 51 of the MPT Act stand attracted. In this regard, reliance was placed on ***Khemchand Gorumal Vs. Parmanand Deepchand Hinduja – 1961 BLR 235, Kedar S. Kale vs. Digamber S. Mhapsekar and ors. - 2007 (4) Bom. C.R. 325, Amirchand T. Gupta and ors. Vs. Vasant Dhanaji Patil and ors. - 1992 (2) Bom.C.R. 22 and Vinayak Dev (supra).***

9] Mr. Shah, finally, submits that one of the reliefs in the suit relates to setting aside the order/resolution of suspension. He submits that this is in fact the main relief in the suit and the reliefs of declaration or injunction are only incidental. He submits that since the relief to set aside order/ resolution suspending a member can only be dealt with by Civil Court, the impugned orders, rejecting the plaint, are in excess of jurisdiction. In this regard, Mr. Shah relies upon ***Shree Hanuman Mandir, Alibag, Public Trust and ors. vs. Satishchandra Bhalchandra Gurjar and ors. - 2013 (13) Mh.L.J. 83.***

10] For all the aforesaid, Mr. Shah submits that the impugned orders dated 30 January 2016 and 26 February 2016 are liable to be set aside.

11] Mr. Ram Apte, learned senior advocate and other learned counsel for the respondents submit that the reliefs prayed for by the appellant are squarely covered under the provisions of section 50 of the MPT Act. They submit that in absence of prior written consent from the Charity Commissioner in terms of section 51 of the MPT Act, the suit was not maintainable and the plaint was rightly rejected by the learned Trial Court vide the impugned orders. They submit that respondent No.1 is admittedly a public trust registered under the MPT Act. They submit that the appellant being a member of respondent No.1 is a "*person having interest*" as defined under section 2(10)(d) of the MPT Act. In the suit, the appellant, had applied for a declaration and injunction as regards the status as a member of the public trust. The acts and resolutions, in terms of which, the appellant has been suspended as a member constituted acts of administration on the part of the trust. In such circumstances, the reliefs applied for by the appellant are clearly covered under the provisions of section 50 of the MPT Act and in absence of any prior consent from the Charity Commissioner before institution of the suit, the suit was clearly not maintainable and the plaint was very rightly rejected by the learned Trial Judge exercising powers under Order 7 Rule 11 of the CPC.

12] Learned counsel for the respondents have pointed out, what according to them, are grounds for distinguishing the decisions relied upon by Mr. Shah, learned counsel for the appellant and further, learned counsel for the respondents, have themselves relied upon the following decisions in support of the impugned orders:

(a) Social and Cultural Association and ors. Vs. State of Maharashtra – 2014 (14) Mh.L.J.174;

(b) Tasadduq Husain Qureshi vs. Asif Abdul Bashar Qureshi – 2014(2) Mh.L.J. 132;

(c) Gaud Saraswat Brahmin Temple Trust and anr. vs. Vadudeo P. Shetye @ Kamlesh P. Shetye and anr. - 2010(4) CPMH 67;

(d) Govind Ram Singh Rathod vs. Assistant Charity Commissioner and ors. - 2015 (6) CPMH 67;

(e) Dr. Rangnath Joshi and ors. Vs. Hanmant Ganpati Bhosale and ors. (decided on 5 August 2016 in Section Appeal No. 460 of 2015);

(f) Church of North India vs. Lavajibhai Ratanjibhai and ors. - (2005) 10 SCC 760;

(g) Mr. Maulana Mohamed Yusuf Ismail vs. madarsa Vejajulu Ulum Kuran and ors. - 2001 (4) All 211;

(h) Datta Devasthan Trust vs. Milind Govind Kshirsagar and ors – 2007(2) CPMH 132; and

(i) Virupakshayya Shankarayya vs. Neelakanta Shivacharya Pattadadevaru – 1995 Supp (2) SCC 531.

13] For all the aforesaid reasons, learned counsel for the respondents submit that there is no case to interfere with the impugned orders made by the learned Trial Judge and therefore, the appeal may be dismissed with costs.

14] The rival contentions now fall for my determination.

15] From the perusal of the averments in the plaint as also the reliefs applied therein, it is clear that the appellant admits that he is the member of respondent No.1, which is a public trust registered under the MPT Act. Besides, it is also the case of the appellant that respondent No.1 is a society registered under the Societies Registration Act, 1860. Section 2(10) of the MPT Act, defines the expression "*person having interest*" to include, *inter alia,* in case of a society registered under the Societies Registration Act, 1860, any member of such society, and in case of any other public trust, any trustee or beneficiary. In terms of averments made by the appellant in the plaint, it is quite clear that the appellant, answers the definition of the expression "*person having interest*".

