

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1823 OF 2017

ORDER:

Aggrieved by the order dated 21.03.2017 in I.A. No.94 of 2017 in O.A. No.74 of 2016 (old O.A.No.64 of 2013) passed by the Telangana State Waqf Tribunal, the petitioner being unsuccessful preferred this revision under Article 227 of the Constitution of India, negating the relief of rejection of plaint under Rule 11 of Order VII read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC'), the present civil revision petition is filed.

The petitioners herein are the respondents 2 and 6, the respondents 1 and 2 herein are the applicants and the respondents 3 to 8 herein are the respondents 1, 3 to 5, 7 & 8, in O.A. No.74 of 2016. They will hereinafter be referred as the petitioners and respondents as arrayed in the revision petition for convenience.

The petitioners filed an interlocutory application under Rule 11 of Order VII of CPC to reject O.A. No.64 of 2013, as the relief claimed in the O.A. has become *infructuous*, alleging that the second respondent representing himself as Honorary Secretary to the first respondent wakf institution filed O.A. No.74 of 2016 (old O.A. No.64 of 2013) under Section 83 (2) of A.P. Wakf Act, 1955 seeking various reliefs. It is the contention of the petitioners that the relief under clause (b) is the main relief and reliefs covered by clauses (a) and (c) of the O.A. are consequential reliefs. When the third respondent - Mirza Khusru Ali Baig, who was nominated as Secretary, expired during the pendency of O.A., the claim under

clause (b) has become *infructuous* since the cause of action dies with the person based on the principle *actio personalis moritur cum persona*, thereby consequential relief covered by clause (a) and (c) has become *infructuous*.

In those circumstances, it is apposite to extract the reliefs claimed in the O.A. and accordingly extracted hereunder:

“a) declaring the impugned proceedings bearing No. F.No.42/Hyd/C/2013/C/2013-Z1 dated 27.11.2013 issued by the first respondent as null and void;

b) To declare the purported resolution dated 04.11.2013 said to have been passed by the respondents 2 to 6 purporting to nominate the 3rd respondent as Secretary of the Managing Committee of the first Applicant as null and void;

c) Consequently grant permanent injunction restraining the respondents 3 to 6 from interfering with the Management of the first Applicant;

d) costs; and

e) pass such other or further orders as this Hon’ble Tribunal deems fit and proper in the circumstances of the case”

It is also contended that as per clause 3 of the constitution of Mumtaz Yaruddowla Wakf which is in respect of ‘Management’ indicates that the affairs of the wakf, shall be managed by Majlis-e-Umna, in whom all the property of the wakf shall be vested. The Majlis-e-Umna shall be the supreme executive body of the wakf and it shall vest power to manage and control the Asafia High School, Mumtaz College and all other institutions. Majlis-e-Umna,

as per clauses (4) and (5) of the said constitution, shall at any time consist of not less than 11 and not more than 17 members. The Majlis, from among its members, shall elect the President, Vice President, one Secretary and one Treasurer, all of whom shall hold office for a period of two years and shall be eligible for re-election.

The petitioners also alleged that second respondent violated the provisions of the constitution of wakf and has been acting as Secretary in perpetuity without adhering to the term of office, only for a period of two years as contemplated in the constitution. The O.A. is silent as to when the second respondent got elected as Secretary, when his term expires. In the absence of those allegations, the Original Application is liable to be rejected.

It is also contended that even if the second respondent was elected as a Secretary and he would cease to be the Secretary of the wakf institution with effect from 04.11.2013, but still continuing to be the Secretary of the wakf institution.

By virtue of the resolution dated 04.11.2013 the first respondent stated to have been appointed as President of Mumtaz Yaruddowla wakf, the resolution was confirmed by A.P. State Wakf Board by issuing proceedings dated 27.11.2013. The appointment of the first respondent as well as the office bearers was challenged by the self-styled President in W.P.No.38308/2013 on the file of this court. The said writ petition was disposed of confirming and recognizing the committee formed under resolution dated 04.11.2013. On 04.11.2015, the petitioners stated to have filed memos to the effect that the matter has become *infructuous* due to

efflux of time and tenure. Therefore, the O.A. cannot be continued as it become *infructuous*.

The respondents 1 and 2, who are the applicants in the O.A., filed counter contending that respondents 3 to 8 never constituted the Managing Committee of the first respondent board and the so called resolution dated 04.11.2013 whereunder the petitioners alleged to have constituted the Managing Committee is void *ab initio* for the grounds raised in O.A. It is further submitted that the impugned proceedings of wakf board dated 27.11.2013 does not fix any term of committee which it normally does. It is further contended that through the impugned resolution dated 04.11.2013 the deponent is the Honorary Secretary of the first respondent wakf. The *lis* in the O.A. is whether respondents 2 to 8 therein constituted the Managing Committee of the wakf. The deponent claimed himself to be the Honorary Secretary and 17 others were the Members of the Managing Committee, which has been managing the wakf institution and administering the educational institutions being run by the wakf. The deponent stated to have been continuing as the Honorary Secretary by virtue of subsequent appointment dated 29.08.2015. Therefore, the question raised in paragraph No.5 of the affidavit under reply does not arise for consideration as the main issue involved in the OA is whether respondents 2 to 8 in the O.A. constituted a managing committee as alleged by them. The deponent himself claimed to be the Honorary secretary as on the date of filing of the O.A. as admitted by the petitioners through the resolution dated 04.11.2013. In the O.A., the applicants mainly challenged the resolution said to have been passed on 04.11.2013 by the respondents 2 to 8, it is

