

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY******CIVIL APPELLATE JURISDICTION*****CIVIL REVISION APPLICATION NO. 1087 OF 2014**

**Dr.Vishwanath Dadarao Karad, )**  
**Age 73 years, Occupation : Educationist, )**  
**Add : 'Dnyanmandir', Plot No. 19, )**  
**Rajpath Co-operative Housing Society, )**  
**Ramkrishna Paramhansnagar, )**  
**Paud Road, Kothrud, Pune – 411 038. )**

**2. Tulshiram Dadarao Karad, )**  
**Age 77 years, Occupation : Agriculture )**  
**Add : At & Post Rui-Rameshwar, )**  
**District – Latur – 414 511 )**

**3. Shri Suresh Govind Ghaisas, )**  
**Age 76 years, Occ. : Med. Practitioner, )**  
**Add.:1248/B, Ghaisas Hospital, )**  
**Deccan Gymkhana, Pune – 411 004 )**

**4. Shri Chandrakant S. Pandav, )**  
**Age/64, Occupation : Service, )**  
**Add.:C-II/30, Ist Floor, AIIMS, )**  
**Ansari nagar (East), New Delhi 110 029 )**

**5. Shri H. M. Ganeshrao, )**  
**Age/87 yrs, Occupation : Retired, )**  
**Add.: 'Kapila', Plot No.301, N-1, )**  
**Sector – C, CIDCO, New Aurangabad )**  
**431 001 )**

**6. Shri Rahul Vishwanath Karad, )**  
**Age/40 years, Occ.:Service, )**  
**Add.: 'Dnyanmandir', Plot No.19, )**  
**Rajpath Co-operative Hsg.Society, )**  
**Ramkrishna Paramhansnagar, )**  
**Paud Road, Kothrud, Pune – 411 038 )**

7. Sunil Kashiram Karad, )  
 Age/42 years, Occupation : Service, )  
 Add.: 'Dnyanmandir', Plot No.19, )  
 Rajpath Co-operative Housing Society, )  
 Ramkrishna Paramhansnagar, )  
 Paud Road, Kothrud, Pune – 411 038 )

8. Dr.Suchitra Umesh Nagare, )  
 Age/38 years, Occupation : Service, )  
 Add.: 'Dnyanmandir', Plot No.19, )  
 Rajpath Co-operative Housing Society, )  
 Ramkrishna Paramhansnagar, )  
 Paud Road, Kothrud, Pune – 411 038 )

9. Shri Virendra Suresh Ghaisas, )  
 Age/40, Occupation : Medical Pract., )  
 Add.: 1248/B, Ghaisas Hospital, )  
 Deccan Gymkhana, Pune – 411 004. )

10. Dr.Mangesh Tulshiram Karad, )  
 Age/48 years, Occupation : Service, )  
 Add.: 'Dnyanmandir', Plot No.19, )  
 Rajpath Co-operative Housing Society, )  
 Ramkrishna Paramhansnagar, )  
 Paud Road, Kothrud, Pune – 411 038 )

11. Maharashtra Academy of Engineering) )  
 Educational Research, Pune, )  
 bearing P.T.R.No.F/2555 (Pune), )  
 S.No.124, Ex-serviceman Colony, )  
 Post Office, Paud Road, Kothrud, )  
 Pune – 411 029 )

..... Petitioner

Versus

1. Shri Avinash Bhaskar Avhad, )  
 Age/40 years, Occupation : Advocate, )  
 Residing at : 19/1B/1, Dnyandeep, )  
 Behind Vasan Eye Care Hospital, )  
 Near City Pride Kothrud, Kothrud, )

**Pune – 411 038.** )

**2. Shri Bhaskar Eknath Avhad,** )  
**Age/70 years, Occupation : Advocate,** )  
**Residing at : 19/1B/1, Dnyandeep,** )  
**Behind Vasani Eye Care Hospital,** )  
**Near City Pride Kothrud, Kothrud,** )  
**Pune – 411 038.** )

**3. Mrs.Kamal Bhaskar Avhad,** )  
**Age/60 years, Occupation : Advocate,** )  
**Residing at : 19/1B/1, Dnyandeep,** )  
**Behind Vasani Eye Care Hospital,** )  
**Near City Pride Kothrud, Kothrud,** )  
**Pune – 411 038.** )

**4. Dr.Asmita Deepak Dhatrak,** )  
**Age/37 years, Occupation : Medical Practitioner,** )  
**Residing at : 19/1B/1, Dnyandeep,** )  
**Behind Vasani Eye Care Hospital,** )  
**Near City Pride Kothrud, Kothrud,** )  
**Pune – 411 038.** )

**5. Prof. Prakash Bhaskar Joshi,** )  
**Age/Adult, Occupation : Educationist,** )  
**Residing at : Flat No.704,** )  
**Sharmad Co-op.Hsg.Society,** )  
**Kothrud, Pune – 411 038.** )

**..... Respondents**

Mr. P.K. Dhakephalkar, Senior Advocate with Mr.Swaroop Karade, Ms.Gauri Shah and Mr.Swapnil Patil Advocate i/by Mr. Surel S. Shah for the Applicants.

Mr. A.V. Anturkar I/by Sugandh B. Deshmukh , Prathamesh Bhargude, Ajinkya Udane, Advocate for the respondents No.1 and 2.

Mr. P.B. Shah I/by Kayval P. Shah and Mahesh V. Rawool, Advocate for Respondents No.3 and 4.

**CORAM : R.D. DHANUKA, J.**  
**RESERVED ON : 22<sup>nd</sup> February 2019**  
**PRONOUNCED ON : 10<sup>th</sup> July, 2019**

***Judgment :-***

1. By this Civil Revision Application filed under Section 115 of the Code of Civil Procedure, 1908 (for short “the CPC”), the applicants (original defendants No.1 to 10) have impugned the Judgment and order dated 14<sup>th</sup> December, 2014, passed by the learned Third Civil Judge, Senior Division, Pune below application Exhibit 21 in Special Civil Suit No. 826/2014, which was filed under Order VII, Rule 11(d) of the CPC by the applicants herein for rejection of the plaint.

2. By consent of the parties, the matter was heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this application are as under :

3. Applicant No.3 is a trust, registered under the provisions of the Maharashtra Trust Act, 1950 (for short “the said Act”). Respondents No.1 and 2 are the trustees of the Respondent No.3 Trust. On 30<sup>th</sup> October, 2013, the Applicant No.3 issued a show cause notice to the respondents No.1 and 2, calling upon them to explain their acts and actions which in the opinion of the board of trustees of the Applicant No.3 amounted to misconduct.

4. Respondents No.1 and 2 filed proceedings before the

Charity Commissioner, as also a suit before the Civil Court against the said action of the Applicant No.3 Trust in the month of November, 2013. The learned Trial Judge granted injunction in favour of the Respondents. In the month of November, 2013, an appeal filed by the Applicant before the District Court came to be allowed.

5. On 2.12.2013, the Applicant No.3 Trust passed a resolution bearing No.57/2013 removing respondents No.1 and 2. Respondents No.1 and 2 filed a Writ Petition No.520/2014 in this Court. On 22.1.2014, the Applicants withdrew the said Resolution No.57/2013. The Respondents accordingly withdrew the Civil Suit filed before the Civil Court, as also the proceedings before the Charity Commissioner. This Court granted liberty to the proceed with fresh inquiry on the charges earlier framed and/or on the additional charges.

6. On 28<sup>th</sup> January, 2014, respondents No.1 and 2 filed Regular Civil Suit No.194/2014 challenging the action of the Applicants. On 12.2.2014, the Applicants issued a show cause notice levelling additional charges, in addition to the earlier charges, levelled in the show cause notice issued.

7. On 20.2.2014, respondents No.1 and 2 filed a Petition before the Division Bench of this Court challenging the constitution of the Trust and the authority of the Board of Trustees to initiate action for

removal of the respondents No.1 and 2 as per the Constitution of the Trust. This Court refused to grant any interim relief in favour of respondents No.1 and 2 on 20/2/2014.

8. It is the case of the Applicants that on 21.3.2014, the Applicant Trust gave a notice of personal hearing to the respondents no.1 and 2 and scheduled a meeting on 28<sup>th</sup> March, 2014. On 25<sup>th</sup> March, 2015, respondents No.1 and 2 sought time to appear before the said Committee and simultaneously, on the same day, withdrew the Writ Petition No.1930/2014.

9. Respondents No.1 and 2, however, did not appear before the said Committee on 28<sup>th</sup> March, 2014. On 5<sup>th</sup> April, 2014, the Applicants by a notice informed the respondents that though they had remained absent, one more chance be given to them for personal hearing and hence the matter was kept on 18<sup>th</sup> April, 2014.

10. On 17<sup>th</sup> April, 2014, the respondents again sought time to appear before the Committee. The said letter was received by the Applicants just 40 minutes before start of the proceedings by the Committee. On 18<sup>th</sup> April, 2014, the respondents once again did not appear before the Committee. On 2 May 2014, the learned Trial Judge heard the application below Exhibit 5 filed by respondents No.1 and 2

and framed an issue of preliminary jurisdiction.

11. On 3 May 2014, the respondents filed an application purporting to be an application under Section 9(A)(2) of the Code of Civil Procedure, 1908 for interim relief. The learned Trial Judge rejected the said application. On 7<sup>th</sup> May, 2014, the Applicants issued another notice to respondents No.1 and 2 for giving personal hearing and called upon the said respondents to appear on 18 May 2014. On 8<sup>th</sup> May, 2014, respondents filed an appeal i.e. Misc. Civil Appeal No. 230/2014 against the order dated 3<sup>rd</sup> May, 2014 and also filed an application (Exh.5) in the said appeal.

12. It is the case of the Applicants that since respondents No.1 and 2 did not attend the proceedings on 18<sup>th</sup> May, 2014, also before the said Committee, the said Committee closed the proceedings. On 19<sup>th</sup> May, 2014, the Applicant issued a notice of meeting of Board of Trustees scheduled to be held on 26<sup>th</sup> May, 2014 to discuss the report submitted by the said Committee and to give an opportunity of hearing to the respondents No.1 and 2.

13. On 21<sup>st</sup> May, 2014, respondents No.1 and 2 filed an application (Exhibit 81) in the said Misc. Civil Appeal for preponement of the date of hearing of the application (Exh.5). It is the

case of the Applicants that on the night of 20<sup>th</sup> May, 2104, an email notice of the application was sent to the Advocate of the Applicants, without any intimation of email being sent to the Advocate for the Applicants. On 21<sup>st</sup> May, 2014, at about 11.20 a.m. the said application, along with a notice was served upon the Advocate for the Applicants. On that day itself, at about 12.00 noon the matter was called out before the Appellate Court, when the learned Judge passed an order directing the parties to maintain *status quo*.

14. On 23<sup>rd</sup> May, 2014, the Applicants filed a Writ Petition (stamp) No.14711 of 2014, challenging the order dated 21<sup>st</sup> May, 2014 passed by the learned District Judge at Pune below application Exh.81 in Misc. Civil Application No.230/2014. On 28<sup>th</sup> May, 2104, the learned Vacation Judge of this Court disposed of the said writ petition by directing the learned District Judge to hear and dispose of the said application for interim relief on or before 4th June, 2014 and modified the order to the effect that the status quo order to operate till 4<sup>th</sup> June, 2014.

15. On 31<sup>st</sup> May, 2014, the learned District Judge rejected the application below Exhibit-5. On 6<sup>th</sup> June, 2014, respondents No.1 and 2 preferred Writ Petition (Stamp) No.14983/2014. It is the case of

the Applicants that respondents No.1 and 2 did not serve any notice upon the Applicants though caveat was filed. The learned Vacation Judge continued the interim order *ex parte*.

16. On 11<sup>th</sup> June, 2014, this Court passed an order and recorded the statement made by the parties that the meeting would be held on 24<sup>th</sup> June, 2014 to deliberate upon the subject No.24 as mentioned in the agenda notice dated 19<sup>th</sup> May, 2014. The respondents No.1 and 2 agreed to participate in the said meeting. The Applicants agreed that any adverse decision taken against the respondents No.1 and 2 in the said meeting would not be implemented for a period of 2 weeks.

17. On 24<sup>th</sup> June, 2014, respondents No.1 and 2 were given opportunity of being heard. The Board of Trustees passed a resolution, thereby expelling respondents No.1 and 2 as Trustees of Applicant No.3 and communicated the decision to respondents No.1 and 2 on 25<sup>th</sup> June, 2014. On 26<sup>th</sup> June, 2014, respondents No.1 and 2 filed Special Civil Suit No.826 of 2014 seeking a declaration that conducting of the meeting dated 24<sup>th</sup> June, 2014 and the intimation of the resolution was illegal and bad in law and prayed for a declaration that the said Resolutions are illegal, void and that the power of

removal vests only with the learned Charity Commissioner under the said Act. Respondents No.1 and 2 also prayed for an amount of Rs.50.00 crores as damages.

18. On 3<sup>rd</sup> July, 2014, the Applicants filed an application under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 and prayed for rejection of the plaint on the ground that the suit was hit by Sections 22 and 70 of the said Act and also by Sections 50 and 51 of the said Act. The Applicants also invoked the provisions of Order II, Rule 2 of the Code of Civil Procedure, 1908. The said application was resisted by respondents No.1 and 2.