16] The suit, as instituted, is mainly to question the order/resolution of respondent No.1 Club in suspending or purporting to suspend the appellant. The appellant, in such circumstances, has prayed for a declaration and injunction, in the matter of such order/resolution suspending him or purporting to suspend him from the membership of society/trust. There is also relief to set aside such suspension. The substantive reliefs applied for in the plaint read thus:

> *"a. it be declared by this Hon'ble Court that the purported and attempted suspension of the Plaintiff from the membership of the Andheri Recreation Club, communicated to the Plaintiff on 26th November 2015 by the Club's letter*

dated 23rd November 2015 and the resolution to that effect dated 19th November 2015, are illegal, perverse, bad in law, null, void, improper, against the principles of natural justice and not at all binding on the Plaintiff, The Andheri Recreation Club and its members.

b. the purported and attempted suspension of the Plaintiff from the membership of The Andheri Recreation Club, communicated to the Plaintiff on 26th November 2015 by the Club's letter dated 23rd November 2015 and the resolution to that effect dated 19th November 2015, be set aside by this Hon'ble court

c. it be declared by this Hon'ble Court that the Plaintiff continues to be a member of The Andheri Recreation Club and is allowed to use all its facilities.

d. it be declared by this Hon'ble Court that the conducting of the meeting by Defendant Nos.2 to 16 on 19th November 2015 and the minutes of and the resolution passed in the said meeting, to the extent of the attempted and purported suspension of the Plaintiff as a member of The Andheri Recreation Club, are absolutely illegal and bad in law and even otherwise."

17] Section 50 of the MPT Act makes provision for the institution of suits, by or against or relating to public trust or others, as indicated in the marginal note. It provides that in any case, where the direction of the court is deemed necessary for the administration of any public trust, or for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity Commissioner, after making such enquiry as he thinks necessary may himself institute a suit to obtain any of the reliefs prescribed under section 50 of the MPT Act. In the alternate, two or more persons having an interest, in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv), having obtained the consent in writing of the Charity Commissioner, as provided in section 51 of the MPT Act, may institute a suit in the court within a local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate, again, to obtain a decree for any of the reliefs specified in section 50 of the MPT Act.

18] In this case, particular reference is required to be made to the provisions in section 50(iv) , which concerns suits for any declaration or injunction in favour of or against the public trust or trustee or trustees or beneficiaries thereof. The suits of such nature can be instituted by one or more persons having interest after obtaining consent in writing of the Charity Commissioner as provided in section 51 of the MPT Act. The reliefs as contemplated in a suit as envisaged under section 50 of the MPT Act, includes *inter alia,* a declaration or denial of any right in favour of or against public trust or trustee or trustees or beneficiaries thereof and issuing injunctions in appropriate cases. This is clear from the provisions contained in section 50(p) of the MPT Act. The proviso to section 50, in terms provides that no suit claiming any of the reliefs specified in section 50 of the MPT Act shall be instituted in respect of in public trust, except in conformity with the provisions thereof.

19] Section 51 of the MPT Act provides that if the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing the parties and making such enquiries, if any, as he thinks fit is satisfied that there is a prima facie case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal. As against refusal of consent, an appeal is provided to the Divisional Commissioner. Section 51(3) of the MPT Act provides that in every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.

20] Section 50(4) of the MPT Act, provides that subject to decision of the Divisional Commissioner in appeal under section 71, the decision of the Charity Commissioner under section 50(1) shall be final and conclusive.

