

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.5848 of 2018

ORDER:

1) Assailing the order, dated 28.08.2018, passed in I.A.No.165 of 2018 in S.O.P.No.155 of 2018 on the file of the II Additional District Judge, Guntur, wherein an application filed under Order XXXIX Rules 1 and 2 of C.P.C. was allowed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) For the sake of convenience, the parties will be hereinafter referred to as arrayed in I.A.No.165 of 2018.

3) The facts in issue are as under:

The first respondent/plaintiff filed the above Society O.P.No.155 of 2018 seeking cancellation of the appointment order, dated 11.11.2017 of the third respondent, issued by respondents 1 and 2 as Correspondent to Tarlupadu College of Education, Tarlupadu. Along with the society O.P., the first respondent also filed I.A.No.165 of 2018 seeking ad-interim injunction against the third respondent restraining him from discharging any duty as Correspondent of Tarlupadu College of Education, Tarlupadu, pending disposal of the main O.P.

The averments in the affidavit filed in support of the petition would show that the petitioner is Bursar of Tarlupadu College of

Education appointed by A.E.L.Church, Guntur. Without following the procedure laid down in A.E.L. Constitution, the 1st respondent appointed the third respondent as Correspondent of the said College for a period of two years from 01.12.2017 to 30.11.2019 vide letter dated 11.11.2018. Since the said appointment is not as per the bye-laws and also as per resolution of the Executive Council, the petitioner filed the above society O.P., questioning the said appointment. It is said that the third respondent, who was appointed in the year 2017, behaved in a high handed manner, causing harm to the reputation of the college even by changing its name as "New Tarlupadu College of Education and he went to the extent of breaking open the locks of the office rooms and create law and order problem in the college. The third respondent taking advantage of his illegal appointment order, has been disturbing the peaceful running of the college and also damaged the reputation of the college in that locality by involving in illegal activities. The third respondent, who is illegally appointed as Correspondent for Tarlupadu College of Education, Tarlupadu, is claiming to be a Correspondent for Luthern D.Ed.College and Luthern Junior College and also got published the same in news papers.

4) The third respondent filed counter denying the allegations made in the petition and contending that the appointment of third respondent as Correspondent is legal and valid and it was done in

accordance with law and the constitution of A.E.L. Church. It is further stated that the petitioner has no locus standi to file the O.P. and he made false allegations and also suppressed the facts.

5) No oral evidence was adduced by both the petitioner and respondents, but Exs.P1 to P12 were marked on behalf of the petitioner and Exs.R1 to R10 marked on behalf of the third respondent.

6) After considering the rival submissions made, the trial Court allowed the petition. Challenging the same, the present Civil Revision Petition is filed.

7) It is to be noted here that the present I.A., which came to be filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short "the C.P.C.") seeking interim injunction against the third respondent, was allowed. An objection was raised stating that against the said order only an appeal would lie. It is to be noted that in the event of any dispute arising among the Committee or the members of the Society, in respect of any matters relating to the affairs of the society, any member of the society, may proceed with the dispute under the provisions of Arbitration and Conciliation Act, 1966 or may file an application before the District Court concerned and the said Court shall after necessary enquiry pass such order as it may deem fit.

8) Therefore, as per Sections 23 of the Societies Act (for short "the Act"), it is very apparent that the aggrieved person may raise a dispute under the provisions of the Arbitration and Conciliation Act or an application before the District court concerned, in which event the said court shall conduct necessary enquiry and pass orders as it deems fit. Insofar as the maintainability of the appeal against the impugned order, it is to be noted that though the order is passed under Order 39 Rules 1 and 2 of the C.P.C., but the said application came to be filed under Section 23 of the Special Act, which postulates an enquiry in case of an application being made bringing to the notice of the said authority, the disputes between the said society. Hence, in my view only a C.R.P. is maintainable.

9) The learned counsel for the petitioner mainly states that the S.O.P., which has been filed under Section 23 of the Act itself is not maintainable. According to him, under Section 24(2) of the A.P. Education Act, 1982, the Management has got the power to nominate a person to manage the affairs of the institution and such nomination may be informed to the competent authority and that if any person is aggrieved by the act, he has to file an appeal before the Government. But, these issues were not raised before the trial court. Even in the counter filed by the petitioners, the issue as to maintainability of the suit was not raised. The learned counsel for the petitioner would submit that he never got an opportunity to raise this issue since the

impugned order came to be passed in the I.A., filed along with the suit.

10) Since the proceedings initiated are under the Special Enactment, akin to the provisions of the Arbitration Act, more so, when Section 23 of the Act contemplates initiation of the proceedings even under the Arbitration Act, the petitioner may raise the issue as to maintainability of the suit as a preliminary issue before the trial court, in which event the trial court shall deal with the same in accordance with law.

11) With the above observation, the C.R.P. is disposed of. There shall be no order as to costs. Miscellaneous Petitions pending if any in this C.R.P. shall stand closed.



JUSTICE C. PRAVEEN KUMAR

Dt:11.12.2018
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