19. Respondents No.1 and 2 also applied for extension of the interim relief granted below Exh.5 vide order dated 27<sup>th</sup> June, 2014 by filing an application (Exh.27). By an order dated 8<sup>th</sup> July, 2014, the learned 5<sup>th</sup> Jt. Civil Judge, S.D. Pune, stayed the implementation and effect of the impugned resolutions No.24, 24B and 24C dated 24<sup>th</sup> June, 2014 till the decision on the application below Exh.5 on merits.

20. The learned Civil Judge also directed respondents No.1 and 2 to proceed with the application below Exh.5 promptly and without seeking unnecessary adjournments. It was directed that if it was found that by taking advantage of the order the plaintiffs were

trying to prolong the hearing on Exh.5 or any other application taken out by the defendants, then the order would be vacated.

21. By an order dated 14<sup>th</sup> June, 2014, the learned 3<sup>rd</sup> Jt. Civil Judge, S.D. Pune rejected the said application below Exh.21 filed by the Applicants under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908. The said order is impugned by the Applicants in this civil revision application. This Court, by an order dated 15<sup>th</sup> December, 2014, after recording brief submissions of the parties, directed that this Civil Revision Application may be heard and disposed of finally at the state of admission. It was also clarified that the said order would not be an impediment for the Trial Court to hear the application at Exhibit 5 filed by the plaintiffs.

22. Mr. P.K. Dhakephalkar, learned Senior Counsel for the Applicants (defendants) invited my attention to various annexures to the Civil Revision Application, including the orders passed by this Court, various proceedings filed by the parties, orders passed by the learned Trial Judge and the learned District Judge. The learned Senior Counsel also invited my attention to the application filed by the Applicants under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 in the suit filed by the respondents No.1 and 2.

23. The learned Senior Counsel also invited my attention to various averments made in the application filed by Respondents No.1 and 2. It is submitted by the learned Senior Counsel that the learned Trial Judge ought to have considered the pleadings in the plaint and not its form. While considering the application under Order VII, Rule 11 (d) of the Code of Civil Procedure, 1908, the Court has to carefully scrutinise the plaint and after carefully scrutinising, if the suit is found to be not maintainable, the Court has to reject such plaint under Order VII, Rule 11 (d) of the Code of Civil Procedure, 1908.

24. It is submitted by the learned Senior Counsel that Respondents No.1 and 2 had challenged the Resolution passed by the Board of Trustees of the Applicant No.3 by virtue of which the Respondents No.1 and 2 were removed from the trusteeship. He submits that the learned Trial Judge could not have held that the suit was not filed by respondents No.1 and 2 against the Trust. He submits that in the plaint filed by Respondents No.1 and 2, under prayer clause (b), Respondents No.1 and 2 had prayed for a declaration that conducting of the meeting by the Applicants on 24<sup>th</sup> June, 2014 and the intimation of the Resolutions allegedly passed for removal of Respondents No.1 and 2 are absolutely illegal and bad in law.

25. Respondents No.1 and 2 also prayed for a declaration that the said Resolutions No.24, 24B and 24C passed in the meeting of the Board of Trustees held on 24<sup>th</sup> June, 2014 for removal of Respondents No.1 and 2 from the Board of Trustees are illegal, improper, *void ab initio*, *non-est* and bad in law and the same be quashed and set aside. Respondents No.1 and 2 also prayed for a declaration that the power of removal/suspension/termination of a Trustee, by a Public Trust vests only with the Charity Commissioner and/or the Civil Court only. In prayer clause (e) of the plaint, respondents No.1 and 2 prayed for damages of Rs.50.00 crores against the Applicants herein jointly and severally.

26. It is submitted by the learned Senior Counsel that the alleged right of Respondents No.1 and 2 claimed in the suit and continue to act as Trustees is not a civil right. He submits that the learned Trial Judge ought to have read the entire plaint as whole in proper perspective and not few paragraphs of the plaint while deciding the application under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908. He submits that the learned Trial Judge was persuaded by the clever drafting of the respondents No.1 and 2. Without appreciating the reliefs sought by Respondents No.1 and 2 in the plaint, the learned Trial Judge dismissed the application filed by

the Applicants under Order VII, Rule 11(d) by passing the perverse order.

27. It is submitted by the learned Senior Counsel that merely because Respondents No.1 and 2 had claimed damages of Rs.50.00 crores against the Applicants in the suit, the said claim for damages which was based on the consequence of the resolutions passed by the Applicants against the Respondents Nos. 1 and 2, on that ground the application under Rule VII, Rule 11(d) could not have been rejected by the learned Trial Judge. He submits that the substantial reliefs prayed by the Respondents No.1 and 2 was for declaration of the Resolutions passed by the Applicants as void and illegal, which reliefs could be sought only in the proceedings under Section 22 of the said Act, before the Charity Commissioner.

28. The learned Senior Counsel for the Applicants placed reliance on the averments made by Respondents No.1 and 2 in paragraph 84 of the plaint and would submit that the claim for damages made by Respondents No.1 and 2 is based on the alleged false, malicious and illegal charges levelled against them by the Applicants and the inquiry conducted and resolutions of removal passed against them by the Applicants. He submits that whether the

action removing Respondents no.1 and 2 was taken malafide or such action was malicious or illegal or not, can be decided by the Charity Commissioner under Section 22 of the said Act.

29. It is submitted that the learned Trial Judge ought to have appreciated that the claim for damages was made only by way of clever drafting and was totally depending upon the outcome of the challenge to the resolutions which could be decided only by the Charity Commissioner under Section 22 of the said Act, when the claim for damages flows from passing of the Resolutions by the Applicants. The learned Senior Counsel for the Applicants placed reliance on the averments made in paragraph 87 of the plaint, alleging that the cause of action to file the suit arose on 27 October 2013 when the Applicants decided to initiate an inquiry against Respondents No.1 and 2 and further arose on 24 June, 2014 when the Applicants passed Resolutions No.24, 24B and 24C dated 24 June 2014, without having any legal authority to do so and when the intimation was received by Respondents No.1 and 2 from the Applicants on 25 June 2014. He submits that the entire cause of action, even according to Respondents No.1 and 2 for filing the said suit was because of the resolutions passed by the Applicants, thereby removing the Respondents no.1 and 2 from the trusteeship.

30. The learned Senior Advocate invited my attention to paragraphs 21 and 23 of the impugned order passed by the learned Trial Judge and would submit that the finding of the learned Trial Judge that the Plaintiffs were trying to vindicate their civil rights unconnected with the management of the Trust and only against the Trustees in their private capacity and not the Board of Trustees, is *ex facie* perverse. He submits that the Resolutions were passed by the Trust, through Trustees which were impugned by Respondents No. 1 and 2 in the said suit. The Trust acts through its Trustees.

31. The learned Counsel for the Applicants invited my attention to the findings rendered by the Trial Judge in paragraph 43 of the impugned order and would submit that in view of the said interim reliefs obtained by Respondents No.1 and 2 against the Applicants, the Applicants could not file the change report under Section 22 of the said Act. The Respondents No.1 and 2 could not have taken a stand that in view of their being no change report filed by the Applicants, Respondents no.1 and 2 did not have option except to file the suit to vindicate their private rights. He submits that the findings of the learned Trial Judge that Respondents No.1 and 2 did not have any option except to file the suit to vindicate their private rights, is *ex facie* perverse.

32. It is submitted by the learned Senior Counsel that the findings of the learned Trial Judge that (i) the suit was filed essentially to vindicate the civil rights of the Plaintiff, (ii) there was no prayer against the Trust, (iii) the suit was not within the scope of Sections 50 and 51 of the said Act, (iv) the grievance of the Respondents No.1 and 2 was not against the Trust, but was with respect to the personal conduct of the Applicant No.1 in the manner in which he had constituted a bias committee arbitrarily and removing the Plaintiffs without following the principles of natural justice, are *ex facie* perverse and contrary to Sections 50 and 51 of the said Act. He submits that the findings of the learned Trial Judge that a right of a Trust to bring a suit in usual way in exercise of its right under the common law is also *ex facie* perverse. The learned Senior Counsel invited my attention to the finding recorded in paragraph 32 of the impugned order and would submit that the finding of the learned Trial Judge that the suit and the reliefs therein are completely unconnected with the administration of Trust and that the suit *inter se* trustees, are *ex facie* perverse and contrary to Sections 50 and 51 of the said Act.

33. The learned Senior Counsel placed reliance on the Judgment of the Hon'ble Supreme Court in the case of ***Madanuri Sri Rama Chandra Murthy vs. Syed Jalal***, (2017) 13 SCC 174 and more

particularly paragraph 7 and would submit that the powers under Order VII, Rule 11 of the Code of Civil Procedure can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If, on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the Court should excise powers under Order VII, Rule 11 of the Code of Civil Procedure. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is held that if clever drafting of the plaint has created the illusion of a cause of action, the Court will nip it in the bud at the earliest so that bogus litigation would come to an end at the earlier stage.

34. The learned Senior Counsel placed reliance on the Judgment of the Supreme Court in the case of ***T. Arivandandam vs. T.V. Satyapal and another***, (1977) 4 SCC 457, in support of his submission that if clever drafting has created the illusion of a cause of action, the Court will nip it in the bud at the first hearing by examining the party searchingly under Order X of the Code of Civil Procedure, 1908.

35. The learned Senior Counsel for the Applicant invited my attention to the findings of the learned Trial Judge in paragraph 55 of the impugned order and would submit that it is erroneously held by the learned Trial Judge that the relief sought in the present suit would not fall within the purview of Section 22 of the said Act on the ground that the said Resolutions were immediately stayed by the Trial Court and thus no change report has been filed by the Applicants before the Charity Commissioner. He submitted that the findings of the Trial Court that only remedy for the Plaintiffs is to institute a suit or that it cannot be said that the Charity Commissioner is empowered to deal with the issues involved in the suit or that the scope of Section 22 is very limited to adjudicate on the change report in respect of the changes which occur in the affairs of the Trust, is *ex facie* contrary to Section 22 of the said Act.

36. The learned Senior Counsel placed reliance on the Judgment of this Court in the case of ***Dinanath Ajabrao Ingole vs. Shetkari Shikshan Parasarak Mandal, Wardha***, AIR 1983 Bom 404 and in particular paras 6, 8, 11, 15, 16, 18 to 23 and would submit that this Court in the said Judgment has considered the scope of Section 22 of the said Act. The plaintiffs in that suit had filed a civil suit, claiming declaration that the plaintiffs be declared to be the duly elected

President and Secretary of the said Trust and that the defendants be declared to be ineligible to work in any capacity in the administration of the said Public Trust. This Court held that the Trial Court will have to go into the question as to whether, in fact, the original defendants were removed legally from the office of President and Vice-President of the said public trust and also to find out whether the plaintiffs no.2 and 3 had been validly elected as the President and Secretary of the said public trust or not. The Trustees even had filed change reports before the Charity Commissioner, which were pending.

37. This Court held that the suit, in substance, claimed a relief of declaration that the plaintiffs no.2 and 3 were the duly elected President and Secretary of the Trust. They indirectly claimed a declaration that the defendants were no longer the President, Secretary or office-bearers of the said Trust and it was in those circumstances that they were seeking permanent injunction against the defendants. It is held that the questions which were to be determined by the Civil Court were those which were to be determined by the Charity Commissioner, before whom the change reports were pending for inquiry and decision. The decision of the Charity Commissioner under Section 22(3) of the Bombay Public Trust Act are made final and conclusive under the said Act and in that view of the matter, the bar to

the jurisdiction of the Civil Court, as imposed by Section 80 of the said Act would become operative.

38. It is held that Section 50 of the said Act enjoins a duty upon the plaintiff to seek consent of the Charity Commissioner for preferring the suit where the claim involves a question of relief in favour or against a trust in the matter of declaration and injunction. In the absence of such consent on behalf of the Charity Commissioner, the Civil Court could not have entertained the suit. This Court, accordingly, dismissed the said suit for want of jurisdiction.

39. It is submitted that in this case, before the Plaintiffs could file a change report under Section 22 of the said Act notifying the effect of the resolutions passed by the Applicants, thereby removing the respondents No.1 and 2 from the post of trustees, respondents No.1 and 2 obtained an injunction from the Civil Court, staying the effect of the resolutions passed by the Applicants and thus, the Applicants could not file the said change report. The respondents No.1 and 2 thus cannot be allowed to raise a plea that since there was no change report filed by the Applicants, the only remedy of the respondents No.1 and 2 was to file a civil suit. He submits that the findings rendered by the learned Trial Judge are ex facie contrary to the law laid down by this Court in

***Dinanath Ajabrao Ingole vs. Shetkari Shikshan Parasarak Mandal, Wardha*** (supra).

40. The learned Senior Counsel placed reliance on the judgment of this Court in the case of ***Gaud Saraswat Brahmin Temple Trust, Mumbai and ors. vs. Vasudeo @ Kamlesh P. Shetye and ors.*** 2010 (3) Mh.L.J. 881 and in particular, paragraphs 5, 6 and 10. He submits that in the said Judgment, this Court held that the Plaintiff had not only applied for declaration of his individual rights, but had also prayed for further relief that the decision of his removal taken by the Managing Committee was bad. It could not be thus said that it was a simplicitor declaration of his civil rights.

