

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11117 OF 2017
(Ratnamala w/o Sudhakar Kulkarni Vs. Samarth Vidya Prasarak
Mandal and others)

Mr.P.M.Nagargoje, Advocate for the petitioner.
Mr.L.V.Sangit, Advocate for respondent Nos.1 to 3.
Mr.B.A.Shinde, AGP for respondent No.7.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 11/07/2018

PER COURT :

1. While issuing notice to the respondents, I had passed the following order on 13/09/2017 :-

“1. The petitioner/original plaintiff in RCS No.307/2014 is aggrieved by the order dated 01/07/2017, by which her application Exh.36 praying for addition of parties, has been rejected.

2. I have considered the submissions of the learned Advocate for the petitioner.

3. The petitioner has preferred the suit for seeking recovery of interest amounts and other ancillary benefits arising out of the delayed payments of service benefits by the Shri Samarth Vidya Prasarak Mandal, the establishment in short. Some of the

trustees were arrayed as defendants. In the written statement filed by the defendants, they have raised an objection that the Trust has not been arrayed and hence the suit be dismissed.

4. Though it appears that Exhibit 36 was filed after a passage of about 2 years and 6 months, the fact remains that the Trust would be a necessary party to the suit as the petitioner is seeking service benefits. Though defendant Nos. 2 to 4 are said to be representing the Trust, the Trust has not been arrayed through the President or Secretary, though they are individually arrayed as defendants.

5. In so far as the addition of a trustee by name Vishwas Yashwant Bhalerao is concerned, in my view, in matters of such nature falling in service jurisprudence, the individual trustees are not necessary unless malafides are specifically alleged against them.

6. I am therefore considering this petition only to the extent of the addition of the trust namely Shri Samarth Vidya Prasarak Mandal. The other person namely Vishwas Yashwant Bhalerao would not be a necessary party.

7. Issue notice to respondent Nos. 1 to 3 and 7, returnable on 31/10/2017. Notice is not necessary to respondent Nos. 4 to 6 who are trustees. Learned AGP waives service for respondent No.7.

8. *Until the next date of hearing in this matter, the Trial Court would adjourn RCS No.307/2014.*

9. *The petitioner shall supply copies of the petition paper book on or before 20/09/2017 for issuing notices, failing which, this petition shall stand dismissed without further reference to this Court."*

2. As such, this petition is being considered only to the extent of the addition of the Trust and the petitioner is not pressing the prayer for addition of Mr.Vishwas Yashwant Bhalerao in the pending proceedings before the Assistant Charity Commissioner.

3. Mr.Sangit, learned Advocate appearing on behalf of the trustees has vehemently supported the impugned order. He contends that application Exh.36 was filed by the petitioner only to overcome the objection of maintainability raised by the trustees. It was set out in the written statement in paragraph No.4, as long ago as on 30/09/2014 that the suit deserves to be dismissed for non-joinder of parties. After a passage of more than 2 ½ years, Exhibit 36 has been preferred on 10/03/2017. The affidavit in lieu of examination in chief has also been filed by the plaintiff and hence the impugned order calls for no interference.

4. It is further canvassed that u/s 50 r/w section 51 of the Maharashtra Public Trusts Act, if a trust is to be arrayed as a defendant in a suit, the plaintiff is obliged to comply with Section 51, failing which, the suit can be dismissed for non-compliance.

5. Learned Advocate for the plaintiff submits that Section 50 and 51 would not affect his case and he is not required to take the permission of any authority for adding the Trust as a defendant. The plaintiff does not desire to seek such permission and in the event the Trial Court concludes that Section 50 and 51 are applicable to his case, he would suffer the consequences.

6. I find from the record that the petitioner has put forth prayers against the defendants since he attributes laches on the part of these defendants due to which he has suffered loss of interest on his retiral benefits like pension, provident fund and gratuity. Due to the conduct of these defendants, the petitioner has claimed damages of Rs.3,00,000/- alongwith 10% interest and costs of the suit. Though he has not put forth any prayers against the Trust, he is adding the Trust only to overcome the objection that the Trust is not arrayed as a defendant.

7. It cannot be ignored that after the written statement was filed in Sept. 2014, application Exh.36 is preferred in March 2017. Merely because the petitioner is the plaintiff and Exhibit 36 may have been filed belatedly causing a delay in his own suit, it cannot be a ground for permitting the addition of a Trust without imposing a costs.

8. At this juncture, learned Advocate for the trustees submits that if this Court is inclined to allow the petition and impose costs, the amount of costs be donated for the treatment of poor people.

9. In the light of the above, this petition is partly allowed. The impugned order dated 01/07/2017 is set aside and application Exh.36 is allowed subject to the petitioner adding the Trust as a defendant and by depositing costs of Rs.5,000/- (Rs. Five thousand only) with the Civil Surgeon, Aurangabad, through Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft (Demand Draft be drawn in the name of "Civil Surgeon, Aurangabad"). The prayer put forth in application Exh.36 to the extent of the addition of Vishwas Yashwant Bhalerao has already been rejected on 13/09/2017 by this Court.

10. The petitioner would deposit the said amount on or before 26/07/2018, failing which, this order shall stand recalled and the petition shall stand dismissed without reference to the Court. After the amount is deposited, a receipt of such deposit shall be presented before the Trial Court on or before 04/08/2018 and the amendment shall be carried out on or before 04/08/2018.

11. It is informed that the learned Advocate appearing for the Trustees would waive service for the Trust after addition. It is made clear that the statement made by the petitioner with regard to the effect of Section 50 and 51 has been recorded and the Trial Court shall consider the objection of the Trustees in that context, on its own merits.

(Ravindra V.Ghuge, J.)