

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.M.A.No.978 of 2016

JUDGMENT:

The unsuccessful defendants before the Court below preferred the instant appeal aggrieved by the order dated 28.10.2016 in I.A.No.725 of 2015 in O.S.No.475 of 2015 passed by XXIV Additional Chief Judge, City Civil Court, Hyderabad granting temporary injunction in favour of plaintiffs.

2) The parties in this appeal are referred as they stood before the trial Court.

3) The factual matrix of the case is thus:

a) The Indigenous Churches in India Trust is the 1st plaintiff and plaintiffs 2 to 4 are its trustees. The said Trust was registered vide document No.46/2004 dated 24.03.2004 with the avowed objects to propagate the gospel of Lord Jesus Christ and do other related activities. The Headquarters of the Trust is at Hebron, Golconda Cross Roads, Musheerabad, Hyderabad. As per the Trust deed, there were five trustees but as on 09.09.2011, there were only three trustees and two posts have to be filled up. Hence, the Trust appointed the defendants as trustees in the existing two posts as per meeting held on 28.11.2012 at Chennai. While so, Chairman of the Trust i.e. Bro.Kuruvilla passed away and the Trust had to fill up the post of Chairman. So, the 2nd plaintiff and others appointed the 1st defendant as Chairman for a period of one year w.e.f.

10.02.2014 till 09.02.2015 and after expiry of one year, they could not conduct Trust meeting due to ill-health of 3rd plaintiff. Though the post of Chairman was not filled up, the activities of the Trust were continued successfully.

b) While so, the 1st defendant who is no longer Chairman of the Trust, claiming himself as officiating Chairman of the Trust, addressed a letter dated 22.04.2015 to the remaining Trustees proposing to call an emergency meeting of the Trust on 28.04.2015 to elect a new Chairman. Having received the same, the Trust sent a reply dated 24.04.2015 stating that as 3rd plaintiff was suffering from ill-health and so meeting cannot be conducted on 28.04.2015 as proposed. Due to these developments, 3rd plaintiff—Secretary of the Trust sent a notice dated 28.04.2015 to all the Trustees informing that Trust meeting will be held on 08.05.2015 at Chennai. On receipt of the said notice, the 1st defendant requested to prepone or postpone the meeting to any convenient day except between 07.05.2015 and 09.05.2015 as he has to conduct VBS meeting and convocation on those days. Considering his request, the Trust postponed the meeting to 06.05.2015 and conducted the same on the said date but defendants did not attend the meeting wherein 3rd plaintiff was elected as Chairman. As he was not keeping good health, 2nd plaintiff was appointed as Chairman for a period of six months. Hence, defendants have no *locus standi* to claim that 1st defendant is the Chairman of the Trust. While so, the defendants with an oblique motive and *mala fide* intention fabricated an ante-dated

resolution alleged to have been passed on 28.04.2015 that 1st defendant will continue as Chairman till new Chairman was elected and it was circulated to all trustees including 2nd plaintiff. Hence, the alleged resolution dated 28.04.2015 was antedated and it was prepared after 06.05.2015. The 2nd plaintiff in his replies dated 17.05.2015 and 29.05.2015 specifically stated that resolution dated 28.04.2014 was fabricated and ante-dated and invalid due to lack of quorum. While so, the 1st defendant claiming himself as Chairman threatening the plaintiffs to present all the documents and interfering with the functioning of the Trust.

Hence the suit.

c) The defendants filed counter contending that earlier, plaintiffs 2 and 4 filed O.S.No.876 of 2014 against the defendants and they also filed I.A.No.670 of 2014 for injunction which was dismissed after contest. Aggrieved, plaintiffs carried the matter in appeal—CMA No.96 of 2015 which was not entertained. Hence, the plaintiffs filed the present suit to take over the management of the Trust by side lining all the trustees. There is neither *prima facie* case nor balance of convenience in favour of plaintiffs. The defendants thus prayed to dismiss the petition.

d) The plaintiffs filed rejoinder denying the material allegations made in the counter and contended that majority trustees passed a resolution in the Trust meeting dated 06.05.2015 appointing 3rd plaintiff as Chairman which is having required quorum. The entire record is

available for perusal and inspection of all the trustees. It is further contended that in O.S.No.280 of 2015, the 2nd plaintiff herein was shown as Chairman of the Trust and the defendants in their counter did not deny the same. It is further contended that in CRP No.4381 of 2015 filed against the order dated 23.09.2015 passed in I.A.No.932 of 2015 in O.S.No.280 of 2015, the defendants admitted that as on the date of filing the suit the 2nd plaintiff was the Chairman. The plaintiffs thus prayed to allow the petition.

e) Exs.P1 to P27 were marked on behalf of plaintiffs. On behalf of defendants Exs.R1 to R30 were marked. No oral evidence was let in on both sides.

f) The trial Court considering the pleadings and documentary evidence, allowed the petition granting temporary injunction restraining the defendants from interfering with the function of the Chairman of Indigenous Churches in India Trust—1st plaintiff.