41. It is submitted that in the said Judgment, it is clearly held that the Assistant Commissioner is empowered to conduct an inquiry under Section 22 before passing any order of change and while conducting inquiry, the Charity Commissioner has to issue notice to the plaintiff, being a necessary party and would have to decide the issue of legality of removal of the plaintiff and the impugned resolution. The Bombay Trusts Act, 1950 itself is a complete Code and under the said Act Deputy/Assistant Charity Commissioner and Charity Commissioner enjoy the procedural powers available under

the Code of Civil Procedure at the time of inquiry including taking statement, recording evidence, etc. This Court, accordingly held that the issue would fall under specified (b) and (p) of Section 50 of the Act. It was necessary for the plaintiff to obtain the consent of the Charity Commissioner. If the Commissioner arrives at a conclusion that the issue is to be decided by the Civil Court, then he may give, consent to file a suit. The learned Senior Counsel submits that the Judgment of the learned Trial Judge is *ex facie* contrary to the principles laid down in the said Judgment.

42. The learned Senior Counsel placed reliance on the Judgment of this Court in the case of ***Charu K. Mehta vs. Lilavati Kirtilal Mehta Medical Trust & ors.*** 2013 (3) ALL M R 206 and in particular, paragraphs 25, 30 to 35, 38 to 40, 47, 50, 60 and 67 and would submit that the Division Bench of this Court in the said Judgment, after considering various Judgments of the Hon'ble Supreme Court and the Scheme of the Bombay Public Trusts Act, has held that the said Act is a complete Code by itself.

43. The learned Senior Counsel placed reliance on a judgment of this Court in the case of ***Mr. Rajiv K. Mehta of Mumbai. vs. Mrs. Rekha H. Sheth and ors.*** (2014) 3 Bom CR 771 and in

particular paragraphs 2, 10, 65 to 68, 74 and 79 in support of the submission that the question which has to be decided or dealt with by the Authority under Section 22 of the Act cannot be decided by the Civil Court and such an adjudication is barred under Section 80 of the Act. He strongly placed reliance on paragraph 79 of the said Judgment in support of this submission.

44. Learned senior counsel for the applicants placed reliance on section 22(2) of the MPT Act and would submit that the Deputy or Assistant Charity Commissioner is empowered to hold an enquiry in the prescribed manner for the purpose of verifying the correctness of the entries in the register kept under section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register. He submits that under Rule 7 of the Bombay Public Trust Act, 1951, the evidence can be recorded by the Deputy or Assistant Charity Commissioner while conducting an enquiry under section 22 in accordance with the procedure prescribed for the trial of the suits. He submits that such enquiry to be conducted by the Deputy or Assistant Charity Commissioner is a full fledged enquiry. He submits that under section 22(3) of the MPT Act, the Deputy or Assistant Charity Commissioner as the case may be has to record reasons after conducting an enquiry. Such order passed by the Deputy or Assistant

Charity Commissioner are appealable.

45. Learned senior counsel strongly placed reliance on Rule 11 of the Bombay Public Trusts Rules, 1951 and would submit that the said provision specifically provides for the manner for recording evidence of the witness while conducting an enquiry by the officer conducting enquiry. Evidence has to be dictated in the presence of the parties. The deposition or its translation in English if in vernacular is done directly on the typewriter when such facility is available. If the evidence is given in vernacular, the dictation of translation in English shall be in addition to the vernacular deposition. The entry recorded is only consequential to the conduct of any enquiry under section 22 of the MPT Act with rules. The said MPT Act is a complete code.

46. Learned senior counsel placed reliance on the judgment of this court in case of ***Social and Cultural Association & Ors. vs. The State of Maharashtra & Ors., 2014(4) Mh.L.J.174*** and would submit that it is specifically held in the said judgment that merely calling a right civil right will not help and that the dispute whether or not the membership has been legally or illegally cancelled, can be considered when objections regarding the election are considered in the Change Report. He submits that this court has already held in the said judgment that the civil suit will be barred under section 80 of the MPT

Act.

47. Learned senior counsel also placed reliance on the judgment of this court in case of ***Dr.Rangnath Pandurang Joshi & Ors. vs. Hanmant Ganpati Bhosale & Ors., 2016 SCC OnLine Bom 9945*** and would submit that the charity commissioner will have to take decision regarding legality of the resolutions. He submits that the claim of the respondents nos. 1 and 2 (original plaintiffs) that they have removed illegally or *dehors* the provisions of the MPT Act and whether the provisions of the trust deed are ultra vires of the provisions of the Act or not can be gone into by the charity commissioner while deciding the change report under section 22 of the MPT Act. It is submitted by the learned senior counsel that in this case also the original plaintiffs have challenged the resolution passed by the trust removing the plaintiff no.2 from the post of trustee of the petitioner trust. The validity of such resolution can be decided in the enquiry under section 22 of the MPT Act.

48. Learned senior counsel for the applicants placed reliance on the judgment of this court in case of ***Rajesh Chunilal Meghani vs. Andheri Recreation Club & Ors., 2017(5) Mh.L.J.167*** and in particular paragraphs 15 to 18, 22, 27 to 29 and 31 in support of the submission that the removal of the trustee is not a civil right. It is

submitted by the learned senior counsel that since the decision of the Deputy Charity commissioner or charity commissioner under section 22 of the MPT Act is final and conclusive under section 80 of the Code of Civil Procedure, 1908, no civil suit is maintainable. An obligation is cast upon the trustees of the trust to notify the change before the Charity Commissioner under section 22 of the MPT Act and based on such report, an enquiry has to be conducted by the Charity Commissioner.

49. Learned senior counsel invited my attention to the paragraphs 82 onwards of the plaint and also the prayer clause (e) and would submit that the plaintiffs had prayed for damages for alleged defamation and loss of reputation. He submits that the said prayer for damages is consequential to the prayers impugning the resolution passed by the trust and is claimed by clever drafting. He submits that merely on that prayer, the suit filed by the original plaintiffs cannot be held maintainable.

50. Learned senior counsel for the applicants invited my attention to sections 50 and 51 of the MPT Act and would submit that the plaintiffs are seeking to challenge their removal as trustees and such relief is claimed not only against the other trustees but also against the trust. If the suit is decreed, they will be reinstated as

trustees of the said trust. He submits that such declaration is essentially against the other trustees and the trust which is squarely covered under section 50(iv), 50(b) and 50(p) of the said MPT Act.

51. It is submitted by the learned senior counsel that the plaintiffs were required to obtain the mandatory prior permission from the Charity Commissioner under section 51 of the MPT Act which permission was neither applied for by the plaintiffs nor granted in their favour by the Charity Commissioner before institution of the suit. The suit filed by the plaintiffs is *ex-facie* barred in absence of such mandatory prior permission not having been obtained by the plaintiffs under section 51 of the MPT Act.

52. Learned senior counsel for the applicants placed reliance on the judgment of this court in case of ***Gaud Saraswat Brahmin Temple Trust, Mumbai and ors.*** (supra) in support of the submission that the challenge to resolution of removal of trustees would require permission/consent under section 51 of the MPT Act from the charity commissioner since such case would fall under sections 50(iv), (b) and (p) of the said MPT Act. He also placed reliance on the judgment of Supreme Court in case of *Church of North India vs. Lavajibhai Ratanjibhai and Ors.*, (2005) 10 SCC 760.

53. It is submitted by the learned senior counsel that a bare

perusal of the averments from the plaint and more particularly paragraph 75 onwards clearly indicates that the challenge regarding the resolution being passed against the original plaintiffs by the trust is on the ground that there was no power under the trust deed or for the trustees of the applicant trust to pass such resolution for expulsion of the plaintiffs. The claim for damages made by the plaintiffs is also based on the allegations regarding illegal expulsion. He submits that this prayer of the original plaintiffs is also squarely covered under section 50(q) of the said MPT Act. The plaintiffs were thus required to obtain prior mandatory permission from the charity commissioner under section 51 of the said MPT Act claiming for damages against the trustees or challenging their acts as trustees of the petitioner trust.

54. In support of the submission that the objection of the jurisdiction based upon under section 80 of the Code of Civil Procedure, 1908 could be raised only under section 9A of the Code of Civil Procedure, 1908, learned senior counsel for the applicants placed reliance on the following judgments :-

(a) The judgment of the Supreme Court in case of ***Om Agarwal vs. Haryana Financial Corporation and others, (2015) 4 SCC 371.***

(b) The judgment of Division Bench of this court in

case of ***State Bank of India vs. Jigishaben B. Sanghavi & Ors., 2011(2) Mh.L.J.342.***

(c) The judgment of this court in case of ***Axis Bank Limited vs. Madhav Prasad Aggarwal & Ors.(2018) 6 Bom.C.R.738***

55. Mr.Anil Anturkar, learned senior counsel for the respondents nos. 1 and 2 (original plaintiffs) on the other hand invited my attention to various averments made by his clients in the plaint, various findings and observations made by the learned trial judge while rejecting the application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 and various judgments of the Supreme Court and this court.

56. It is submitted by the learned senior counsel that there is clear difference in the provisions of Order 7 Rule 11 on one hand and 9A of the Code of Civil Procedure, 1908 on the other hand. Order 7 Rule 11 deals with maintainability of the suit whereas section 9A deals with the jurisdiction of the court. Order 7 Rule 11 of the Code of Civil Procedure, 1908 prohibits the suit whereas section 9A prevents the court from exercising the jurisdiction of the court. He submits that the power of provisions of Order 7 Rule 11 are outwardly used for the purpose of attacking the jurisdiction of the court.

57. It is submitted by the learned senior counsel that the objection of the applicants herein that in the light of section 80 of the MPT Act, the jurisdiction of a civil court is barred on the ground that all the questions raised by the plaintiffs can be dealt with the enquiry under section 22 of the MPT Act while determining the change report would be the arguments based on the provisions of section 9A of the Code of Civil Procedure, 1908 and not based on the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure, 1908. He submits that the provisions of Order 7 Rule 11(d) are attracted when the court has otherwise jurisdiction but the suit is not maintainable either on account of non-compliance of some statutory provisions such as (a) the provision of section 80 of the Code of Civil Procedure, 1908, (b) the provision of section 164 of the Maharashtra Co-operative Societies Act, (c) the provision of section 515A of the Mumbai Municipal Corporation Act, (d) when finality has been given to the order, which has been passed by some statutory authority, and that finality having been given by one statute, cannot be penetrated by another statute, viz. section 9 of the Code of Civil Procedure, 1908 or (e) the suit is not maintainable on account of law of limitation.

58. It is submitted by the learned senior counsel that the moment the bar of jurisdiction, or the maintainability of the suit on the

point of jurisdiction is raised, the challenge would not fall under the provisions of Order 7 Rule 11 but under the provisions of section 9A or Order 14 Rule 2 of the Code of Civil Procedure, 1908. He submits that even though the application of the applicants was purportedly made under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908, the said application was in fact an application under section 9A of the Code of Civil Procedure, 1908 challenging the jurisdiction of civil court. He submits that the learned civil court while passing impugned order was also exercising under section 9A of the Code of Civil Procedure, 1908.

59. Learned senior counsel strongly placed reliance on the unreported judgment of this court in case of ***Vaibhav Basantkumar Shukla vs. Lorna Cordeiro and another*** delivered on 27<sup>th</sup> October, 2014 in ***C.R.A.No.16 of 2014*** and would submit that if the application raises a pure question of law in respect of entitlement of the plaintiffs to get the relief and the jurisdiction of the court to grant such relief claimed is challenged or an application raises an issue as to bar of limitation, such application has to be treated as application under section 9A of the Code of Civil Procedure, 1908 irrespective of the fact that it is styled as one under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908.

60. It is submitted by the learned senior counsel that since the learned trial judge has exercised the jurisdiction under section 9A of the Code of Civil Procedure, 1908 and has rejected the objection of jurisdiction raised by the applicants, this civil revision application stands abated by virtue of the provisions of Maharashtra Act No. LXI of 2018 by which the provisions of section 9A stands amended and more particularly by the provisions of section 3. It is submitted by the learned senior counsel that the applicants herein have not filed any written statement in the said suit filed by the original plaintiffs, the objections regarding the jurisdiction thus could be considered only under section 9A and such application was in fact made under section 9A.

61. Learned senior counsel placed reliance on the Ordinance issued by the State Government published in the Maharashtra Government Gazette dated 27<sup>th</sup> June, 2018 and submits that in view of section 3 of the said Ordinance, this court will have to consider the said provision. Thus civil revision application filed by the applicants deserves to be dismissed as abated in view of the said provision and cannot be considered by this court on merits. He submits that merely because the nomenclature of the application filed by the petitioner would show that the said application was filed under Order 7 Rule

11(d) of the Code of Civil Procedure, 1908, the said proceedings would fall under section 9A of the Code of Civil Procedure, 1908. He submits that the issue of law and jurisdiction could be considered by the learned trial judge read with Order 14 Rule 2 of the Code of Civil Procedure, 1908 along with all other issues.

62. In his alternate submission and without prejudice to the submission made aforesaid, Mr. Anturkar, learned senior counsel for the plaintiffs submits that the present suit filed by his clients is for declaration, permanent injunction and damages. Even if it is considered for the sake of convenience that some of the prayers in the suit falls within the exclusive jurisdiction of the charity commissioner, some reliefs are outside the purview of the charity commissioner and fall within the exclusive jurisdiction of the civil courts. He submits that only argument advanced by the applicants is that the some of the reliefs are consequential to the main relief and hence the suit can be dismissed under order 7 Rule 11(d) of the Code of Civil Procedure, 1908. He submits that since some of the reliefs are admittedly within the jurisdiction of the civil court, whether the other reliefs are consequential to the main relief or not is a matter to be ascertained by the civil court after the complete trial and not at the threshold.

