

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO. 38 OF 2019

1. Mr. Firoz Khan and 2 Ors. ... Appellants

Versus

1. Mr. Feroz Mohamad Hussein Katwalia
and 19 Ors. ... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. P. Sawant and Mr. P. Taulikar, Advocates for the Appellants.

Mr. A. D. Bhole and Ms. Annelise Fernandes, Advocates for the Respondent nos.1 to 4.

Coram :- C. V. BHADANG, J.
Reserved for Order on : 4th July, 2019
Order Pronounced on : 5th July, 2019

ORAL ORDER

1. The challenge in this appeal is to the order dated 17.04.2019 (below exhibit D-26) passed by the learned District Judge in Civil Suit No.3 of 2017. By the impugned order, the learned District Judge has dismissed the application, exhibit D-26, filed by the appellants.

2. The brief facts necessary for the disposal of the appeal may be stated thus :

That the plaintiffs have filed the aforesaid suit in their representative capacity as members of a Society namely "Ahle Sunnat Wal Jamatul Muslamin" also known as 'Jamatul Muslamin Ahle Sunnat' Mapusa, registered under no.7/79 under the Societies Registration Act, 1860 (Act, for short). There is a mosque commonly known as 'Jama Masjid' standing on chalta no.123 of P.T. Sheet No.147 of City Survey of Mapusa which, according to the appellants/plaintiffs is the "Wakf Property" dedicated by the founders namely of family of Haji Hussein Dawood Parek prior to 1947. After partition, the founders have permanently settled in Pakistan leaving the office of the Management of 'Wakf Property' in the hands of Sunni Set of Muslim Community. The Sunni members of the "Jamat" constituted themselves into a society, the consideration of which is backed by a judicial approval of compromise before the Civil Court in Civil Suit No.3/1971 decided on 27.01.1978. The said Society was eventually registered in the year 1979 at registration no.7/79. As per the constitution and the bye-laws, the Governing Body is consisting of 14 members and the period of the Governing Body is for three years. The first Governing Body of the society was elected and the triennial period had expired in or about 1982.

3. It appears that there were several complaints filed against the Administration and Management of the said society including lack of maintenance of property, records of membership and maintenance of proper accounts etc. The Inspector General of Societies, North, by a letter dated 01.12.2015, informed one Mr. Abdul Carol that as per records, the registration of the said Society has not been renewed since 11.06.2000 and in view of Section 3(B)(5) of the Societies Registration (Goa Second Amendment) Act, 1998, (Act of 1998 for short), it has become an unregistered society. According to the appellants, it was informed that the registration cannot be renewed and there has to be a re-registration of the society.

4. The appellants along with some other dissatisfied members, on being made aware of the fact that the society has become an unregistered society for want of renewal since 11.06.2000, had to act hurriedly to see that the corporate status of the society is not allowed to lapse. The authorities suggested that the only option left was to obtain a new registration of a society and ultimately in response to the efforts taken by the appellants and others, a society came to be registered in the place of the earlier defunct society and the new society was registered in the name of Ahle Sunnat Wal

Jamatul Muslamin, Mapusa Goa, bearing registration no.474/Goa/2015 which is defendant no.5 in the suit. The old society bearing registration no.7/79 is arrayed as defendant no.6.

5. The appellants on the basis of the information received under the Right to Information Act learnt that the registration of the old defunct society bearing no.7/79 has been renewed w.e.f. 08.03.2016. According to the appellants, the said renewal is patently illegal and is in contravention of Section 3B(5) of the Act of 1998. It is the material case that the society registered under no.7/79 cannot be considered as having been revived.

