

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6247 OF 2019
(Anjuman-E-Taraqqi-E-Urdu Trust and others Vs. Shaikh Mushtaq
Ahmed and others)

Mr.A.D.Shinde, Advocate for the petitioners.
Mr.A.S.Deshpande, Advocate for respondent Nos. 1 and 2.
Mr.S.P.Tiwari, AGP for respondent Nos. 3 and 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/06/2019

PER COURT :

1. This matter was heard at length and the submissions of the learned Advocates for the respective sides were considered, on 03/06/2019.

2. Learned Advocate for the petitioners prays for deleting respondent Nos. 5 to 8 as they are formal parties. Deletion is permitted at the risk of the petitioners. Deletion to be carried out forthwith.

3. In the light of the submissions of the learned Advocates for the respective sides, I have perused the impugned order dated 29/03/2019 passed by the learned District Judge below Exh.1 in Trust Application No.3/2012. I have also considered the

submissions in connection with the order passed by this Court dated 30/01/2019 in CRA No.21/2019.

4. It is evident that the Maharashtra Government has issued an ordinance No.XVIII/2018 through the Law and Judiciary Department dated 27/06/2018 that was published in the Maharashtra Government Gazette. Vide the said ordinance, the Maharashtra amendment in the form of Section 9-A to the CPC was deleted and it was observed in Clause No.3 as under :-

"3. Notwithstanding the deletion of section 9A of the principal Act ,---

(1) where consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018 (hereinafter, in this section, referred to as "the Amendment Ordinance"), the said issue shall be deemed to be an issue framed under Order XIV of the principal Act and shall be decided by the Court, as it deems fit, along with all other issues, at the time of final disposal of the suit itself :

Provided that, the evidence, if any, led by any party or parties to the suit, on the preliminary issue so framed under section 9A, shall be considered by the Court along with evidence, if any, led on other issues in the suit, at the

time of final disposal of the suit itself ;

(2) in all the cases, where a preliminary issue framed under section 9A has been decided, holding that the court has jurisdiction to entertain the suit, and a challenge to such decision is pending before a revisional Court, on the date of commencement of the Amendment Ordinance, such revisional proceedings shall stand abated :

Provided that, where a decree in such suit is appealed from any error, defect or irregularity in the order upholding jurisdiction shall be treated as one of the ground of objection in the memorandum of appeal as if it had been included in such memorandum ;

(3) in all cases, where a preliminary issue framed under section 9A has been decided, holding that the Court has no jurisdiction to entertain the suit, and a challenge to such decision is pending before an appellate or revisional Court, on the date of commencement of the Amendment Ordinance, such appellate or revisional proceedings shall continue as if the Amendment Ordinance has not been enacted and section 9A has not been deleted :

Provided that, in case the appellate or revisional Court, while partly allowing such appeal or revision, remands the matter to the trial Court for reconsideration of the preliminary issue so framed under section 9A, upon receipt of these proceedings by the trial Court, all the

provisions of the principal Act shall apply ;

(4) In all cases, where an order granting an ad-interim relief has been passed under sub-section (2) of section 9A prior to its deletion, such order shall be deemed to be an ad-interim order made under Order XXXIX of the principal Act and the Court shall, at the time of deciding the application in which such an order is made, either confirm or vacate or modify such order."

5. Pursuant to the above, objections with regard to the jurisdiction of a Court u/s 9A of the Maharashtra Amendment to the CPC will now be considered under Order XIV Rule 2 of the CPC. The learned District Judge had passed an order on 24/08/2017 in Trust Application No.3/2012 concluding that it had jurisdiction to entertain the trust application. This order was carried by the present petitioners in CRA No.21/2019 before this Court. This Court considered the Maharashtra Act No.XLI/2018 (41/2018) and concluded that the civil revision application would not survive. This Court referred to Section 3(2) of the Maharashtra Act No.**LXI/2018** and upon noting the provision, concluded that the civil revision application would stand disposed off as abated as revisional proceedings would stand abated u/s 3(2).

6. I find from the proviso thereunder that the conclusion of the Court that it has jurisdiction can be questioned only after the decree in the suit is appealed and on the basis of an error, defect or irregularity in the order upholding jurisdiction. It would be treated as one of the grounds of objection in the appeal.

7. As such, though the CRA filed by these petitioners was abated, they would still have an opportunity to question the conclusion of the District Judge holding that it has jurisdiction in Trust Application No.3/2012, only after the said application is finally decided.

8. Keeping the above legal position in focus, I find from the impugned order dated 29/03/2019 that the learned District Judge has held in paragraph No.5 that the minutes of the elections / meeting are not produced either before the Charity Commissioner or alongwith the change report. Based on this, he has concluded that no elections were held.

9. In my view, whether the elections are properly held or not, is not for the learned District Judge to consider u/s 50(A)(4) of the Maharashtra public Trusts Act, which respondent Nos.1 and 2 have invoked in Trust Application No.3/2012.

10. I also find that the learned District Judge has further concluded in paragraph No.6 that the trustee should have produced the details of the accounts maintained, their records and their audit reports. Learned Advocate for the petitioners submits that he would produce the audit reports from 2010 onwards and would also produce the record regarding change report enquiry with reference to the elections held in 2013 and 2015 before the learned District Judge in the said proceedings.

11. Learned Advocate for respondent Nos.1 and 2 submits that if these documents are produced before the learned District Judge, the matter can be remanded and the Trust application No.3/2012 can be re-considered by the learned District Judge in the light of these documents and the pleadings and contentions of the litigating sides.

12. Considering the above, this petition is partly allowed and the impugned order dated 29/03/2019 is set aside in the backdrop of a consensus between the parties and the statements made by the petitioners as regards the production of the documents.

12. As such, the petitioners shall produce the audit reports from

the year 2010 onwards and copies of the change report enquiries with regard to CR Enquiry No.103/2013 and 201/2016 before the learned District Judge on or before 20/07/2019, failing which, this order shall stand recalled and the impugned order dated 29/03/2019 shall stand restored. All contentions of the litigating sides are kept open, except the objection as regards the conclusion of the learned District Judge that he has jurisdiction to entertain Trust Application No.3/2012 in view of Section 3(2) of Maharashtra Act No.LXI/2018 vide which these petitioners can raise a comprehensive challenge even against the said conclusion, in the event of they suffering an adverse order in Trust Application No.3/2012. Other contentions as regards whether the elections were properly held or not and as to whether Section 41A and 41D would be involved, including whether the CR enquiries are exclusively left to the realm of the Assistant Charity Commissioner, shall be considered by the learned District Judge, while deciding Trust Application No.3/2012.

(Ravindra V.Ghuge, J.)