63. It is submitted that if there are various facts which constitute the cause of action and some of the cause of action or relief are outside the jurisdiction of the charity commissioner and are within the jurisdiction of the civil court and if some are within the jurisdiction of the charity commissioner, in such circumstances on account of the blended facts, and the cause of action, artificial separation of the cause of action would not be permissible and in such circumstances, the civil court would have the jurisdiction.

64. Learned senior counsel for the plaintiffs placed reliance on the following judgments in support of the submission that merely because some of the reliefs cannot be granted by the civil court, it would not entail an automatic rejection of the entire plaint :-

(a) Judgment of this court in case of ***Shree Hanuman Mandir and Ors. vs. Satishchandra Bhalchandra Gurjar and Ors., 2014 (2) Bom.C.R. 221.***

(b) Judgment of this court in case of ***Pratap Shivaji Chumbale vs. Deepak Vishanath Pingale and Ors., 2014(2) Bom.C.R.239, Paragraph 12.***

(c) Judgment of this court in case of ***Gerald Shirley Indian Inhabitant and Ors. vs. Dipesh Mehta and Ors., 2014(4) Bom.C.R.778, Paragraph 41.***

65. The next submission of the learned senior counsel for the plaintiffs is that in respect of those issues where civil court's jurisdiction is excluded by section 80 of the MPT Act, there is no question of obtaining any permission under sections 50 and 51 of the MPT Act. He submits that if the civil court has no jurisdiction under section 80 of the MPT Act, even if the consent is given by the charity commissioner that consent will not confer any jurisdiction, on the civil court. The fields governed by section 80 on one hand and sections 50 and 51 on the other hand are mutually exclusive i.e. sections 50 and 51 operates only in respect of those cases which are not excluded by section 80 of the MPT Act.

66. Learned senior counsel submits that sections 50 and 51 of the MPT Act refers to consent and in contradistinction with those provisions, section 36 of the Act provides for 'sanction'. Similarly section 83 of the MPT Act also provides for 'previous sanction' which would show that requirement of the consent cannot be construed as a requirement of the 'prior permission' and that requirement can be met with even subsequently i.e. after filing of the suit. The fact that the charity commissioner is a party to such suit as per section 51(3) of the MPT Act shows that the charity commissioner in appropriate case can even give *post facto* consent also. Although proviso 1 to section 51

requires the consent to be obtained before filing of the suit, the fact that neither in section 50 nor in section 51, any fatal consequence of filing the civil suit without obtaining the consent of the charity commissioner is provided for eloquently indicates that the requirement of consent can be met post facto also.

67. It is submitted that the provisions of Order 7 Rule 11 uses the crucial words 'where the suit appears from statement in the plaint to be barred by law'. He submits that if that would have been the intention of the legislature, the legislature would have used the word 'sanction' or 'prior sanction' as it has used in section 36 or section 86 of the MPT Act. Even the objection under sections 50 and 51 and the absence of consent under those provisions is an objection covered by section 9A of the Code of Civil Procedure (Maharashtra Amendment).

68. Learned senior counsel placed reliance on the judgment of the Supreme Court in case of ***Mardia Chemicals Ltd. vs. Union of India (2004) 2 MLJ (SC) 1090*** in support of the submission that the civil court would have jurisdiction not only in respect of those issues which cannot be decided by the authorities under the Act but also in respect of those issues which can be decided by the authorities where a fraud is played upon the plaintiffs. He submits that since in this case, his clients have pleaded fraud in the plaint, the civil court would have

jurisdiction to entertain the suit, even in respect of those issues which can be decided by the authorities under the provisions of the MPT Act. The legislature does not want any party without any remedy.

69. It is submitted by the learned senior counsel that section 50 of the MPT Act does not mandate that the civil court must dismiss the suit or that the suit without consent of the charity commissioner is not maintainable. The first proviso to the section 50 is only embargo on the plaintiffs but it does not mandate that if the provision is not followed, then the suit must be dismissed. At the most, the said provision is directory in nature and not mandatory. He submits that the legislature has not used the words 'permission and/or sanction' but the word used in section 50 is 'consent' and hence it cannot be read as permission or sanction.

70. It is submitted by the learned senior counsel that section 50 does not provide for any consequence for filing of the suit in the absence of prior consent from the charity commissioner. In the absence of such specific provision of obtaining prior consent or in the absence of any consequence provided for filing of such suit in the absence of such consent, the said provision of obtaining consent of charity commissioner is directory and not mandatory. The said provision is procedural in nature and not a substantive provision. He

submits that the compliance of such procedural provision without providing any consequences in case of defiance thereof thus cannot be construed as mandatory and has to be construed as directory. In support of this submission, learned senior counsel placed reliance on the judgment of this court in case of ***Global Aviation Services Private Ltd. vs. Airport Authority of India, 2018 SCC Online Bom 233*** and in particular paragraphs 115, 116, 118 and 121.

71. It is submitted by the learned senior counsel that there is no non-obstante clause under sections 50 and 51 of the MPT Act which provides that the civil law/common law rights cannot be exercised without obtaining the consent of the charity commissioner. Sections 50 and 51 of the MPT Act operates in a completely different context. In the absence of non-obstante provision, MPT Act cannot be used for the purpose of defeating the individual civil courts right which are otherwise enforceable.

72. It is submitted by the learned senior counsel that at the time of the first hearing of the present civil revision application, the plaintiffs were not before this court. The applicants had specifically recorded its no objection if the application below Ex.5 in the suit was proceeded with. The said statement was recorded by this court in its order dated 15<sup>th</sup> December, 2014 in paragraph (4). It is submitted that

the applicants filed their written statement in the suit thereafter and have contested the application for temporary injunction below Ex.5. The said application has been allowed. An appeal from order has also been filed in this court which is still pending. He submits that objection regarding consent under section 50 thus stands waived since the defendants have already participated in the further proceedings of the suit.

73. Learned senior counsel placed reliance on the judgment of this court in case of *Ashraf Ahmed Aziz Siddiqui vs. Municipal Corporation of Greater Bombay, 1999 (3) Mh.L.J. 183* and would submit that in the said judgment this court has held that it is always open to the Bombay Municipal Corporation and/or its concerned authorities to waive notice under section 527 of the Bombay Municipal Corporation Act and they may be estopped by conduct from pleading the want of notice. It was for the Corporation to raise specific issue in the written statement raising an issue of jurisdiction for want of notice. Where the Bombay Municipal Corporation fails to raise specific plea of want of notice at the earliest, by its conduct it may be estopped from pleading the want of notice at later stage.

74. It is submitted by the learned senior counsel that the power of charity commissioner to grant the temporary injunction as

contemplated by the provisions of section 41A, 41B, 41C, 41D and 41E is only in respect of the properties and not in respect of the individual rights and the status of the person, which is the subject matter in the instant case. Such reliefs cannot be granted even under the provisions of MPT Act and more particularly under section 22 of the MPT Act and thus jurisdiction of the civil court is clearly available. It is submitted that the civil court jurisdiction cannot be excluded except by the express provision or by necessary implication. The express provision or the necessary implication cannot be found in the provisions of the MPT Act. The civil court jurisdiction to grant the reliefs continues to exist.

75. It is submitted by the learned senior counsel that if an averment is made that the impugned order is void and non-est, the civil court will have jurisdiction. It was one of the contention of the plaintiffs that under section 41D and 47 of the MPT Act, it was the charity commissioner alone who had power to remove trustees. Such power is not available, to other trustees to pass a resolution and to remove any person as trustee. Since the power is available with the charity commissioner alone and if that power is sought to be exercised by the trustees, who do not have the power, the plaintiffs is entitled to file the suit for the declaration and injunction. Such power is ultra

vires the provisions of the MPT Act and therefore such suit is always maintainable for seeking a declaration about the validity of such resolution as void *ab-initio* and being ultra vires, non-est of the provisions of the MPT Act and without any authority and power.

76. It is submitted by the learned senior counsel that it is specifically contended by the plaintiffs in the plaint that the action of removing the plaintiffs is without jurisdiction, without authority and *dehors* of the provision of the MPT Act and therefore it is non-est and void *ab-initio* etc. Learned senior counsel placed reliance on the following judgments:-

(a) The judgment of this court in case of ***Abdul Karim Ahmed Mansoori vs. Municipal Corporation of Greater Mumbai & Anr., 2013 BCI 1046.***

(b) The judgment of Supreme Court in case of ***Dhulabhai and others vs. State of Madhya Pradesh, AIR 1969 SC 78.***

(c) The judgment of Supreme Court in case of ***Dhruv Green Field Ltd. vs. Hukam Singh & Ors., (2002) 6 SCC 416***

(d) The judgment of this court in case of ***Qari Mohammed Zakir Hussain & Ors. vs. Municipal***

***Corporation of Greater Mumbai, 2002 (2) Bom.C.R.98***

(e) The judgment of this court in case of ***Vidarbha***

***Youth Welfare Society, Amravati & Ors. vs. Sandip Ram***

***Meghe, 2016(5) Mh.L.J.711.***

77. It is submitted by the learned senior counsel that since the act on the part of the trustees is nullity or since the action is not by complying mandatory provisions of the Act, then the civil court will have jurisdiction to entertain the suit. He submits that the removal of a trustee by co-trustee is not contemplated under the provisions of the MPT Act and in particular sections 17 to 19 and thus no change has occurred under section 20 and thus there could be no change report filed under section 22 of the MPT Act. It is the specific case of the plaintiffs that the defendants had no power under the MPT Act to remove the plaintiffs. The defendants cannot encroach upon the powers of the charity commissioner bestowed by sections 41D, 47 and 50 of the MPT Act.

78. It is submitted by the learned senior counsel that if it is held that the the plaintiffs must wait until the defendants files the change report and should make his challenge only in the change report submitted by the other trustees, the said interpretation would result in most chaotic and unjust condition. There is no strict time limit for

filing the change report. It is common experience, that change reports are filed belatedly after prescribed period and the delay is normally condoned. He submits that the plaintiffs would not be in a position to do anything until the defendant trustees files the change report. The defendants are also not under any obligation to implead the plaintiffs in such change report as party opponents. Even when the plaintiffs are impleaded as party of such change report, they would not be in a position to ask for injunction against the trustees in the change report. The adjudication of the change report takes decades most of the time.

79. Learned senior counsel for the plaintiffs placed reliance on the judgment of the Supreme Court in case of ***Dhulabhai and others*** (supra) and would submit that until the change report is decided, the civil court would have jurisdiction to entertain a suit, and grant interim relief in appropriate case because there is no provision in the MPT Act providing for any such remedy, much less any efficacious remedy for the time interregnum.

80. Learned senior counsel for the plaintiffs distinguished the judgment of Supreme Court in case of ***Om Agarwal*** (supra) on the ground that the said judgment was delivered by the Supreme Court arising from Punjab and Haryana State and not arising out of the judgment under the MPT Act. He submits that insofar as the

Maharashtra State is concerned, the objection to the jurisdiction to entertain the suit is specifically covered by the provisions of section 9A of the Code of Civil Procedure, 1908. Insofar as section 9A is concerned, it starts with the following non-obstante clause 'notwithstanding anything contained in this Code' which itself shows that the provision of section 9A are applicable notwithstanding anything containing in the code, which *inter alia* includes Order 7 Rule 11 of the Code of Civil Procedure, 1908 also. Insofar as the State of Maharashtra is concerned, special provision under section 9A of the Code of Civil Procedure, 1908 would prevail over the general provision i.e. Order 7 Rule 11 of the Code of Civil Procedure, 1908. He submits that the judgment of the Supreme Court in case of **Om Agarwal** (supra) is clearly distinguishable in the facts of this case.

81. Mr.Anturkar, learned senior counsel for the plaintiffs placed reliance on the judgment **Mardia Chemicals Ltd. vs. Union of India (2004) 2 MLJ (SC) 1090 = AIR 2004 SC 237** and submits that paragraphs 51 and 80 of the said judgment would also clearly indicate that civil court would have jurisdiction not only in respect of the issues which cannot be decided by the authorities under the Securitization Act but even if an issue can be decided by the authority under the Securitization Act. If the plea of fraud, has been raised by the plaintiffs

then the civil court will have the jurisdiction notwithstanding the fact that that the issue can be decided by the authority under the provisions of the Securitization Act.

82. Learned senior counsel placed reliance upon the judgment of Division Bench of this court in case of ***Amirchand Tulsiram Gupta and others vs. Vasant Dhanaji Patil and others, 1992 (1) Mh.L.J.275*** in which there is reference to the judgment of the Division Bench of this court in ***Appeal No.1315 of 1990*** dated 14<sup>th</sup> March,1991 and in case of ***Rajgopal Raghunathdas Somani vs. Ramchandra Hajarimal Jhavar, 1967 Mh.L.J.799*** holding that if the trustees files a suit for the purpose of enforcement of individual right then, the consent of the charity commissioner is not required. In support of this submission, learned senior counsel placed reliance on the following judgments :-

- (a) The judgment of this court in case of ***Namgonda Jjingonda Patil vs. Appasaheb B. Valvekar, (2000) SCC OnLine Bombay 136***
- (b) The judgment of this court in case of ***Kedar Shivkumar Kale vs. Digamdar Shridhar Mhapsekar, (2007) 4 Mah.L.J.77***
- (c) The judgment of this court in case of ***Dr.Rangnath Joshi vs. Hanmant Bhosale, (2016) SCC OnLine Bom***

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(d) The judgment of this court in case of ***Pratap Shivaji Chumbale vs. Deepak Vishnath Pingale, 2014(2) Bom.C.R.239.***

83. It is submitted by the learned senior counsel that this court however in case of ***Dr.Rangnath Joshi*** (supra) has taken a contrary view after discussing the judgment of this court in case of ***Namgonda J.Patil*** (supra) and in case of ***Kedar Shivkumar Kale*** (supra). He submits that the judgment in case of ***Dr.Rangnath Joshi*** (supra) is under challenge before the Supreme Court in ***SLP (C) No. 030556 of 2016***. A notice has been issued by the Supreme Court in the said Special Leave Petition as well as on interim reliefs by an order dated 26<sup>th</sup> October,2016. The said Special Leave Petition is admitted and is pending for final disposal.