6. The appellants in such circumstances filed the suit for following reliefs :

" a) To declare that Revival of Defunct Society registered under no.7/79 by way of renewal under certificate of registration dated 8/3/2016 is illegal being in breach of amended provision of Section 3B-(1, 4 & 5) and other provisions of Societies Registration Act, 1860 as amended and applicable to State of Goa.

b) To declare that the defendant nos.1, 2, 3 and 4 individually and collectively are disentitled in holding the management, administration and affairs of "Wakf Property". Consequently, to forbid them to continue with the holding of administration and management of "Wakf Property" termed as The Suit Property.

c) For directions to the defendant nos.1, 2, 3 and 4 individually and collectively to handover permanent charge of administration, management and the affairs of Wakf Property termed as The Suit Property including Operation of all banking accounts standing in the name of the society in the custody of The Administrator/The Receiver preferably the defendant no.5 through the defendant no.5(i) and 5(ii) bearing Registration no.474/Goa/2015 being Corporate registered Body."

7. The appellants filed CMA No.92/2016/A in the aforesaid suit for interim reliefs in the following terms :

"a) For an Order of removal of the respondent nos.1 to 4 individually and or collectively from holding management, administration and affairs of Wakf Property including of Masjid termed as The Suit Property.

b) For an order to lock and seal the office premises situated within the Masjid consisting of wooden

cupboards, furnitures, etc. containing all the relevant records, registers and books by deputing the bailiff with a direction to take Inventory, prepare notes and present his Report on record.

c) For an order directing the respondent nos.1, 2 and 4 individually and collectively to handover charge, administration, management and affairs of "Wakf Property" termed as the Suit Property under the custody of independent Administrator / the Receiver preferably with the defendant no.5, through the defendant nos.5(a) and 5(b).

d) For an Order directing the respondents nos.1, 2, 3 and 4 individually and collectively to restrain them in operation of banking accounts bearing nos.370102010005583, 370102010005585 and 370102010005586 standing at Union Bank of India, Mapusa branch, Mapusa and all banking accounts including Fixed deposit Receipts, Investments, etc. standing in the name of the Society."

e) Any other additional suitable reliefs considered best in the circumstances of the case."

8. The learned Trial Court has issued notice on the said application on 26.04.2016 and the same is pending consideration before the Trial Court.

9. On 21.07.2017, the appellants filed application, exhibit D-26, seeking following reliefs :

“a) Pending the suit and application for urgent reliefs, the respondent/defendant no.6 through its President Respondent no.1/defendant no.1 and other respondents/the defendants nos.2, 3 and 4 be restrained to hold and deliberate Annual General Body Meeting fixed on 23.07.2017 as published in Gomantak daily and or any other meetings of whatsoever nature and consequently due to their misdeeds, dishonest activities and mismanagement to appoint the respondent/the defendant no.5 as the Administrator/Receiver of the Suit Property.”

10. On 21.07.2017, the learned Trial Court passed the following order thereon :

“Heard arguments from the learned Advocate for the Plaintiffs. Issue Show Cause Notices to the defendants for their Say on the next date of hearing, i.e. 12/8/2017 at 10.00 a.m. Because of the urgency in the matter as according to the publication in daily newspaper, placed on record, Annual General Body Meeting is fixed on 23/7/2017 (Sunday) which will have bearing and impact on the instant case, ex-parte prayer (a) is granted and the defendants are restrained from holding such meeting till the next date of hearing, i.e. 12/8/2017 at 10.00 a.m.”

11. The original defendant no.1 Feroz Katwalia and others approached this Court in Writ Petition No.300/2019 for the limited relief of an expedited hearing of application exhibit D-26 in which the ad-interim relief was operating against them. This Court by an order dated 13.03.2019, directed the Trial Court to decide the application, exhibit D-26, within a period of one month. Accordingly, the learned Trial Court took up the hearing of application, exhibit D-26, and has dismissed the same by the impugned order dated 17.04.2019 which is subject matter of challenge in this appeal.

12. I have heard Mr. Kantak, the learned Senior Counsel for the appellants and Mr. Bhobe, the learned Counsel for the respondent nos.1 to 4, being the contesting respondents. Perused record.