21] The provisions of the MPT Act have been considered in great details by the Hon'ble Supreme Court in *Church of North India (supra)*. Upon analysis of the provisions, the Hon'ble Supreme Court has held that the MPT Act is a special law. It confers jurisdiction upon the Charity Commissioner and other authorities named therein. The statute has been enacted by the state legislature in public interest to safeguard the properties vested in the trusts as also control and management thereof, so that the trust property may not be squandered or the object or purport for which a public trust is created may not be defeated by the persons having control thereover. A society may be created either for charitable or religious purposes as also for other purposes. A society registered under the Societies Registration Act is not a juristic person. It cannot own any property. The properties belonging to a society admittedly vest in the trustees. In terms of section 2(13) of the MPT act, a society is also a charitable trust. Both the Acts are regulatory in nature. The object and purport of both the Acts are clear and the provisions thereof do not contain any obscurity. A plea as to bar of jurisdiction of a civil court must be considered having regard to the scheme of the Act as also the object and purport it seeks to achieve. Such plea must be considered having regard to the averments in the plaint. The averments disclosing the cause of action and the reliefs sought for therein must be considered in their entirety. There will be no justification in determining the question, one way or the other, only having regard to the reliefs claimed *dehors* the factual averments in the plaint. On reading of the plaint and the averments therein in its entirety, if, the suit is found to be barred, only then the plaint can be rejected in terms of Order 7 Rule 11 of the CPC.

22] In *Church of North India (supra),* the Hon'ble Supreme Court has reiterated and followed the principles in ***Dhulabhai vs. State of M.P. - AIR 1969 SC 78,*** in the matter of exclusion of jurisdiction of civil courts. It is held that the jurisdiction of the civil courts would be excluded if there is adequate remedy to do what the civil courts would normally do in a civil suit. The MPT Act provides for express exclusion of the jurisdiction of the civil court. The bar of jurisdiction created under section 80 of the MPT Act clearly points out that a third party cannot maintain a suit so as to avoid the rigours of the provisions of the MPT Act.

23] In *Social and Cultural Association (supra),* the plaintiffs had alleged that notices and resolutions cancelling their membership were illegal and relief was sought to declare such notices and resolutions as illegal coupled with consequential reliefs in the nature of mandatory injunction to permit the plaintiffs to participate in the election process. The Trial Court, held that such reliefs are not covered under section 50 of the MPT Act, since, the plaintiffs, have challenged the cancellation of their membership and the suit was basically to vindicate the plaintiff's personal civil right. This Court, however, upset the Trial Court's order by observing the following at paragraphs 12 and 13:

> *12. Relevant portions of Section 50 of the Trust Act, read as under:"*
>
> > *50. Suit by or against or relating to public trusts or trustees or others*
> >
> > *In any case,-*
> >
> > *i) ....*
> >
> > *(ii) ....*
> >
> > *(iii) ....*
> >
> > *(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity Commissioner after making such enquiry as he thinks necessary or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:-*
> >
> > *a)............ to (o).................*
> >
> > *(p) declaration or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or*
> >
> > *(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief or is necessary in the interest of the trust:.............................."*
> >
> > *(Emphasis supplied)*
>
> ***13. It is clear from the perusal of the above provisions, that declaration relating to "any right" in favour of or against trustees or beneficiaries thereof is covered under the above provisions. The rights claimed by the Plaintiffs are apparently not individual rights.***

> ***Plaint claims that to keep Plaintiffs out of power their membership is cancelled and then elections were called and that the membership cancelled is beyond the Scheme of the Trust. The right to membership cannot be said to be divorced from being member of the Trust. The right claimed is that their membership of the Trust could not have been cancelled by the Trust in the manner in which it has been done. The right emanates basically from being member of the Trust. Merely calling the right civil right will not help. It cannot be said that it is any independent right not connected with the affairs of the Trust or management of the Trust. It has been rightly argued by the learned counsel for Petitioners-Defendants that if the right is to be enforced against the Trust, consent of the Charity Commissioner is necessary under Section 50 of the Trust Act.*** *The contentions in the Plaint itself shows that the membership was cancelled with the object of election which was due on 2nd September, 2012. Change report regarding the election is already before the Charity Commissioner and learned counsel for Petitioners submitted that the Respondents-Plaintiffs have already raised objections. Thus, the dispute whether or not the membership has been legally or illegally cancelled, can be considered when objections regarding the election which followed, are considered in the Change Report. I find that the present Suit must be held to be barred as per Section 80 of the Trust Act, as the matter is covered under Section 50 of the Trust Act, in case the Plaintiffs want to pursue the dispute before the Court. The dispute can be decided and dealt with even at the time of Change Report. Thus, Section 80 of the Trust Act applies and the Suit is not maintainable."*

(emphasis supplied)

24] The decision of the learned Single Judge of this Court in *Social and Cultural Association (supra),* which was delivered on 14 February 2014 was challenged by the plaintiff in the suit by instituting petition for Special Leave to Appeal (C) No (S). 15812 of 2014. By order dated 31 January 2017, the special leave petition was dismissed. However, the plaintiff in the suit were granted liberty to challenge the validity of resolution cancelling their membership before the Charity Commissioner, who was directed to consider such objections at the time of granting of his approval/disapproval to the change report.