84. Insofar as the judgment of this court in case of ***Mr. Rajiv K. Mehta of Mumbai***(supra) relied upon by the plaintiffs is concerned, Mr.Anturkar, learned senior counsel for the plaintiffs distinguishes the said judgment on the ground that the said trust had not filed any suit. In that matter, the plaintiff was one of the trustee and had filed the said suit as a person interested in a trust

in a representative capacity and not for enforcement of his own civil individual rights but for the purpose of enforcement right of the defendant trust to recover the property.

85. Learned senior counsel for the plaintiffs submits that it was specifically contended by the plaintiffs that action of removing the plaintiffs was without jurisdiction, without authority, *dehors* the provisions of MPT Act and therefore was non-est, void *ab-initio* etc. A civil suit is thus maintainable. In support of this submission, learned senior counsel placed reliance on the judgment of Division Bench of this court in case of **Abdul Karim Ahmed Mansoori** (supra) in which judgment this court has referred to and relied upon the judgment of Supreme Court in case of **Dhulabhai and others** (supra), judgment of Supreme Court in case of **Dhruv Green Field Ltd.** (supra) and judgment of this court in case of **Qari Mohammed Zakir Hussain & Ors.** (supra) and has held that if the plaintiff files a suit on the ground that the action is nullity or the action taken is not by complying mandatory provisions of the Act etc. then the civil court will have jurisdiction to entertain the suit.

86. Learned senior counsel for the plaintiffs submits that in

prayer clause in paragraph 92(d) of the plaint, the plaintiffs have prayed for a declaration that the power of removal/suspension/termination of trustee of public trust vests only with the charity commissioner. Such declaration challenging the validity of resolution can be granted by the civil court and not the charity commissioner. It is submitted that even the claim for damages made by the plaintiffs also cannot be granted by the charity commissioner but only by the civil court. He submits that since there are various facts which constitutes the cause of action and if the part of the reliefs can be granted by the civil court and part by the authority, civil court would have jurisdiction. In support of this submission, learned senior counsel placed reliance on the judgment of this court in case of ***Shree Hanuman Mandir and Ors.*** (supra) relying upon the judgment of Apex Court in case of ***Sopan Sukhdeo Sable vs. Assistant Charity Commissioner, 2004(4) Bom.C.R.904***, judgment of this court in case of ***Pratap Shivaji Chumbale*** (supra) and judgment of this court in case of ***Gerald Shirley Indian Inhabitant and Ors.*** (supra). He submits that merely because some of the reliefs cannot be granted in the civil court, it would not entail an automatic rejection of the entire plaint.

87. Learned senior counsel placed reliance on the judgment of

this court in case of ***Vidarbha Youth Welfare Society, Amravati & Ors.*** (supra) and would submit that the resolution challenged by the plaintiffs in this case *inter alia* removes the plaintiffs not only from the post of trustees but from the post of primary membership and trusteeship of the MAEER Trust/society, its body of trustees and its other committees.

88. Learned senior counsel for the plaintiffs submits that the nature of the proceedings under section 19 and the nature of the proceedings under section 22 would show that even the nature of the proceedings under section 22 is also summary in nature and the observations made in paragraphs 22 to 26 in the full Bench judgment in case of ***Keki Pestonji Jamadar vs. Kohodadad Merwan Irani & Ors., 1973 BCI(0)27*** would squarely apply even to the enquiry in respect of the change report also. He submits that the nature of enquiry under section 19 and nature of enquiry under section 22 is exactly identical and therefore whatever has been said in paragraphs 22 to 26 of the judgment in case of ***Keki Pestonji Jamadar*** (supra) will squarely apply even in respect of the enquiry under section 22 also.

89. It is submitted by the learned senior counsel that the judgment of this court in case of ***Rajgopal Raghunathdas Somani*** (supra) and in case of ***Amirchand Tulsiram Gupta and others*** (supra)

would apply to the facts of this case and would assist the case of the plaintiffs.

90. Insofar as the judgment of Supreme Court in case of ***Church of North India*** (supra) relied upon by Mr.Dhakephalkar, learned senior counsel for the petitioners is concerned, it is submitted by Mr.Anturkar, learned senior counsel for the plaintiffs that the said judgment of the Supreme Court is not under sections 50 and 51 of the MPT Act but is under section 80 of the MPT Act and would not assist the case of the petitioners. It is submitted that the case of the plaintiffs is squarely covered by the judgment of this court in case of ***Vidarbha Youth Welfare Society, Amravati & Ors.*** (supra) where this court in paragraph (6) has considered the provisions of sections 50 and 80 of the MPT Act and has held that the civil suit is maintainable. He submits that the jurisdiction under section 9 of the Code of Civil Procedure, 1908 as a rule must be presumed unless taken away by the law explicitly or impliedly.

91. Mr.P.B.Shah, learned counsel for the respondent nos.3 and 4 filed brief written arguments and supports the case of the plaintiffs. He submits that the respondent nos.3 and 4 are the trustees of the MAEER Trust. The plaintiffs are also permanent trustees of the MAEER Trust. The defendant no.1 was having grudge against the

plaintiff no.2 since the plaintiff no.2 and the other trustees have raised objection against the alleged high handed and illegal actions of the defendant no.1. The plaintiffs and other trustees have strongly opposed the inclusion of the said subject on agenda against one of the trustees of MAEER Trust and thus the defendant no.1 was more enraged.

92. It is submitted that the acts of defamation is not related to the affairs of the trust and hence bar under section 50 of the MPT Act is not attracted to this case. A prayer for damages is on account of the defamation done by the defendant nos. 1 to 10 individually and the trust is no way concerned with it. The relief of damages cannot be granted by the charity commissioner. He placed reliance on the judgment of this court in case of ***Gerald Shirley Indian Inhabitant and Ors.*** (supra) in support of the submission that no authority under the BPT Act is required to determine the question or the quantum of damages and such issue can be decided only by the civil court.

93. It is submitted that the relief of permanent and temporary injunction is claimed by the plaintiffs against the defendant nos. 1 to 10 and not against all trustees and the trust. The charity commissioner has no power to grant injunction against individual trustees or in disputes *inter se* trustees. Learned counsel for the respondent nos. 3 and 4 placed reliance on various judgments, some of which are already

relied upon by Mr.Anturkar, learned senior counsel for the plaintiffs.

94. Mr.Anturkar, learned senior counsel for the plaintiffs tendered a chart in support of his submission that various judgments referred to and relied upon by the learned senior counsel for the defendants did not refer to various other judgments and/or submissions which are made by his clients in this petition and are thus clearly distinguishable.

95. Mr.Dhakephalkar, learned senior counsel for the applicants in rejoinder submits that the plaintiffs are seeking to challenge their removal as the trustees in the plaint which relief is not only claimed by them against the other trustees but also against the trust and if the suit is to be decreed, they will be reinstated as trustees of the trust. The prayers for declaration is essentially against the other trustees and the trust which is squarely covered under sections 50(iv), 50(b) and 50(p) of the said MPT Act. He submits that prior permission of the charity commissioner under section 51 of the MPT Act is mandatory which is admittedly not granted in favour of the plaintiffs before institution of the suit and thus the said suit filed by the plaintiffs is *ex-facie* barred under the said provision.

96. Learned senior counsel once again placed reliance on the judgment of this court in case of ***Gaud Saraswat Brahmin Temple***

**Trust, Mumbai and ors.** (supra) and in particular paragraphs 5, 6 and 10 and would submit that it is specifically held by this court in the said judgment that challenge to the resolution of removal would require permission/consent under section 51 of the MPT Act and such case would fall under sections 50(iv), 50(b) and 50(p) of the said MPT Act. He once again placed reliance on the judgment of this court in case of **Mr. Rajiv K. Mehta of Mumbai** (supra) and in particular paragraphs 58, 65, 68 and 69 in support of the submission that the prior permission of the charity commissioner was mandatory. He also placed reliance on the judgment of this court in case of **Social and Cultural Association & Ors.** (supra).

97. Insofar as the contentions raised by Mr. Anturkar, learned senior counsel for the plaintiffs that the issue of bar of jurisdiction raised by the petitioners would fall under section 9A of the Code of Civil Procedure, 1908 and not order 7 Rule 11(d) is concerned, it is submitted by Mr. Dhakephalkar, learned senior counsel for the petitioners that the issue of jurisdiction is also an issue which bars the jurisdiction of the court to decide. He strongly placed reliance on the judgment of the Supreme Court in case of **Bharvagi Constructions and Ors. vs. Kothakapu Muthyam**

**Reddy and Ors., 2018 (13) SCC 480** and would submit that it has been held by the Supreme Court in the said judgment that 'barred by law under Order 7 Rule 11(d) would also mean law declared by the highest court of State as well as the Supreme Court'. He submits that the Supreme Court in case of **Om Agarwal** (supra) has clearly held that the question of jurisdiction of civil court to entertain and try a civil suit goes to the very root of the matter and can be raised at any time under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

98. Learned senior counsel placed reliance on the judgment of Supreme Court in case of **The Authorized Officer, State Bank of India vs. Allwyn Alloys Pvt. Ltd. and Ors., (2018) 8 SCC 120** and would submit that the Supreme Court had considered the provisions of Securitization Act and has held that by virtue of sections 13 and 34 of the said Act, filing of the civil suit is barred and that no civil court can exercise the jurisdiction to entertain a suit or proceedings in respect of any matters which DRT or DRAT is empowered under 2002 Act. He submits that the jurisdiction to decide the validity of expulsion is vested only in the charity commissioner under the provisions of MPT Act and this issue could very well be considered under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

99. It is submitted by the learned senior counsel that the right

of the plaintiffs, if any, are the rights as a trustee connected with the trust and not any independent civil right. Such right is available to the plaintiffs as a trustee and not in connection with the trust and not any civil right or private right.

100. Insofar as the submission of the learned senior counsel for the plaintiffs that since the suit is filed in the civil court, bar under sections 50 and 51 would not apply because of the definition of the word 'court' under section 2(4) which refers to the District Court is concerned, Mr.Dhakephalkar, learned senior counsel for the petitioners relied upon the judgment of this court once again relying upon the judgment of this court in case of **Mr. Rajiv K. Mehta of Mumbai**(supra) and would submit that this issue has been concluded by the said judgment.

101. Insofar as the submission of Mr.Anturkar, learned senior counsel for the petitioners that since the charity commissioner has no power to grant stay to the expulsion, only the civil court has such power to grant stay is concerned, it is submitted by the learned senior counsel for the petitioners that merely because there is no power conferred upon the charity commissioner to grant stay, the same cannot bestow jurisdiction

upon civil court which is expressly barred by virtue of section 80. The provisions of MPT Act being a complete code by itself. The legislature in its wisdom has decided not to confer the power to grant injunction in the charity commissioner.

102. Insofar as the submission of the learned senior counsel for the plaintiffs that sanction to institute the suit under section 51 can be granted *post facto* is concerned, learned senior counsel for the petitioners placed reliance on the judgment of this court in case of **Mr. Rajiv K. Mehta of Mumbai**(supra) and more particularly paragraph 69 in which it is held that permission is condition precedent and in absence thereto, the provisions of Order 7 Rule 11(d) are attracted.

103. Insofar as issue of alleged waiver raised by the learned senior counsel for the plaintiffs before this court in this petition is concerned, it is submitted by the learned senior counsel for the defendants that even by consent of parties, jurisdiction cannot be conferred upon the court which does not possess. He submits that the bar contemplated is to the jurisdiction of the civil court and thus there is no question of waiver by the party to the said

jurisdiction. He submits that even otherwise the fact that phraseology of Order 7 Rule 11(d) permits raising of objection under Order 7 Rule 11(d) at any stage of suit, there is no question of any waiver. Insofar as the judgment of Supreme Court in case of *Gollaleshwar Dev & Ors. vs. Gangawwa Kom Shantayya Math & Ors.*, AIR 1986 SC 231, judgment of Supreme Court in case of *Vinayaka Dev, Idagunji and others vs. Shivaram and others*, (2005) 6 SCC 641 and in the full Bench judgment in case of *Keki Pestonji Jamadar* (supra) are concerned, it is submitted that all these judgments have been considered by the Supreme Court in case of *Church of North India* (supra) in great detail. Supreme Court has laid down the jurisdiction of the civil court as well as the necessity of permission under sections 50 and 51 of the MPT Act.

104. It is submitted that all the said judgments were also considered in two judgments of this court in case of *Dr. Rangnath Pandurang Joshi & Ors.* (supra) and in case of *Rajesh Chunilal Meghani* (supra) and held that in view of the judgment of Supreme Court in case of *Church of North India* (supra), all the said judgments will have to be considered in view of the latest position as expanded in case of *Church of North India* (supra). He submits that reliance thus

placed by the learned senior counsel for the plaintiffs on those three judgments is totally misplaced.