13. Mr. Kantak, the learned Senior Counsel for the appellant has submitted that the application, exhibit D-26, was only an adjunct to the application, exhibit B1 for temporary injunction. It is submitted that the filing of application, exhibit D-26, was necessitated on account of the public notice in respect of the Annual General Body Meeting proposed to be held on 23.07.2017. It is however submitted that the prayer in the application, exhibit D-26, was not limited to the said meeting

but any other meeting of whatsoever nature being conducted by the respondent nos.1 to 4(original defendant nos.1 to 4). It is submitted that the defendant no.1 and three others who approached this Court in Writ Petition No.300/2019, did not bring to the notice of this Court that the main application for temporary injunction (exhibit B1) is pending, else otherwise this Court would not have expedited only the application, exhibit D-26. The learned Senior Counsel was at pains to point out that the issues in application, Exhibit D-26, and Exhibit B1 are connected and the application, exhibit D-26, could not have been decided independently. The learned Senior Counsel pointed out that in fact the then Presiding Officer had also heard the application, exhibit B1, however, the said Presiding Officer had superannuated on 11.03.2019.

14. It is submitted that the Trial Court has not properly addressed the issue about the re-registration of the old society. It is submitted that the old society bearing registration no.7/79 had become defunct and de-registered for want of renewal from the year 2000 and the society bearing registration no.474/Goa/2015 was registered in its place. It is thus submitted that the subsequent renewal of the earlier society by the concerned authority, is not legal and proper and is in breach of the provisions of Section 3B of the Act of 1998.

It is submitted that the Trial Court was also in error in relegating the appellants to the competent authority under the Act when the Civil Court had jurisdiction. Reliance for this purpose is placed on the decision of the Supreme Court in the case of **Nagri Pracharini Sabha & anr. vs. Vth Additional District and Sessions Judge, Varanasi & Ors. 1991 Supp (2) SCC 36** and the decision of the Karnataka High Court in the case of **Amiya Vilas Swami & Ors. vs. Shankha Brita Das & Ors. 2007 SCC Online Kar 432**. It is submitted that the reliefs which are sought before the Civil Court, which is a Court of plenary jurisdiction under Section 9 of the Civil Procedure Code, are not available before the concerned authorities under the Act and thus the jurisdiction of the Civil Court cannot be said to be barred, either expressly or by necessary implication. The learned Senior Counsel has referred to a recent public notice dated 18.06.2019 whereby a General Body Meeting of the Society Ahle Sunnat Wal Jamatul Muslamin (registration no.7/79) has been called on 07.07.2019. He submits that the respondent nos.1 to 4 claiming to be the office bearers of the said society be restrained from holding the said meeting.

15. Mr. Bhohe, the learned Counsel for the respondent nos.1 to 4, has supported the impugned order. It is submitted that

the old society has been renewed and the respondent nos.1 to 4 beings its office bearers are entitled to hold the General Body Meeting of the said society. It is submitted that the appellants have not shown as to how the society bearing registration no. 474/Goa/2015 is the same society bearing registration no.7/79. It is submitted that the registration of the old society has been renewed and it is this society which is managing the Jama Masjid at Mapusa. It is submitted that the respondent nos.1 to 4 had approached this Court in Writ Petition no.300/2019 inasmuch as the ad-interim exparte relief was operating against them in application, exhibit D-26, and there was no misrepresentation whatsoever made in the said petition. He submits that the Trial Court has rightly refused to continue the ad-interim relief and the impugned order does not call for interference.

16. I have considered the rival circumstances and the submissions made and perused records.

17. The consideration in this appeal has to be limited to the relief claimed in application, exhibit D-26. The appellants had sought an order restraining the respondent nos.1 to 4 from holding the Annual General Body Meeting scheduled on 23.07.2017 and for appointment of the respondent no.5 as the

Administrator/Receiver of the suit property. The prayer so far as the meeting dated 23.07.2017 is concerned, is already worked out. The contention however is that now there is yet another meeting scheduled to be held on 07.07.2019. Thus, the consideration in the present petition will be limited to the question whether the respondent nos.1 to 4 at this stage can be restrained from holding the Annual General Body Meeting and whether an Administrator/Receiver needs to be appointed of the suit property. While deciding the present application, I am conscious of the fact that the application for temporary injunction is still pending before the learned Trial Court in which the appellants are praying, inter alia, for sealing of the premises and for appointment of an independent Administrator/Receiver 'preferably the respondent no.5' and for an order restraining the respondent nos.1 to 4 from operating the bank accounts. It is, therefore, necessary to see that neither of the parties are prejudiced by any of the findings or observations made while deciding the present appeal.