Hence, the appeal.

4) Heard arguments of Sri M.V.Durga Prasad, learned Senior Counsel for Sri B.Venkateswara Rao, learned counsel for appellants and Sri S.Ramachandra Rao, learned Senior Counsel appearing for Sri K.R. Prabhakar, learned counsel for respondents.

5a) Lampooning the order of the Court below, Sri M.V.Durga Prasad, would strenuously argue that trial Court grossly erred in granting interim injunction restraining the respondents who were none other than the

Chairman and Trustees of plaintiff—Church from interfering with the Church activities without considering the pleadings and evidence on record in a proper perspective. He expatiated by arguing that since the plaintiffs filed the suit seeking declaratory and injunction reliefs, the burden is heavy on the plaintiffs to establish *prima facie* case, balance of convenience and irreparable loss in their favour to claim interim injunction. However, strangely, the petitioners/plaintiffs have not produced before the trial Court the alleged proceedings dated 06.05.2015 to establish that a resolution indeed was passed by the majority of the trustees electing the 3rd plaintiff as Chairman and due to his ill-health, 2nd plaintiff was instructed to officiate as Chairman for a period of six months. He vehemently argued that resolution proceedings are the basis for the claim of the plaintiffs in the suit and non-filing and non-marking of the said crucial document falsifies the claim of the petitioners/plaintiffs. Since the plaintiffs failed to establish *prima facie* case and other ingredients, they do not deserve injunction and their petition ought to be dismissed *in limini* by the trial Court by believing the version of the respondents/defendants that on 28.04.2015 a resolution was passed by majority of the trustees re-electing the 1st respondent/1st defendant as the Chairman of the plaintiff—Church. He submitted that even accepting the arguments of the plaintiffs that the resolution dated 28.04.2015 is unbelievable for want of quorum and for its non-mentioning in the counter filed by the 2nd respondent in I.A.No.725 of 2015, still that lapse on the part of the defendants will not

validate the resolution dated 06.05.2015 of the plaintiffs as plaintiffs failed to prove the said resolution and they cannot bank upon the weakness of the defendants' case. The trial Court even without having advantage of perusing the alleged resolution dated 06.05.2015 observed as if the election of the 2nd plaintiff as Chairman of the Trust in the meeting held on 06.05.2015 was valid in all respects and was in accordance with law. The said observation is erroneous as is not backed up by any document.

b) Nextly, he would argue that the petitioners/plaintiffs in order to patch up the lapses in their case filed some photostat copies in the CMA which are purported to be the original Trust deed and resolution dated 06.05.2015. However, they cannot be looked into at this stage as they were not produced at the relevant time before the trial Court. Further, those documents are only photostat copies and hence cannot be admitted in evidence.

c) He further argued 2nd appellant/2nd defendant was unnecessarily implicated in a false case by the plaintiffs and the said criminal case will have no impact on the present suit and appeal.

d) He finally submitted that appellants are in fact Chairman and trustees of the Church and the interim injunction causes any amount of hardship for their participation in Church activities and therefore, the same may be set aside by allowing the appeal.

6a) In oppugnation, Sri S.Ramachander Rao, learned senior counsel appearing for respondents/plaintiffs while supporting the order impugned would firstly argue that the resolution dated 06.05.2015 was passed by majority of the trust members present and voted by electing the 3rd plaintiff as Chairman but, however, due to his ill-health 2nd plaintiff was requested to officiate as Chairman for a period of six months. The plaintiffs have sent advance notice to the defendants about the proposal to convene the meeting on 06.05.2015 at Chennai but the defendants deliberately abstained from attending the meeting and now casting aspersions questioning the genuinity of resolution dated 06.05.2015. Hence, the contention of appellants/defendants is quite untenable. Learned counsel would further argue that in contra, the resolution dated 28.04.2015 claimed by appellants/defendants was a myth as there was no quorum for the alleged meeting and further, the 2nd appellant/2nd defendant did not mention about the convening of said meeting in his counter. Therefore, it is quite obvious that appellants/defendants concocted the resolution dated 28.04.2015 to serve as a counter blast to the resolution dated 06.05.2015 of the plaintiffs. The trial Court having found the genuinity of resolution dated 06.05.2015 and *prima facie* case and balance of convenience in their favour rightly granted interim injunction. He submitted that when the order passed by the trial Court does not suffer from any illegality or infirmity, the appellate Court shall not ordinarily interfere with the same. He relied upon the following judgments.

1. *Hindustan Petroleum Corporation Limited vs. Sriman Narayan*¹

2. *Laxmikant V. Patel vs. Chetanbhai Shah*²

b) Remonstrating the arguments of the appellants, he would submit that in fact the Trust deed and resolution dated 06.05.2015 were filed before the trial Court but they might not have been marked as exhibits but nevertheless the plaintiffs again filed copies of the Trust deed and resolution dated 06.05.2015 which can be perused by this Court.

c) Finally, he argued that the plaintiffs deserve interim injunction as *prima facie* case and balance of convenience are in their favour and on the other hand, defendants are unscrupulous persons and 2nd defendant was admittedly involved in criminal case for snatching away the funds of the Church and their indulgence and interference in the Church activities would profane the serenity of the Church. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination in this appeal is:

“Whether there are merits in the C.M.A. to allow?”

8) **POINT**: As can be seen from Ex.R1 and also judgment in W.P.No.16430 of 2008 dated 24.06.2009, the undisputed facts were that the plaintiff—Trust is the successor of Society of Trustees of Indigenous Churches in India Trust (Registered No.114/71). The said Society of

¹ (2002) 5 SCC 760

² (2002) 3 SCC 65

Trustees was dissolved as per special resolution dated 23.03.2004 passed by the general body of the society and the assets and liabilities were transferred to the plaintiff's Trust on 25.03.2004. This Trust was established with five Trustees viz. Bro.K.Philip, G.T.Benjamin, Theodore Reginold, FCS Peter and Paul Sudhakar. Bro.K.Philip was functioning as Chairman of the Trust. It appears Bro.Paul Sudhakar voluntarily renounced as trustee, whereas Bro. G.T.Benjamin who was functioning as Vice President of the Trust died in the year 2010 and Br.K.Philip was called to glory on 15.12.2013. While he was alive, on 28.01.2012 it was resolved to appoint Y.John Subba Reddy and K.M.Samson (the defendants) in the two vacant posts of trustees. Subsequently after the demise of Prof.K.Philip another trustee Bro.U.Jaiprakash (the 4th plaintiff) was appointed as trustee. In February, 2014 Trustees elected Bro.Y.John Subba Reddy as Chairman of the Trust for a period of one year from 10.02.2014 to 09.02.2015.

9) Be that as it may, subsequent to the one year stint of 1st defendant, it appears disputes arose among the Trustees i.e. plaintiffs on one hand and defendant on the other with regard to election of Chairman. While the plaintiffs claim that as per the resolution dated 06.05.2015 the majority Trustees elected 3rd plaintiff as Chairman and due to his ill-health, 2nd plaintiff was requested to officiate as Chairman for a period of six months w.e.f. 06.05.2015; the defendants would make a counter claim that as per resolution dated 28.04.2015 the 1st defendant was re-elected as Chairman. This is preciously the bone of contention.

10) The present suit—O.S.No.475 of 2015 was filed by the plaintiff seeking declaratory reliefs that the resolution dated 06.05.2015 electing third plaintiff as Chairman was true, valid and legal and also for declaration that the alleged resolution dated 28.04.2015 passed by the defendants was null and void and non-est in the eye of law and consequently, restraining the defendants and their henchmen from interfering with the functioning of the Chairman of the plaintiffs Church. Needless to emphasize that since the interim injunction is claimed by the plaintiffs on the strength of the declaratory and injunction reliefs claimed in the main suit, the burden is heavy on them to establish *prima facie* case, balance of convenience and irreparable loss that may likely occasion to them in case injunction were to be refused. In ***Hindustan Petroleum Corporation Limited's*** case (1 supra), cited by the respondents/defendants, the Apex Court reiterated the principles for granting an interlocutory injunction. In Para 7 of the judgment, it was observed that the tests normally applied for granting interim injunction are:

- i) Whether the plaintiff has a *prima facie* case
- ii) Whether the balance of convenience is in favour of plaintiff and
- iii) Whether the plaintiff would suffer an irreparable injury, if his prayer for interlocutory injunction is disallowed.

It was further held that the object of granting interlocutory injunction is to protect plaintiff against injury by violation of his right for which he could not be adequately compensated in damages. At the

same time the Apex Court cautioned the need for such protection which was granted to plaintiff, has to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Apex Court thus held that the Court must weigh one need against another and determine where the “balance of convenience” lies. In the light of aforesaid principle, it has now to be seen whether plaintiffs could pass the tests to deserve themselves for interim injunction and whether the trial Court has properly applied those tests and most importantly, weighed the balance of convenience in a judicial scale, judiciously.

11) The plaintiffs claim pivots on the resolution dated 06.05.2015, as per which, the 3rd plaintiff was said to be elected as Chairman of the plaintiffs Trust and due to his ill-health, 2nd plaintiff was instructed to officiate as Chairman for a period of 6 months. Surprisingly, the plaintiffs have not produced the resolution dated 06.05.2015 into the Court and they have not got the said document marked as exhibit for the scrutiny of the Court to test their claim. In fact the 2nd appellant in Para 8 of his counter in I.A.No.725 of 2015 while challenging the proceedings dated 06.05.2015 alleged that those proceedings were the ante-dated by the 2nd plaintiff and he masterminded the whole process of conducting meeting in a clandestine manner claiming to have quorum. In that view of the matter, it is the duty of the plaintiffs to produce the copy of the alleged resolution dated 06.05.2015 and submit it for the

satisfaction of the Court that a meeting indeed took place on 06.05.2015, wherein 3rd plaintiff was elected as Chairman and due to his ill-health, 2nd plaintiff was requested to officiate as Chairman for 6 months. That task was not undertaken by the plaintiffs. Despite the same, the trial Court observed as if the plaintiffs could establish their *prima facie* case and balance of convenience. It observed that in Ex.P.4—copy of the CMA filed by the 1st defendant, 2nd plaintiff was shown as Chairman of the plaintiffs trust. It appears, the trial Court was under the impression that such a mentioning was an admission on the part of the defendants. The explanation in this regard offered by the counsel for appellant is that since in I.A.No.932 of 2015 in O.S.No.280 of 2015 on the file of VII Additional District Judge, Ongole, against which order the CMA was filed, the 2nd plaintiff was referred as Chairman, the same cause title was reproduced in CMA and that cannot be treated as an admission. There is considerable force in his submission. At the outset, it must be said that the plaintiffs could not *prima facie* establish that a meeting was held on 06.05.2015 at Chennai wherein the 3rd plaintiff was elected as the Chairman and due to his ill-health, the 2nd plaintiff was instructed to officiate as Chairman for 6 months. It is true that the defendants claim that a meeting was held on 28.04.2015 at Hyderabad by the majority trustees including Paul Sudhakar wherein they re-elected 1st defendant as Chairman. This claim lacks strong foundation as the continuation of Sudhakar as one of the Trustees is a questionable one. Thus, as the matter stands, the claim of either party is having its own demerits and

the veracity of the respective claims can be decided only after a full-fledged trial. However, for the present, since the plaintiffs are claiming interim injunction, they have to pass the tests of *prima facie* case, balance of convenience and irreparable loss without depending on the weakness of the defendants' case. As already stated supra, the plaintiffs could not establish the *prima facie* case as they failed to produce the resolution dated 06.05.2015 before the trial Court. No doubt, they produced photostat copies of the Trust deed and the resolution dated 06.05.2015 in this appeal. However, they cannot be taken into consideration at this juncture for the reason that they were only photostat copies and they were not filed at the appropriate time before the trial Court for its scrutiny. The balance of convenience and irreparable loss and injury also cannot be said to be in favour of plaintiffs. Admittedly the defendants are trustees of the plaintiffs' church. If they are enjoined not to interfere with the church activities, the relative injury will be more to the defendants and consequently, the Church administration and other activities also will suffer due to absence of defendants. Unfortunately, the trial Court has not considered these aspects in a proper manner. In ***Laxmikant V. Patel***'s case (2 supra) cited by the respondents/plaintiffs, it was observed by the Apex Court that the appellate Court would not ordinarily interfere with the discretion exercised by the trial Court in granting temporary injunction except where such discretion was exercised arbitrarily, capriciously or perversely or where the order of the Courts under scrutiny ignored the settled principles of law regulating

grant or refusal of interim injunction. This is one such occasion where the trial Court has not properly appreciated the principles regulating the granting of injunction. Therefore, the order of the Court below is liable to be set aside.

12) However, having regard to the fact that the institution of the plaintiff—Church and the faith and allegiance of the devotees are at stake, in my considered view, this Court while setting aside the impugned order requires to pass a suitable order for smooth administration of the Trust pending disposal of the suit.

13) In the result, this Civil Miscellaneous Appeal is allowed and ordered as follows:

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- i) The order dated 28.10.2016 in I.A.No.725 of 2015 in O.S.No.475 of 2015 passed by XXIV Additional Chief Judge, City Civil Court, Hyderabad, is hereby set aside.
 - ii) Having regard to the importance of the matter, the trial Court is directed to dispose of the main suit on merits within six(6) months from the date of receipt of copy of this order.
 - iii) It is made clear that the trial Court shall not be influenced by the observations made in this order.
 - iv) For smooth administration of the Trust, pending disposal of the suit, the parties in the suit shall come to consensus opinion and name one among them and inform the same to the trial Court

within one(1) month from the date of this order, who will officiate as Chairman of the plaintiffs' trust, pending disposal of the suit.

v) If the parties fail to do so within the stipulated period, the trial Court by drawing lots select one among the parties to officiate as Chairman, pending disposal of the suit.

vi) No costs in the appeal.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 05.06.2017
Murthy / scs

U. DURGA PRASAD RAO, J