105. Insofar as the submission of Mr. Anturkar, learned senior counsel that the judgment in case of ***Church of North India*** (supra) did not consider sections 50 and 51 of the MPT Act is concerned, he submits that this statement is not correct since the Supreme Court in paragraphs 35, 36, 78, 81 to 89 has considered the provisions of sections 50 and 51. Insofar as reliance placed by the learned senior counsel for the plaintiffs on the judgment in case of ***Vidarbha Youth Welfare Society, Amravati & Ors.*** (supra) is concerned, learned senior counsel for the applicants submits that the entire plaint is silent about the removal of the plaintiffs from the primary membership and thus reliance placed on the said judgment in case of ***Vidarbha Youth Welfare Society, Amravati & Ors.*** (supra) is totally misplaced. He submits that there is no prayer in the plaint for setting aside their expulsion as a members of the trust. He submits that prayer clause (b) can be considered by the charity commissioner under section 22 of the MPT Act. Prayer clause (e) is a consequential relief covered under section 50(q) of the MPT Act and prayer clause (g) falls under section 50(iv) of the MPT Act.

106. It is submitted by the learned senior counsel that in the

facts and circumstances of this case, the prior permission of the charity commissioner before filing of the suit under section 51 was mandatory. Even otherwise since all the questions raised in the plaint are regarding the legality of the expulsion of the plaintiffs on whatever grounds, the same can be considered only by the charity commissioner under section 22 whilst deciding the change report. By virtue of the provisions of section 80 of the MPT Act, the jurisdiction of the civil court is barred.

107. Learned senior counsel for the applicants states that the court has to consider the crux of the matter while deciding the issue of jurisdiction and the effect of clever drafting has to be avoided. Learned senior counsel placed reliance on the judgment of Supreme Court in case of **Om Agarwal** (supra) and the judgment of Division Bench of this court in case of **State Bank of India** (supra) and would submit that since the civil court did not have jurisdiction to grant relief, the civil court is empowered to reject the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

108. Insofar as filing of the change report by the trustees under section 22 of the MPT Act is concerned, it is submitted by the learned senior counsel that the change report has to be filed within 90 days of the change under section 22 of the MPT Act with the authority. In this

case since the plaintiffs obtained an injunction from the trial court against the applicants, the applicants could not file a change report under section 22 till date. The plaintiffs having obtained injunction against the applicants from the trial court cannot be allowed to contend that the plaintiffs cannot be asked to wait for filing of the change report by the trustees under section 22 and then argue the issue of validity of the resolution before the charity commissioner. He submits that the right to act as trustee claimed by the plaintiffs is not a civil right but touches the administration of trust. All the judgments relied upon by Mr. Anturkar, learned senior counsel for the plaintiffs are regarding recovery of the trust properties and individual right to the trust and would not assist the case of the plaintiffs. He strongly placed reliance on the judgment of the Supreme Court in case of ***Social and Cultural Association & Ors.*** (supra) in support of the submission that the right to act as a trustee is not a civil right. The plaintiffs have even stopped the trust from filing change report under section 22.

109. Learned senior counsel for the applicants distinguished the judgment of Supreme Court in case of ***Vinayaka Dev, Idagunji and others*** (supra) and would submit that in the said judgment, the plaintiffs had claimed the enforcement of personal right to get offering and not as a trustee. The plaintiffs had claimed

individual hereditary rights as archak and had nothing to do with the public interest and/or administration of trust. It is submitted that the right of removal of the trustee is a part of administration of the trust. He placed reliance on the judgment of this court in case of **2014 SCC Online Bom 400**. He submits that Supreme Court in case of **Church of North India** (supra) has specifically held that the MPT Act is a complete code by itself.

110. Learned senior counsel submits that the judgment in case of **Kedar Shivkumar Kale** (supra) has been distinguished by this court in case of **Dr.Rangnath Pandurang Joshi & Ors.** (supra) and in case of **Rajesh Chunilal Meghani** (supra). Learned senior counsel for the applicants distinguished the judgment of this court in case of **Vidarbha Youth Welfare Society, Amravati & Ors.** (supra) on the ground that the fact in the said judgments were totally different. There was difference between the membership and trusteeship. If the person is removed as a life member, no change was required to be reported under section 22. He submits that the said judgment relied upon by Mr.Anturkar, learned senior counsel for the plaintiffs would not assist the case of the plaintiffs. In that context, this court held that there was no bar under section 80 of the MPT Act.

111. Insofar as prayer for damages is concerned, it is submitted

by the learned senior counsel that the said prayer would fall under section 50(p), (q) of the MPT Act which prayer is consequential to the prayer challenging the removal of the plaintiffs as trustees and thus it is barred in view of the plaintiffs not having obtained prior mandatory consent of the charity commissioner.

**REASONS AND CONCLUSION :**

112. I shall first consider whether the subject matter of the dispute in the plaint or any part thereof is within the jurisdiction of the Charity Commissioner under Section 22 of the MPT Act or not or whether Civil Suit filed by the respondent nos.1 and 2 for various reliefs is maintainable.

113. It is not in dispute that the plaintiff nos.1 and 2 were the trustees of the applicant no.14 trust. On 30<sup>th</sup> October 2013, trust issued a show cause notice to the plaintiff no.1 alleging various breaches and misconduct on his part relating to the management of the trust and calling upon him to show cause as to why a strict disciplinary action against him should not be taken and if necessary, why he should not be expelled or removed from trusteeship of MAEER, Pune in accordance with clause 14(f) of MAEER Constitution. By the said show cause notice, the trust had constituted three member committee consisting of Advocate Dharmeshwar

Mishra- Chairman, Dr. K.G. Pathan-Member and Dr.Mangesh T. Karad – Presiding Officer. The plaintiff no.1 was called for personal hearing. He replied to the said show cause notice on 13<sup>th</sup> November 2013.

114. Various proceedings came to be filed by the plaintiffs against the applicants arising out of the said show cause notice including a civil suit bearing Regular Civil Suit No.194 of 2014 for declaration that the provisions of the constitution and/or in particular clause 14(a) and/or (f) of the Constitution of the applicant no.14 -trust were not meant for / were not applicable for the removal of any trustee/co-trustee/member of the society nor the said provision empowered any of the Trustee, Managing trustee/Board of trustees to remove any trustee from the membership of the society/trust as trustee from the applicant no.14 trust and for various other reliefs.

115. On 11<sup>th</sup> June 2014, in Writ Petition (St.) No.14983 of 2014 filed by the plaintiffs, this Court passed an order by consent of parties that the meeting of the Board of trustees of Maharashtra Academy of Engineering and Educational Research (MAEER), Pune would be held on 24<sup>th</sup> June 2014, to deliberate upon subject no.24 of 2014 mentioned in the Agenda in the notice dated 19<sup>th</sup> May 2014. The plaintiffs agreed to participate in the said meeting. The

respondent nos.1 and 2 accordingly withdrew the said Regular Civil Suit No.2311 of 2013 and other proceedings filed by them.

116. It is the case of the applicant that on 24<sup>th</sup> June 2014, the applicant no.14 passed a resolution thereby expelling the plaintiffs as trustees of the applicant no.14 trust. On 26<sup>th</sup> June 2014, the respondent nos.1 and 2 filed a fresh suit bearing Special Civil Suit No.826 of 2014. A perusal of the plaint in the said suit indicates that the applicant nos.1 to 13 herein were impleaded as defendant nos.1 to 13 and as permanent trustees of the applicant no.14 trust in the said suit. The applicant no.14 herein is impleaded as the defendant no.14 trust. In paragraph 3 of the plaint, it was averred that under the constitution of the defendant no.14 trust, there was a Body of Trustees and to assist the Body of Trustees, there was a Managing Committee, Advisory Council. Since the trust was also registered as a society there was a General Body consisting of the members of the society besides the members of the Body of Trustees including the plaintiff no.2 as a Founder Trustee of MAEER as the defendant no.14.

117. In various paragraphs of the plaint, the plaintiffs made various allegations against the trustees and the trust. They also made a reference to the Agenda of the meeting proposed to be held on 27<sup>th</sup> October 2013 and also to clause 14 (a) & 14(f) of the constitution of

the defendant no.14 trust which are extracted as under : -

“Subject to the provisions of the Bombay Public Trust Act and rules framed thereunder, the Board of Trustees shall have full powers and authority to do all acts, matters, things and deeds, which may be necessary or expedient for the purpose of Trust. In particular, they shall have the follower powers and authority :-

(a) To do things for the purpose of effectually carrying out the objects and activities of the Society (Trust).

(f) To expel a person from the trust for misconduct or for any act, which in the opinion of the body of trustees, is prejudicial to the interest of the Society, provided that no such action should be taken without giving opportunity to the person concerned of being heard.”

118. In paragraph 80 of the plaint, it was submitted that the authority to suspend or remove any trustee of a public trust is exclusively with the Charity Commissioner as per the provisions of Sections 41D, 47, 50 etc. of the Maharashtra Public Trusts Act. There cannot be any rules or provisions of Memorandum of Trust conflicting with the provisions of law and any such rules would be/are ultra vires, basically illegal and null and void. It was contended that the defendants have illegally passed a resolution dated 24<sup>th</sup> June

2014 for the so called removal of the plaintiffs from the applicant no.14 trust which was clearly beyond the scope and jurisdiction of the constitution of the applicant no.14 trust. In paragraph 82 of the plaint, it was alleged that after passing of the alleged resolution dated 24<sup>th</sup> June 2014, on non-existent agenda item nos.24B and 24C, the said fact was widely published by the defendant nos. 1 to 10 in the campus of the institute so as to intentionally insult and humiliate the plaintiffs. Such passing of resolution on item nos.24B & 24 C was given wide published which had caused great humiliation and defamation of the plaintiffs. In paragraph 83 of the said plaint, it is averred that the charges framed, enquiries conducted and the resolutions passed against these plaintiffs are most defamatory and made by the defendants with malicious intention and motive to lower the plaintiffs in the estimation of right thinking members of the society and thereby to cause direct damage and loss to their reputation and social standing.

120. In paragraph 92 of the plaint, prayer clause (b), plaintiffs sought a declaration and to hold that the conducting of the meeting by the defendants on 24<sup>th</sup> June 2014 and intimation of the resolutions allegedly passed therein sent by the defendant nos.1 and 3 to the plaintiffs were absolutely illegal and bad in law. In prayer

clause (c) of the plaint, the plaintiffs sought a declaration that the resolution nos.24, 24B and 24 C passed in meeting of Board of Trustees held on 24<sup>th</sup> June 2014 for removal of the plaintiffs from the Board of Trustees is illegal, improper, void ab-initio, non-est and bad in law and for quashing and setting aside the same. In prayer clause (d), it was prayed for a declaration that the power of removal/suspension/termination of a trustee of a public trust vests only with the Charity Commissioner and/or Civil Court only. In prayer clause (e) of the plaint, the respondent nos.1 and 2 prayed for damages against the applicant nos.1 to 10 herein jointly and severally to pay damages of Rs.50 crores to the respondent nos.1 and 2.

121. I shall also consider the issue whether any prior permission of the Charity Commissioner was required to be obtained under Section 51 of the said MPT Act before filing such suit by the plaintiffs. Learned Senior Counsel for the applicant and the plaintiffs relied upon several Judgment on this issue in support of their rival contentions. I shall now deal with some of those Judgments relied upon the learned Senior Counsel.

122. In case of ***Dinanath Ajabrao Ingole*** (supra) relied upon

by Mr. Dhakephalkar, Senior Counsel for the Applicants this Court considered a situation where the plaintiff had filed the suit before learned Civil Judge, Senior Division, Wardha, claiming that they were duly elected as President and Secretary of the plaintiff no.1 society. It was alleged in the plaint that since the Deputy Charity Commissioner had no jurisdiction to entertain the dispute, the Civil Court should grant an injunction and necessary declaration against the defendant nos. 1 and 2 permanently restraining them from functioning as the President and Vice President of the plaintiff no.1 society and restraining them from interfering with the management of the society. The defendants raised a preliminary issue regarding the jurisdiction of the Civil Court to entertain the said suit.

123. This Court in the said Judgment held that the Trial Court will have to go into the question as to whether infact, the original defendants were removed from the office of President and Vice President of the said Public Trust and also to find out whether the plaintiff nos. 2 and 3 had been validly elected as the President and Secretary of the said Public Trust. This Court held that under Section 22(3) of the MPT Act, after holding an enquiry as contemplated under sub-Section 2 of Section 22, the Charity Commissioner if satisfied with the change occurred in any of the entires recorded in the Register, he

shall record the finding with the reasons to that effect. The amendments to be recorded after the change has been found, shall be subject to appeal before the competent authority provided by the Act. The amendments in the entires was made subject to any further amendment of occurrence of a change or any cancellation of entires shall be final and conclusive.

124. Under Section 80 of the MPT Act, a bar is imposed on the jurisdiction of a Civil Court. The Court has to see whether the subject matter of the suit has to be decided or dealt with by an officer or authority under the said Act and if the said decision of such authority has been made final and conclusive, then certainly there is a bar of jurisdiction of Civil Court. The Court must consider what in substance and not merely in form, the nature of the claim made in the suit and the real relief sought therein while deciding whether Section 80 of the MPT Act was attracted in the given case or not. It is held that if in order to afford that relief, it is necessary for the Court to decide or deal with a question which by or under the Bombay Public Trust Act is to be decided or dealt with by officer or authority appointed under the Act, the Civil Court jurisdiction in that respect will be ousted. After considering the prayers in the plaint and the averments made therein, this Court held that the plaintiff had indirectly claimed a declaration

that the defendants were no longer the President, Secretary or office bearers of the said Trust and were seeking permanent injunction against the defendants.