18. The learned Trial Court has dismissed the application, exhibit D-26, mainly on the following grounds :

(i) That there is no material produced to show that the suit property is a trust property governed by the Wakf Act;

(ii) Prima facie, the respondent no.6 is a society of which the registration is renewed on 08.03.2016.

(iii) The issues pertaining to alleged mismanagement and misadministration of the society fall within the purview and ambit of the Act of 1860 and that the appellants have an alternate remedy before the competent authorities under the said Act and hence the application cannot be entertained in view of Section 41(h) of the Specific Relief Act; and

(iv) That the issues as raised are triable issues.

19. Prima facie, it appears that the society was registered in the year 1979 at registration no.7/79 and the name of the society is "Ahle Sunnat Wal Jamatul Muslamin" @ 'Jamatul Muslamin Ahle Sunnat'. There is a certificate issued by the Inspector General of Society on 08.03.2016 thereby renewing the registration of the society till 11.06.2020 under Section 3(B)(4) of the Act of 1998. Prima facie, it appears that, although under sub-section (5) of Section 3(B) of the Act of 1998, a society which fails to get its registration renewed in accordance with this Section, within one year of the expiration of the period for which the certificate was operating, becomes an unregistered society, however, the proviso appended

thereto authorises the Inspector General to grant renewal of such registration. Indisputably, according to the respondent nos.1 to 4, there had been an election to the Managing Committee of the said society in the year 2016 and that has been communicated to the Registrar of Societies. The learned Counsel for the respondent nos.1 and 4 states that the necessary changes have been incorporated in the records of the Registrar of Societies. Thus, at this stage, in my considered view, no case for restraining the respondent nos.1 to 4 from holding the meeting dated 07.07.2019 is made out.

20. I have consciously not entered into the question whether it is the same society which is re-registered or the two societies are different entities, in view of the fact that the application for temporary injunction is still pending before the learned Trial Court. Appointment of an Administrator/Receiver is also one of the reliefs which the appellants are seeking in the application, exhibit B1, and therefore, it is neither necessary nor appropriate to go into that question at this stage.

21. Insofar as the finding recorded by the Trial Court that the appellants have an alternate remedy before the authorities under the Act, it appears that the judgment relied upon on

behalf of the appellants namely in the case of **Nagri Pracharini** (supra) and **Amiya Vilas Swami** (supra), were not brought to the notice of the learned Trial Court. There cannot be any manner of dispute with the proposition that the exclusion of the jurisdiction of the Civil Court is not normally inferred unless and until it is shown to be barred expressly or by necessary implication. The learned Trial Court will have to examine the reliefs claimed in the suit and the application for temporary injunction in the context of the powers available to the competent authority under the Act of 1860 as amended by the Act of 1998 to see whether the jurisdiction of the Civil Court can be said to be barred in this case.

22. In that view of the matter, I find that the interest of the appellants can be protected if the holding of the proposed meeting dated 07.07.2019 is made subject to the outcome of the application for temporary injunction.

23. In the result, the following order is passed :

ORDER

(i) The appeal is hereby dismissed.

(ii) However, the proceedings conducted in the meeting on 07.07.2019 and action taken in pursuance thereof, if any, shall be subject to the outcome of the application for temporary injunction pending before the Trial Court.

(iii) The learned Trial Court shall decide the application, exhibit B1, on its own merits and in accordance with law without being influenced by the observations or the findings in the impugned order or any of the observations made herein.

(iv) The learned Trial Court shall decide the application, exhibit B1, for temporary injunction as expeditiously as possible and preferably, within a period of three months, from the receipt hereof.

(v) In the circumstances there shall be no order as to costs.

C. V. BHADANG, J.

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