absolutely clear that main challenge is to the purported constitution of respondents 2 to 8 as Managing Committee members of first applicant wakf. Therefore, merely because one of the respondents expired, it cannot be said that O.A. has become *infructuous* and not liable for dismissal.

Respondent No.7 filed counter contending that respondent No.2 involved in huge misappropriation of funds, he is not member of the institution and was ceased to be a member of this institution because of non attending three consecutive meetings. It is submitted that after expiry of tenure of Majlis-e-Umma of Mumtaz Yaruddowla Waqf, which was constituted on 04.11.2013, new committee was constituted and the same was informed to the waqf board about the change of management. After the death of grandson of Mumtaz Yaruddowla, who was the Secretary of the institution, by resolution dated 31.01.2017 all the members unanimously appointed correspondent/ secretary of Asafia High School, Shah Mohamed Sayeeduddin as Secretary of Mumtaz Yaruddowla waqf and he took charge and informed the same to the waqf board. Hence, the O.A. has become infructuous after death of Mirza Khusru Ali Baig.

The tribunal, after hearing argument of both the counsel, dismissed the petition on various grounds.

Aggrieved by the order passed by the tribunal, the present revision is filed on various ground mainly on the ground that the relief claimed under clause (b) of the O.A. became *infructuous* due to expiry of the third respondent during the pendency of the O.A. and the other reliefs covered by clauses (a) and (c) are

consequential to the relief claimed under clause (b), thereby the entire petition became *infructuous*. It is also contended that the tenure of the office bearers was expired on 04.11.2015, thereby the O.A. become *infructuous*, but the tribunal did not consider these aspects in proper perspective, committed serious error in dismissing the petition.

Sri Vedula Venkata Ramana, the learned Senior Counsel appearing for the petitioners, while reiterating the contentions, placed reliance on the judgment of the Apex Court in **Shipping Corporation of India Ltd., v. Machado Brothers and others**¹ to support his contention. When the relief claimed in the plaint become *infructuous* due to subsequent events, the suit has to be dismissed as *infructuous* exercising power under Section 151 CPC, but the tribunal did not appreciate the contention, thereby the order of the tribunal is contrary to the principle laid down by the Apex Court in **Shipping Corporation of India Ltd., v. Machado Brothers and Others** (1supra) and requested this court to allow the revision setting aside the order passed by the tribunal while dismissing O.A. No.74 of 2016 (Old O.A. No.64 of 2013) as *infructuous*.

Sri B.Nalin Kumar, learned counsel for the respondents 1 and 2, supported the order passed by the tribunal, while drawing the attention of this court to the order passed by this court in earlier CRP, which was filed against the order passed by the tribunal in a petition filed under Rule 11 of Order VII of CPC to reject the O.A. The order dated 18.12.2015 in CRP No.5295 of

¹ AIR 2004 SC 2093

2015 is also placed on record. In the earlier petition, the petitioners raised all the grounds including expiry of the term of the office and the reliefs covered by O.A., but this court recorded its findings and dismissed the CRP and thereby the present revision petition is not maintainable. It is also contended that the second respondent not only challenged the nomination of respondent No.3 as Honorary Secretary, but also challenged the appointment of respondents 2, 4 to 8 as Members of the Managing Committee and their nomination as President and Members of the Board under clause (c) of the relief. Similarly, the relief claimed in clause (c), though appears to be consequential relief, this court observed that it is an independent relief in the earlier CRP. Therefore, now this court cannot come to a different conclusion than the conclusion arrived by this court in the earlier round of litigation. Otherwise, if for any reason, this court comes to a different conclusion, it would amount to reviewing the order of this court in the earlier CRP and consequently on that ground the petition cannot be allowed and prayed for dismissal of the petition.

The O.A. was filed under Section 83(2) of the Wakf Act claiming various reliefs before the tribunal and the petitioners filed a petition under Rule 11 of Order VII read with 151 of CPC to reject the O.A. on two grounds.

The first ground is that the second respondent challenged nomination of the third respondent in O.A. as Honorary Secretary by Resolution dated 04.11.2013 under clause (b) of the reliefs, as he was expired during pendency of the O.A., the relief covered by clause (b) in the original application has become *infructuous*, since

holding office as Honorary Secretary is a person and the cause of action does not survive consequent upon his death based on the principle *actio personalis moriturus causa*.