125. This Court held that the questions which were to be determined by the Civil Court are those which were to be determined by the Charity Commissioner before whom the change reports were pending for enquiry and decision. It is further held that under Section 22(3) of the Bombay Public Trust Act, the decisions given by the Charity Commissioner in that regard are made final and conclusive under the Act and thus the bar to the jurisdiction of the Civil Court imposed by Section 80 of Act will become operative. It is held that even otherwise, Section 50 of the Bombay Public Trust Act, enjoins the duty of the plaintiff to seek consent of the Charity Commissioner for preferring the suit where the claim involves a question of relief in favour or against the Trust in the matter of declaration and injunction. In the absence of such consent on behalf of the Charity Commissioner, Civil Court in that even would not entertain the said suit. This Court accordingly dismissed the said suit for want of jurisdiction.

126. In my view, the principles laid down by this Court in the said Judgment also applies to the facts of this case. The relief sought by the plaintiffs are impugning the resolution passed by the Trust in the

meeting held by the said Trust and attended by the Trustees and further seeking a declaration that the power of removal/suspension/termination of a trustee of a public trust vest only in the Charity Commissioner and so called the Civil Court only.

127. In so far as the issue raised by the plaintiffs that change reports were not even filed by the defendants is concerned, before any change report could be filed by the applicants notifying the removal of the respondent nos. 1 and 2 as trustees of the Trust, the respondent nos. 1 and 2 filed the Civil Suit and obtained injunction against the applicants. In view of the said injunction obtained by the plaintiffs, the applicants could not file the said change report notifying the removal of the plaintiffs as the trustees of the Trust. Be that as it may, though no such change report was filed on the date of filing of the suit, in view of the injunction obtained by the plaintiffs, the jurisdiction to decide the issue of validity of resolution which vests in the authority under Section 22 of the MPT Act cannot be taken away. I am respectfully bound by the principals of law laid down by this Court in the Judgment of this Court in case of ***Dinanath Ajabrao Ingole*** (supra) which applies to the facts of this case.

128. This Court in a case of ***Gaud Saraswat Brahmin Temple Trust*** (supra) has considered a situation where the plaintiff had

contended that he had fulfilled the criteria of membership as per rules / constitution of Trust and thus his removal was illegal and arbitrary. The plaintiff filed the suit before the City Civil Court, Bombay for a declaration that the resolution dated 7<sup>th</sup> September 2007 passed by the defendant no.1 Trust in its board meeting was arbitrary, illegal and bad in law. The plaintiff also applied for a declaration that plaintiff continue to be a permanent trustee of the defendant no.1 Trust. The plaintiff also prayed for injunction restraining the defendant Trust to act upon the said resolution dated 7<sup>th</sup> September 2007. This Court considered the issue whether such relief sought by the plaintiff was only Civil right or was beyond i.e. related to the trust, trustees and its management, which was to be answered by this Court. This Court while determining the jurisdiction of the Civil Court, it is necessary to look into the averments and the relief prayed in the plaint in its entirety. This Court considered the Judgment of the Supreme Court in case of ***Dhulabhai v/s. State of Madhya Pradesh (1968) 3 SC 662*** and also the Judgment in case of ***Church of North India*** (supra).

129. This Court held that if the plaintiff would have prayed for simplicitor declaration that he was “Gaud Saraswat Brahmin” then it would have been for declaration of his individual right and the Civil Court would have jurisdiction to entertain and try such suit. However,

he had prayed for a declaration and relief that the decision of his removal taken by the Managing Committee was bad. Such relief could not be the simplicitor declaration of his civil rights but an issue connected with the eligibility criterion of the membership and trusteeship under the scheme and object of the Trust. This Court also considered the provisions of Section 50 of the MPT Act and also Section 22 thereof. It is held that the MPT Act itself is a complete code under the Code Court Deputy, Assistant Charity Commissioner and Charity Commissioner enjoin the procedural powers provided under the Civil Procedure Code at the time of enquiry including taking statements, recording evidence. Such issue in that matter fell under sub-section (b) and (p) of Section 50 of the Act and thus it was necessary for plaintiff to obtain the prior consent of the Charity Commissioner. If the Commissioner arrives at the conclusion, that the issue is to be decided by the Civil Court, than he may give consent to file a suit. In my view, this Judgment in case of ***Gaud Saraswat Brahmin Temple Trust*** (supra) also applies to the facts of this case. The relief sought by the plaintiffs in the Civil Suit are not for vindicating any civil right but was challenging the decision of the Trust and the trustees for their removal.

130. The Division Bench of this Court in case of ***Charu K.***

**Mehta** (supra) after referring to the Judgment of the Supreme Court in case of **Dhulabhai** (supra) has held that where there is express bar of the jurisdiction of the Court, an examination of the scheme of the said Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. It is held that in deciding the issue whether the reliefs sought in a plaint was barred under Section 80 of the MPT Act, the Court has to consider whether the controversy which is sought to be raised before the Civil Court requires an adjudication of a matter or question which is to be decided or dealt with by officer or authority under the Act while exercising his powers under the Act and whether such a decision is made final or conclusive. In determining that issue, the Court has to consider the substance and not merely the form in which the claim before the Civil Court is made and the underlying object of seeking the relief.

131. This Court considered Sections 22(3) of the MPT Act and held that under the said provisions, the entries which the Deputy or Assistant Charity Commissioner makes have to be in accordance with the findings which require an amendment or deletion of the entries. The findings of the Deputy or Assistant Charity Commissioner constitute the foundation while the entries which he makes are

consequential. Section 22(3) of the MPT Act makes an amendment of entries “so made” final and conclusive subject to an amendment or occurrence of a change or cancellation of the entries. The entries made are a consequence of the finding and finality cannot attach to one without the other. This Court adverted to the Judgment of the Supreme Court in case of ***Church of North India*** (supra) in which it was held that the MPT Act is a special law, which confers jurisdiction upon the Charity Commissioner and other authorities named therein and the provisions of the Act and the scheme thereof leave no manner of doubt, that the Act is a complete code in itself.

132. It is held that the bar under Section 80 attaches to a Civil Court dealing with or deciding a question, which the Assistant Charity Commissioner is required to decide or deal with, and its finality. It is held that if the two requirements of Section 80 were fulfilled, the bar under Section 80 was attracted and the Civil Court could not have entertained the suit. The Division Bench of this Court in the said Judgment held as under :-

“In every one of the change reports which have been filed before the Assistant Charity commissioner, the interpretation of the relevant provisions of the deed of trust is directly in issue and is a question which is required to be decided or dealt with by him in pursuance of the enquiry

under Section 22(3). The mode of succession to the office of trustees under the deed of trust and the validity of the appointments made is in issue. These are questions which have to be dealt with and decided by the Assistant Charity Commissioner in the course of his enquiry in the change reports. The entries which the Assistant Charity Commissioner would make in consequence of his findings on whether or not a change has taken place in the office of trustees are made final and conclusive. An overall reading of the plaint would also make it abundantly clear, that what the Plaintiff seeks is not as suggested by Counsel a pure or abstract question of interpretation of the clauses of the Deed of Trust. There are live disputes between the parties over the appointment of trustees, the mode of succession and the validity of meetings which are the subject matter of change reports, which are pending. For the purpose of determining jurisdiction, it is evident from a bare reading of the averments contained in the plaint that the change reports are pending.”

133. This Court in case of **Mr. Rajiv K. Mehta** (supra) has considered a situation where the plaintiff in the civil suit had claimed to be a trustee and had prayed for an order and decree against the defendants that various amounts to be paid by the defendants to the plaintiffs as trustee or to the said trust be returned. It is held that the plaintiff had not claimed any personal right or has not filed the suit, which could be considered as suit for enforcement of a rights of a

private nature. It is held that on perusal of the averments in the plaint and prayers clearly indicated that the reliefs claimed relate to the working of the trust and its trustees and therefore permission of the Charity Commissioner would be required when the suit is instituted by a person having interest of a nature provided in Section 50 of the Bombay Public Trust Act. This Court also held that since the consent of the Charity Commissioner is a condition precedent before filing of suit considering the nature of averments and reliefs claimed in that case and the plaintiff not having obtained the prior consent of Charity Commissioner, it attracted Order VII, Rule 11(d) of the Civil Procedure Code, 1908, clearly and in view of non-compliance thereof the plaint deserved to be rejected.

134. This Court after considering the Judgment of the Supreme Court in case of ***Church of North India*** (supra), in case of ***Shree Gollaleshwar Dev*** (supra) and various other Judgments, which are relied upon by Mr. Anturkar, learned Senior Counsel for the plaintiffs on this issue held that the questions which have to be decided or dealt with by the authority under Section 22 of the Bombay Public Trust Act cannot be decided by a Civil Court and such adjudication is barred under Section 80 of the Bombay Public Trust Act. This Court held that Order VII, Rule 11(d) of the Civil Procedure Code would squarely

apply to the facts of that case.

135. In my view, the principal laid down by this Court in the said Judgment would squarely applies to this case. In this case also the plaintiff has sought various reliefs against the trust and more particularly has impugned the validity of the resolution passed by the trust. The validity of the resolution passed by the trust can be decided by the Deputy Charity Commissioner or Assistant Charity Commissioner, as the case may be while deciding the change report under Section 22 of the MPT Act. Since, the said issue can be decided only by the authority under Section 22, in view of Section 80 of MPT Act, the said issue being clearly barred within the purview of powers of a civil court.

136. In my view, there is thus no substance in the submissions of Mr. Anturkar, learned Senior Counsel for the plaintiffs that prior consent of the Charity Commissioner under Section 51 before filing a suit falling under any of the categories provided in Section 50 is not a condition precedent or that such permission can be obtained even post facto. There is also no substance in the submission made by the learned Senior Counsel that there is no consequence provided in Sections 50 and 51 for not having obtained prior permission under Section 51 even if the cause of action is covered by one of the condition prescribed

under Section 50 of the MPT Act or such condition is discretionary and not mandatory.

137. This Court in case of ***Social and Cultural Association and others*** (supra) after adverting to various Judgments of Supreme Court and this Court has held that declaration relating to any right in favour of or against trustees or beneficiaries thereof is covered under various sub-Sections of Section 50 of MPT Act. In the said Judgment, this Court had considered a situation where the defendants had issued a show cause notice against the plaintiff and had passed a resolution thereby cancelling the membership of the plaintiff. The plaintiff had prayed for a declaration that the resolution passed by the trust whereby the membership of the plaintiff had been cancelled, shall be declared as illegal. The plaintiff had also prayed for a permission to participate in the election by staying the resolution passed by the trust. The defendants in the said suit had filed an application under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 on the ground that there was a bar under Section 80 of the MPT Act and keeping in view the provisions of Section 50 of the MPT Act, the suit was not maintainable in the Civil Court.

138. This Court in the said Judgment has held that the rights claimed by the plaintiff were apparently not individual rights. The

plaintiff had claimed that to keep the plaintiff out of power, his membership was cancelled and then elections were called, which was beyond the scheme of the trust. It is held that the right to membership cannot be said to be divorced from being member of the trust. It was claimed by the plaintiff in the suit that his membership of the trust could not have been cancelled by the trust in the manner in which it had been done. Such right emanates basically from being member of the trust and thus merely calling the right a civil right will not help. It is held that it could not be said that it was any independent right not connected with the affairs of the trust or management of the trust.

139. This Court accordingly held that the dispute whether or not the membership has been legally or illegally cancelled can be considered when objections regarding the elections were considered in the change report. This Court accordingly held that the said suit must be held to be barred as per Section 80 of the MPT Act as the matter was covered under Section 50 of the said Act. The said dispute could be decided and dealt with even at the time of the change report and thus Section 80 of the MPT Act clearly applied and the suit was not maintainable. This Court rejected the plaint by exercising powers under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908. The principles of the law laid down by this Court in the Judgment of ***Social***

**and Cultural Association and others** (supra) squarely applies to the facts of this case. I am respectfully bound by the said Judgment.

140. This Court in the case of **Dr. Rangnath Pandurang Joshi and others** (supra) has considered the situation where the plaintiff in the civil suit had stated that the trust consist of governing body, the Council and General Body consisting of senior life members of the trust. It was averred that a meeting of the council was called. The plaintiffs narrated their version of the manner in which the meeting proceeded with various illegalities committed by the trustees, who had attended the said meeting. In the said meeting, various decisions were taken against the plaintiffs. The plaintiffs accordingly filed the said suit taking exception to the decision taken in the meetings and sought declarations that the meeting conducted by the defendants and the resolution passed therein were illegal. The plaintiffs had also prayed for a declaration regarding the resolution passed in the meeting regarding the alleged removal of the plaintiff no.2 from the post of treasurer. The plaintiffs had also prayed for a permanent injunction. The defendants had filed application under Order VII, Rule 11(d) of Code of Civil Procedure and prayed that in view of Section 80 of the MPT Act, the jurisdiction of the Civil Court was barred.

