

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION NO.90 OF 2018

Bhagwandas Karamshi Thakkar / Sejpal & anr. ... Applicants

Vs.

Vinod Karamshi Sejpal / Thakkar & Ors. ... Respondents

Mr.K.G. Mushi i/b Dua Aassociates for the Applicants

Mr.A.Dasgupta with Shrey Shah i/b Jhangiani Narula & Associates,
for Respondent No.1

Ms.Sheetal Shah for Respondent No.2

Ms.Dipti Bhuta for Resp. No.3

Mr.Himanshu Kode for Resp. No.4

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: APRIL 20, 2018

P.C. :

1. This application is moved under section 24 of the Civil Procedure Code for transfer of S.C. Suit No.5209 of 2012 pending before the City Civil Court at Mumbai to this High Court, where the Trust Petition No.6 of 2014 is pending. It is submitted by the learned Counsel for the applicants that the issue pertains to the appointment and removal of trustees in a private trust consisting of initially 4 trustees. One of the trustees died in 2000. The other two trustees removed the 4th trustee or the remaining 3rd trustee by letter dated 17.10.2012. The said removal is challenged by that

trustee before the City Civil Court. It is submitted that the wife of the said plaintiff/trustee filed Trust Petition in the capacity of a beneficiary before the High Court. It was submitted that in the said petition, the appointment of the third trustee, after removal of the plaintiff/trustee, is challenged. It is submitted that the issue of cancellation of appointment of new trustee as prayed in prayer (b) of the Trust Petition has a direct bearing over the decision of the suit ending before the City Civil Court. The learned Counsel has submitted that it is a private trust where the family members i.e., their brothers, their children and their wives are involved. If the suit before the City Civil Court is decreed or dismissed, then, it may have a direct impact on the decision of the Trust Petition and there is a likelihood of passing two conflicting orders.

2. The learned Counsel in support of his submissions, relied on the judgments in **Indian Overseas Bank, Madras vs. Chemical Construction Company & Ors.**¹ and in the case of **Nirmala Devi vs. Arun Kumar Gupta & Ors.**²

3. The other respondent in this application, who is the original trustee, who was appointed alongwith the second deceased

1 (1979) 4 SCC 358

2 (2005) 12 SCC 505

trustee to respondent No.4, both have supported this application of the applicants for transfer. Both the learned Counsel appearing for respondent No.3 and respondent No.4 have adopted the same arguments that the decision in the suit and the decision in the Trust Petition are interdependent and will have direct impact on each other and hence, the Suit in the City Civil Court at Mumbai, be transferred to this High Court where the Trust Petition is pending.

4. Per contra, the learned Counsel for the contesting respondent No.1 and respondent No.2, who are the plaintiff trustees in the City Civil Court and his wife, who is a petitioner in the Trust Petition, have submitted that the suit before the City Civil Court was filed in the year 2012 and it is only against respondent No.3. The present applicants are not parties in the suit. It is further submitted that this Trust petition was filed in the year 2014. This application for transfer is filed at a very late stage. He submitted that they are opposing the transfer as both the proceedings are on different grounds.

5. Considered the law laid down in **Indian Overseas Bank, Madras vs. Chemical Construction Company & Ors. (supra)** and **Nirmala Devi vs. Arun Kumar Gupta & Ors. (supra)**. In the

case of **Indian Overseas Bank, Madras vs. Chemical Construction Company & Ors. (supra)**, it is held that apart from the principle of convenience and expenditure to the parties, issues in both the suits are common or interdependent, is to be taken into account. The Court dealing with the application u/s 24 of the Civil Procedure Code, should not lightly invoke its jurisdiction under section 24.

6. In the case of **Nirmala Devi vs. Arun Kumar Gupta & Ors. (supra)**, clubbing of two proceedings i.e., probate proceedings and another suit, was the issue. The Supreme Court in its short order, has only clubbed the proceedings and directed the District Judge to dispose of both the proceedings at the earliest.

7. The present petitioners were not party to the Trust Petition till March, 2018. They are added on 9.3.2018 as a party respondent in the Trust Petition. Therefore, it cannot be said that the application is filed at a late stage. However, they are not party to the suit pending before the City Civil Court. Initially, the suit was filed by the removed trustee i.e., respondent No.1, against the two trustees, who removed him. One of the trustees Defendant No.2 has expired. Now, only one trustee i.e., respondent No.3 remains.

In the suit, it is prayed that the letter dated 17.10.2012 removing him from the trusteeship, is illegal and not binding on the plaintiff. Thus, consequently, he will continue to remain as trustee. The reliefs claimed in the Trust Petition are many. However, as pointed out by the learned Counsel for the applicants, the relief which is going to be affected is prayer clause (b) which says that appointment of respondent No.3 (respondent No.4 herein) vide letter dated 18.3.2013 as trustee, be declared as illegal and void ab initio.

8. Thus, the reliefs claimed in the suit so also clause (b) in the petition, it is found that one of the reliefs is for declaration that the letter of removal from the trusteeship is not binding and it is illegal and in the prayer (b) in the petition as pointed out the appointment of respondent No.4 is challenged. I am of the view that these two prayers or the reliefs are independent and different. As argued before this Court, 4 trustees are required in this trust. Today, only two trustees are working i.e., respondent No.3 and the plaintiff/trustee. Assuming the possible apprehension as expressed here, that removal of the plaintiff trustee is held as legal and so also, if the appointment of respondent No.4 is held as

illegal, then, only one trustee i.e., respondent No.3 will remain as trustee and it will be an anomalous situation. The Trust Petition is pending before this Court and the Court will take decision on it and appropriate procedure can be followed in respect of appointment of all the trustees.

9. Under such circumstances, no ground is made out by the applicants to invoke the powers of this Court u/s 24 of the Civil Procedure Code. Miscellaneous Civil Application is dismissed.

(MRIDULA BHATKAR, J.)