There is no dispute with regard to the reliefs covered by clauses (a) and (c) as they are independent reliefs. In clause (a) the second respondent claimed declaration that the proceedings bearing No.42/HYD/C/2013/Z/1 dated 27.11.2013 issued by the first respondent i.e. A.P. Wakf board represented by its Chief Executive as null and void.

As per the proceedings dated 27.11.2013 Janab Gulab Yazdani was appointed as President, Janab Mirza Khusro Ali Baig was appointed as Honorary Secretary and other six members were appointed as members of the Board, specifying their duties. Thus the second respondent challenged not only appointment of Janab Mirza Khusro Ali Baig as Honorary Secretary, but also appointment of President and other Members respectively, specifying their duties by virtue of proceedings dated 27.11.2013. Therefore, the relief claimed by respondents 1 and 2 in clause (a) is more comprehensive. Death of Janab Mirza Khusro Ali Baig, the third respondent in O.A., who was nominated as Honorary Secretary by Resolution dated 4.11.2013 will have no impact on the relief claimed in clause (a). Since it is an independent relief, death of Janab Meerza Khusro Ali Baig would not abet the O.A. Therefore, the relief under clause (a) is an independent relief which is more comprehensive relief than covered by clause (b).

Under clause (c), the second respondent claimed consequential permanent injunction restraining the respondents 3

to 8 in the O.A. from interfering with the management of the first applicant. A bare look at the relief in clause (c) it is only a consequential relief. But this court in earlier CRP No.5295 of 2015 by order dated 18.12.2015 at paragraph 5 held as follows:

*“5. The resolution, dated 04.11.2013, passed for nominating respondent No.3 as Secretary of the Managing Committee of applicant No.1 for a period of two years, which was approved by the A.P.State Wakf Board, is the subject matter under challenge. But, it is to be noted that apart from seeking to declare the proceedings, dated 27.11.2013, and resolution, dated 04.11.2013, as null and void, **there is an independent relief sought for in the O.A. with regard to permanent injunction restraining respondent Nos.3 to 8 from interfering with the management of applicant No.1.** Whether applicant No.2 has violated the provisions of the Constitution of Wakf or not, is the matter to be gone into during trial.”*

Taking advantage of words underlined, Sri B.Nalin Kumar, learned counsel for the respondents 1 and 2, contended that the relief covered by clause (c) is an independent relief, though it is claimed as a consequential relief in the O.A. But I am unable to express my opinion on this aspect, as this court already took a specific view that the relief covered by clause (c) is an independent relief from the relief claimed under clauses (a) and (b). As per my discussion in the earlier paragraphs the relief covered by clause (a) is comprehensive and independent. It is difficult to accept the contention of the counsel for the petitioners that the entire reliefs claimed in O.A. become infructuous.

The tribunal can reject the O.A. only in the circumstances specified in clauses (a) to (d) in Rule 11 of Order VII of CPC. Rejection of plaint on the ground that the relief claimed in the O.A. has become *infructuous* is not covered by any of the clauses (a) to

(d) of Rule 11 of Order VII of CPC. Therefore the relief claimed by the petitioners for rejection of the plaint on the ground that the O.A. has become infructuous is misconceived and such the petition is not maintainable. When this court questioned about the very maintainability of the petition under Rule 11 of Order VII of CPC to reject the O.A., Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the petitioners, in all fairness admitted that the plaint in O.A. cannot be rejected on the ground that it become *infructuous* under Rule 11 of Order VII of CPC. However, such power can be exercised under Section 151 of CPC and his view is fortified by the judgment of the Apex court in **Shipping Corporation of India Ltd., v. Machado Brothers and Others** (1supra) wherein the Apex court, placing reliance on the earlier judgment in **J.M. Biswas v. N.K. Bhattacharjee**², held that a plaint or any proceedings can be dismissed on the ground that it become *infructuous* exercising power under Section 151 CPC due to subsequent event, if the original proceedings has become *infructuous*.

But in the present case on account of death of the third respondent in O.A. Janab Mirza Khusru Ali Baig Sahab, the reliefs covered by clauses (a) and (c) are still surviving, that apart in the earlier round of litigation in CRP No.5295 of 2015, this court declined to reject the plaint on the ground of expiry of the term of the office of the President, Secretary and members and on all other grounds. Though the relief covered by clause (b) has become *infructuous*, the plaint cannot be rejected in part, at best the O.A.

²(2002) 4 SCC 68

against the third respondent can be dismissed on the ground that it has become *infructuous*.

Therefore, this court cannot exercise power under Article 227 of the Constitution and set aside the order passed by the Tribunal and reject the plaint in O.A. No.74 of 2016 (Old O.A.No.64 of 2013) on the file of Telangana State Waqf Tribunal, Hyderabad, on any of the grounds mentioned in the petition. Therefore the order passed by the Tribunal is free from any legal infirmities, warranting interference of this court, consequently, the finding of the tribunal is upheld while holding that the petition is devoid of merits and it deserves to be dismissed.

In the result, the civil revision petition is dismissed.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:10.07.2017
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