141. This Court in the said case considered various Judgments

of Supreme Court and this Court including the Judgment in cases of ***Church of North India*** (supra), ***Dinanath Ajabrao Ingole*** (supra), ***K. Shamrao vs. Assistant Charity Commissioner*** (supra) and several other Judgments and held that the post of treasurer itself was something created by the trust and was not a post created under general law. That could not relate to the civil or personal right of the plaintiff no.2. A resolution passed by the trust indicated that it was resolved to abolish the post of a treasurer. It was held that whether the decision to abolish the post of a treasurer is incorrect or otherwise lies in the realm of the administration of the trust. The decision in the meeting as per the provisions of the Act has to be placed before the Charity authorities for adjudication. Without the approval of the Charity authorities, the change reports are not accepted.

142. This Court specifically held that merely because the suit is filed prior in time then the submission of the change report, the scheme of the Act cannot be nullified on that ground. Change reports indicate that all decisions which have been taken in the meeting are for consideration before the Charity Commissioner. This Court held that once the Charity Commissioner gives his decision by holding an enquiry under Chapter IV of MPT Act, the decision would then become final, subject to the further challenge as provided. The legality

of the resolution will have to be determined by the Charity Commissioner in the proceeding under the change reports. It is held that in the change report a decision will be taken by the Charity Commissioner regarding the legality of the resolution. Such decisions would be final, subject to the challenge as provided under the said MPT Act.

143. This Court considered the Judgments of this Court in case of **Mr. Maulana Mohamed Yusuf Ismail v/s. Madarsa Vejajulu Ulum Kuran** in which it was held that where the suit relates to administration of the trust, the permission is necessary under Section 50 and the suit is barred if the methodology under Sections 50 and 51 of the Act is not followed. In my view, the Judgment of this Court in case of **Dr. Rangnath Pandurang Joshi** (supra) squarely applies to the facts of this case. Mr. Anturkar, learned Senior Counsel for the plaintiffs could not distinguish any of these Judgments referred to aforesaid.

144. This Court in case of **Rajesh Chunilal Meghani** (supra) considered a situation where the plaintiff had challenged the suspension of the plaintiff from the membership of the club, which was admittedly a Public Trust registered under the provisions of MPT Act. The defendants filed an application under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908. After advertng to various Judgments

of the Supreme Court and this Court, it is held by this Court that the averments disclosing the cause of action and the relief sought for therein must be considered in their entirety while considering the plea of bar under Section 80 of the MPT Act. This Court held that the relief sought in the said plaint was covered by sub-Section 50(iv) (d), (p) and (q) of Section 50 of the MPT Act and the plaintiff not having obtained prior consent from the Charity Commissioner before the institution of suit, the suit was specifically barred in view of the Section 80 of the MPT Act. The said Judgment of this Court squarely applies to the facts of this case. I am respectfully bound by the said Judgment.

145. The Supreme Court in case of ***Om Aggarwal*** (supra) has held that an application under Order VII, rule 11(d) of the Code of Civil Procedure, 1908, rejection of the plaint can be filed, if the allegations made in the plaint taken to be correct as a whole on its face value, show the suit to be barred by the law. The question as to whether, the suit is barred by the law or not, would always depend on the facts and circumstances of each case. On deciding that question, only the averments made in the plaint are relevant. The question of jurisdiction of Civil Court to entertain and try the civil suit goes to very root of the case and hence it can be raised at any time by the defendants by taking recourse to the provisions of Order VII, Rule

11(d) of the Code of Civil Procedure, 1908. The Supreme Court in that matter had considered Section 3(4) of the Haryana Public Moneys (Recovery of Dues) Act, 1979 providing that no civil court shall entertain or adjudicate upon any case relating to recovery of any sum due from defaulter under 1979 Act and such suit pending at commencement of 1979 Act in any Civil Court must abate.

146. The Supreme Court held that suit was apparently barred by virtue of bar contained in Section 3(4) of the said Act and was thus rightly dismissed by the Courts below by taking recourse to Order VII, Rule 11(d) of CPC, 1908. In my view, since in this case also the validity of the resolution passed by the trust expelling the plaintiff as trustees of the trust can be decided only by the Deputy Charity Commissioner or Assistant Charity Commissioner, as the case may be in the change reports under Section 22 of the MPT Act, the bar under Section 80 of the MPT Act against a Civil Court has clearly attracted to the facts of this case. The principles laid down by the Supreme Court in case of *Om Aggarwal* (supra) would apply to the facts of this case. I am respectfully bound by the said Judgment.

147. This Court in case of *State Bank of India v/s Jigishaben B. Sanghavi and others* (supra) considered the provisions of Section 34 of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 and held that the said provision operates as barred in respect of a Civil Court entertaining any suit or proceeding. The bar applies in respect of a matter, which can be determined under the Act by the Debts Recovery Tribunal or the Appellate Tribunal. In my view, the provisions considered by the Division Bench of this Court in the said Judgment is in *pari materia* with Section 80 read with Section 22 of the MPT Act. The said Judgment applies to the facts of this case. I am respectfully bound by the said Judgment.

148. A perusal of the prayers (b) and (c) would clearly indicate that the plaintiffs have sought a declaration that the conduct of the meeting by the defendants (including the trust) on 24<sup>th</sup> June 2014 and the intimation of the resolution allegedly passed are absolutely illegal and bad in law. It is clear that a plaintiff had also applied for declaration that the resolution passed in the meeting of board of trustees held on 24<sup>th</sup> June 2014 for removal of plaintiffs from the board of trustees is illegal, improper, void *ab-initio*, non-est and bad in law and hence be quashed and set aside. Both this prayers read with the averments made in the plaint clearly indicates that the plaintiffs have challenged the resolution passed by the trust and also their removal from the board of trustees on the ground that the resolution were

illegal, improper, *ab-initio*, *non-est* and bad in law.

149. In my view, the validity of such resolution could be decided only by the Deputy Charity Commissioner or Assistant Charity Commissioner, as the case may be under Section 22 of the MPT Act while deciding the change reports to be filed under Section 22 of the MPT Act. The trust had proposed to file a change report recording the effect of the resolution for removal of the plaintiffs from the board of trustees. However, before the said change report could be filed by the trust, the plaintiffs obtained injunction against the trust and the trustees from acting upon the resolution passed by the trust removing the plaintiffs from the board of trustees.

150. While considering the application under Order VII, Rule 11(d) of the CPC, 1908, the Court has to consider the averments made in the plaint in entirety to ascertain whether the cause of action pleaded in the plaint could be tried only by any authority under the provisions of the Act and not by Civil Court, in view of specific bar under Section 80 of the MPT Act. It is clear that if the plaintiffs succeeds in the said suit, their position as trustees would be restored. The rights thus claimed in the suit is not for vindicating any personal or civil right but such relief is relating to the management of the trust.

151. In my view, there is no substance in the submission of Mr.

Anturkar, learned Senior Counsel for the plaintiffs that if part of the reliefs claimed in the suit cannot be decided by the authority under Section 22 of the MPT Act there cannot be automatic dismissal of the plaint in the facts of this case. It is consistently held by the Supreme Court and this Court that if clever drafting has created the illusion of a cause of action, it would be nipped in the bud at the first hearing by examining the parties under Order 10 of the Court. The Supreme Court in case of ***Church of Christ Charitable Trust and Educational Charitable Society*** (supra) has held that while scrutinising the averments in the plaint, the Court is bound and it is the duty of the Trial Court to ascertain the material cause of action. The cause of action is bundle of facts which taken with the law applicable to them gives the right to relief against the defendants.

152. In so far as the prayer clause (e) for an order and decree against the defendant nos. 1 to 10 for payment of damages of Rs.50 crores to the plaintiff is concerned, the defendant nos. 1 to 10 were admittedly the trustees of the trust, who had participated in the meeting of board of trustees held on 24<sup>th</sup> June 2014. In paragraph 87 of the plaint, it is alleged by the plaintiff that the cause of action had first arose on 27<sup>th</sup> October 2013 when the defendant no. 1 decided to initiate an enquiry against the plaintiffs and further arose on 24<sup>th</sup> June 2014,

when the defendants passed the resolution under agenda no. 24, 24(b), 24(c) dated 24<sup>th</sup> June 2014 without having any legal authority. It is thus clear that the reliefs sought by the plaintiffs against defendant nos. 1 to 10 were in their capacity as trustees and for the alleged misconduct while acting as trustees on behalf of the applicant no.14-trust.

153. In my view, by such clever drafting of the plaint by seeking monetary relief only against the trustees who passed the resolution as trustees of the trust by participating in the meeting held by the trust, plaintiffs cannot oust the jurisdiction of the Deputy Charity Commissioner or Assistant Charity Commissioner under Section 22 of the MPT Act. The applicants have rightly urged that the Court shall nip in the bud and shall ascertain the material cause of action by reading the plaint in entirety including the prayers. The principles laid down by the Supreme Court in case of ***Church of Christ Charitable Trust and Educational Charitable Society*** (supra) and by this Court in several Judgments apply to the facts of this case. I am respectfully bound by those Judgments.

154. Be that as it may, the claim for damages is made against the trustees on the ground of alleged misconduct while acting as trustees of the defendant no.14-trust, this prayer depends upon the outcome of the validity of the resolutions passed by the trust, which

issue can be considered only by the Deputy Charity Commissioner or Assistant Charity Commissioner, as the case may be while considering the change reports as would be filed by the trust. The plaintiffs can be granted liberty to file an appropriate proceeding at the later stage depending upon the outcome of the result of the change reports that would be filed by the respondents under Section 22 of the MPT Act.

155. In so far as the submission of the learned Senior Counsel for the plaintiffs that the plaintiffs could be removed only by the Charity Commissioner under Section 41D of the MPT Act and not by the other trustees is concerned, clause 14(a) and 14(f) of the constitution of the defendant no.14-trust provide that subject to the provisions of Bombay Public Trust and the rules framed thereunder, the board of trustees shall have full powers and authority to do all acts, matters, things and deeds, which may be necessary or expedient for the purpose of trust. The board of trustees may also expel a person for a misconduct or for any act, which in the opinion of the board of trustees is prejudicial to the interest of the society provided that no such action should be taken without giving an opportunity to the person concerned of being heard. It is the case of the trust and the trustees that the activities of the plaintiffs were prejudicial to the interest of the trust and the plaintiffs had committed misconduct. The plaintiffs on the

other hand had disputed the allegations of misconduct or that the activities of the plaintiffs were prejudicial to the interest of the trust. On the other hand, in the plaint the plaintiffs have alleged various acts of misconduct on the part of the other trustees of the applicant no.14-trust.

156. In my view, the Deputy Charity Commissioner or Assistant Charity Commissioner, as the case may be is empowered to decide the allegations of misconduct or the activities of the plaintiffs or the other trustees whether prejudicial to the interest of the trust or not in passing the resolution while deciding the change report. The decisions as may be taken by the Deputy Charity Commissioner or Assistant Charity Commissioner, as the case may be would be obviously subject to the provisions of the MPT Act. Similar powers of the board of trustees have been considered by this Court in some of the Judgments already referred to aforesaid. I am not inclined to accept the submission of Mr. Anturkar, learned Senior Counsel for the plaintiffs that the plaintiffs who were the trustees of applicant no.14-trust could be removed only by the Charity Commissioner under Section 41D of the MPT Act, though such power vested in clause 14(a) and 14(f) of the constitution of the defendant no.14-trust in the event of the conditions provided therein were satisfied. Be that as it may, the

question as to whether such powers under the constitution of the trust were validly exercised or not by the trustees while removing the plaintiffs from the board of the trustees can be always decided by the Deputy Charity Commissioner or Assistant Charity Commissioner, as the case may be while deciding the change reports.

157. In my view merely because the change reports were not pending on the date of filing suit by the plaintiffs and more particularly in this case, in view of the injunction obtained by the plaintiffs against the applicants from acting upon the resolution passed by the trust, the civil suit in respect of prayers sought by the plaintiffs could not be held maintainable since validity of such resolution could be decided only under Section 22 of the MPT Act. Admittedly, the period for filing such change report described under Section 22 of the MPT Act had not expired, when the plaintiffs obtained injunction against the applicants. Even otherwise delay in filing such change report can be condoned by the Deputy Charity Commissioner or Assistant Charity Commissioner, as the case may be if sufficient cause is shown.

158. In my view, Mr. Dhakephalkar, learned Senior Counsel for the Applicants is right in his submission that even if there is no power vested in the Deputy Charity Commissioner or Assistant Charity Commissioner to grant injunction against the operation of resolution

passed by the trustees, civil suit on that ground would be held maintainable. Be that as it may, since in this case, the Trial Court had already granted injunction, which has been in force for last several years, no prejudice would be caused to the plaintiffs, if the defendants are directed to file change report under Section 22 of the MPT Act, at the earliest and if the interim protection already granted to the plaintiffs by the Trial Court is continued during the pendency of the change reports, which may be filed by the Applicants (original defendants). In my view, the Judgments relied upon by Mr. Anturkar, learned Senior Counsel for the plaintiffs on the issue that there cannot be any rejection of plaint automatically even if part of the reliefs can be decided only by the authority would be of no assistance to the plaintiff in the facts of this case.

159. In so far as the submission of Mr. Anturkar, learned Senior Counsel for the plaintiffs that even if the plaintiffs were required to obtain any prior permission from the Charity Commissioner under Section 51 of the MPT Act and the plaintiffs not having obtained such prior sanction, such sanction can be obtained post facto is concerned or that there is no consequence provided in Sections 50 and 51 of MPT Act for not obtaining such prior sanction is concerned, in my view the sanction under Section 51 has to be obtained prior to the date of filing

suit and not post facto as sought to be canvassed by the learned Senior Counsel for the plaintiffs. This Court has already decided this issue in case of **Mr. