

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

929 CIVIL REVISION APPLICATION NO.29 OF 2019

BALKRUSHNA CHANDRAM KHOIYA AND OTHER
VERSUS
SURESH BHAGAJI BHALERAO

...
Advocate for Applicants : Mr. B. R. Kedar
Advocate for Respondent : Mr. A. G. Talhar

CORAM : M. S. KARNIK, J.

DATE : 6th AUGUST 2019

PER COURT

Heard learned counsel for the applicants and learned counsel for the respondent.

2. The order challenged in this revision is passed below Exhibit-47. The defendants had made the application for rejection of the plaint in view of Order VII Rule 11 of the C.P.C. The issue relates to the election of the Association. The application was filed on the premise that Civil Court has no jurisdiction to try and decide the suit. According to the applicants, the present dispute can only be decided by the Central Executive Committee, Delhi.

3. Learned counsel for the applicants invited my attention to the reliefs claimed in the suit. The only relief claimed in the suit is for declaration that the communication dated 10th April, 2018 under the signature of the applicants/original defendant Nos. 1 and 2 be declared as null and void. It is pointed out by the learned counsel for the applicants that respondent No.1/original plaintiff was elected for the period from 2016 up to 8th July, 2019. The term of the present respondent No.1/original plaintiff has come to an end with effect from 8th July, 2019. It is now pointed out that a new body has been elected and they are functioning in place of earlier body. In this view of the matter, in the submission of learned counsel for the applicants nothing remains to be decided in the suit as prayer made in the suit is rendered infructuous. This contention of the applicants is however opposed by the learned counsel for the respondent No.1/original plaintiff.

4. Heard. Reading the prayer made in the suit would reveal that respondent No.1/original plaintiff had sought declaration

that the letter dated 10.04.2018 as null and void. I have perused the letter dated 10th April, 2018. By the said letter, the names of newly nominated members of committee were circulated to the plaintiff who was the then President. However, during the pendency of the suit, respondent No.1/original plaintiff continued as President and now his term has come to an end with effect from 8th July, 2019. In view of the subsequent development, it remains to be considered whether the cause of action would really survive. In my opinion, instead of going into the merits of the contentions raised by the applicants, it would be appropriate that if an application is made by the applicants/original defendant Nos. 1 and 2 to the Trial Court pointing out the cause of action no longer survives, the Trial Court may deal with the application on its own merits and in accordance with law without being influenced by any of the observations made in this order.

5. In the event, if the application is not considered favourably by the Trial Court, it would be open for the

applicants to seek revival of this revision application. The revision application is disposed of with liberty.

(M. S. KARNIK, J.)

vsm/