25] In Dr. *Rangnath P. Joshi (supra)*, the plaintiffs had challenged the resolutions of the trust in relation to membership of life members of the trust. Plaintiff No.2 had also challenged his removal from the post of treasurer of the trust. The Trial Court held that the suit was maintainable even without permission of the Charity Commissioner as contemplated by section 50 of the MPT Act. In the context of such facts, the two questions, which arose for determination in the second appeal read as follows:

> *"(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 Trust 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 ?"*

26] This court, at paragraph 11, after adverting to the decisions of the Hon'ble Supreme Court in *Church of North India (supra)* and ***K.Shamrao and ors vs. Assistant Charity Commissioner – (2003) 2 SCC 445,*** held that the authorities under the MPT Act are *"courts"* and the proceedings before them have trappings of judicial proceedings. Therefore, the bar as contemplated under section 80 of the MPT Act is attracted where the Charity authorities have jurisdiction over a subject to decide the matter judicially, as the Act is a complete code in this regard. After adverting to the averments in the plaint as well as the reliefs claimed, learned Single Judge of this Court, following the decision in *Social and Cultural Association (supra),* held that if a suit is filed for enforcing a personal right, bar of section 50 of the MPT Act may not apply, however, where the suit relates to administration of the trust, the permission is necessary and the suit barred, if the methodology under sections 50 and 51 of the Act is not followed. In the context of reliefs applied for in the plaint, which, are similar to the reliefs applied for in the present case, it was held that the suit relates to the administration of the trust and therefore, the same was not maintainable in absence of permission under section 50 of the MPT Act.

27] The decision in *Dr. Rangnath P. Joshi (supra),* is relevant because it distinguishes most of the decisions relied upon by Mr.Shah, learned counsel for the appellant. In this regard, the observations in paragraph 25 are necessary, which read thus:

> "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."*

28] The other decisions relied upon by Mr. Shah, learned counsel for the appellant, also do not assist the case of the appellant. In *Sahebgounda (supra),* the plaintiff was claiming rights as a Poojari for performing pooja and the injunction applied for was not related to the administration of the trust. In *Vidarbha Kshatriya Mali Shkshan Sanshta (supra),* the plaintiff had applied for enforcement of his tenancy rights under an agreement dated 1 December 1970. *Namgonda Patil (supra)* and *, Kedar Kale (supra),* have already been considered and distinguished in *Dr. Rangnath Joshi (supra). Khemchand Gorumal (supra),* which was decided in 1961, naturally, does not take cognizance of the provisions of section 50 of the MPT Act, as introduced in the year 1971. *Amirchand Gupta (supra),* was a case of a suit instituted by the trustees to recover property from a trespasser. *Gerald Shirley (supra) and the Breach Candy Swimming Bagh Trust (supra)* are distinguishable on facts and in any case, it is pointed out that the said decisions have been appealed and there is a stay in operation. It is also not possible to accept Mr. Shah's contention that the relief for declaration and injunction as applied for by the appellant is only incidental and not the main relief. Accordingly, the decision in *Shree Hanuman Mandir (supra)* is also inapplicable to the facts and circumstances of the present case.

29] Upon perusal of the averments in the appellant's plaintiff and the reliefs prayed for therein, there is no reason to upset the impugned order dated 30 January 2016, in which, learned Trial Judge has held that the suit as instituted stands covered under section 50 of the MPT Act. The appellant's suit, seeks a declaration that the order/resolution suspending him is illegal, null and void and further, seeks an injunction to restrain the public trust and its trustees from acting in pursuance of such order/resolution. In effect, the appellant, seeks a declaration with regard to his status as a member of the trust or complaint about denial of rights as a member of the trust and seeks relief of injunction in that regard. Upon reading of the appellant's plaint and the reliefs claimed therein in entirety, it cannot be said that there is any serious legal infirmity with the view taken by learned Trial Judge that the appellant's suit is a suit as contemplated under section 50 of the MPT Act.

30] The apprehension expressed by Mr. Shah that the appellant will be rendered remediless cannot be accepted, in the facts and circumstances of the present case. There is really no basis for such an apprehension particularly because the respondents have themselves time and again urged that the appellant's suit, is a suit as contemplated under section 50 of the MPT Act. Even in the written submission filed by the respondents, the following is stated:

> *"7. ……...It is respectfully submitted that the subject matter of the Suit, therefore, squarely come under Sub Section (iv) of Section 50(iv)(b),(p) and (q) of Section 50 of the BPT Act, 1950. Therefore the prior permission from Charity Commissioner for filing the present Suit is mandatory and necessary as required under Section 51 of the BPT Act and since the Plaintiff has not obtained prior permission of the Charity Commissioner for filing the present Suit, the Suit is barred by Section 50 and 51 of the BPT Act.*
>
> *8. ………….*
>
> *9. ……. Therefore, the Suit is inherently barred by law and more particularly under the first proviso to section 50 Clause (iv),(b), (p) and (q) of BPT Act, 1950 read with Section 51 and/or Section 80 of the BPT Act."*

31] Applying the law laid down in *Social and Cultural Association (supra), Gaud Saraswat Brahmin Temple Trust (supra)* and *Dr. Rangnath Joshi (supra),* it is not possible to accept Mr. Shah's contention that the reliefs in the appellant's suit are only to vindicate the appellant's personal or private rights. In this case, as noticed earlier, the appellant, answers the definition of the expression "*person having interest*" under section 2(10) of the MPT Act. The appellant claims to be aggrieved by the order/resolution of the public trust suspending or purporting to suspend the appellant from the position held by him with the public trust. The reliefs applied for by the appellant in the suit also stand covered by the reliefs referred to in section 50 of the MPT Act. Admittedly, the appellant had not obtained prior consent from the Charity Commissioner before the institution of the suit. Proviso to section 50 of the MPT Act, in terms provides that no suit claiming any of the reliefs specified in section 50 shall be instituted in respect of any public trust, except in conformity with the provisions thereof. Similarly, section 51 of the MPT Act also provides that the consent of the Charity Commissioner is necessary for institution of a suit of the nature specified in section 50 of the MPT Act. For all these reasons, there is no case made out to interfere with the impugned order dated 30 January 2016.

32] However, there is merit in the contention of Mr. Shah, learned counsel for the appellant, insofar as the challenge to the order dated 26 February 2016 made by the learned Trial Judge is concerned. In the first place, the impugned order dated 26 February 2016 is not at all clear. Secondly, once it is held that the suit as instituted by the appellant is of the nature as contemplated by section 50 of the MPT Act, there is no question of non-suiting the appellant by resort to the provisions in section 80 of the MPT Act and holding that there is bar of jurisdiction because the question raised in the suit is a question which, by or under the MPT Act to be decided or dealt with by any officer or authority under the MPT Act and in respect of which, the decision or order of such officer or authority has been made final and conclusive. In this case, neither Mr. Apte nor any of learned counsel appearing for the respondents were able to pin point any provision or any officer or authority under the MPT Act, from whom the appellant, would be in a position to obtain redressal in the matter of his suspension from membership. Finally, learned Trial Judge having rejected the plaint by the impugned order dated 30 January 2016, was not at all justified in making any further order dated 26 February 2016 and invoking the provisions contained in section 80 of the MPT Act, in order to non suit the appellant. Accordingly, the impugned order dated 26 February 2016 is liable to be set aside and is hereby set aside.

33] The setting aside of the impugned order dated 26 February 2016, however, does not result in restoration of the suit to the file of learned Trial Judge, since, the impugned order dated 30 January 2016, by which, learned Trial Judge has rejected the plaint under order 7 Rule 11 of the CPC, is not interfered with in this appeal. In case, the appellant, desires to pursue the matter before the civil court, the appellant, will be at liberty to apply to the Charity Commissioner for permission to institute the suit as contemplated by section 51 of the MPT Act. Such application, if made by the appellant within a period of four weeks from today, shall be disposed of by the Charity Commissioner , in accordance with law and on its own merits as expeditiously as possible and in any case within a period of two months from the date of receipt of such application.

34] This appeal is therefore, partly allowed and disposed of with the following order: -

a] The impugned order 30 January 2016 is not interfered with;

b] The impugned order dated 26 February 2016 is hereby set aside;

c] The appellant is at liberty to apply to the Charity Commissioner for permission to institute suit under Section 51 of the MPT Act. Such application, if made by the appellant within a period of four weeks from today, shall be disposed of by the Charity Commissioner in accordance with law and on its own merits, as expeditiously as possible and in any case within a period of two months from the date of receipt of such application;

d] In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)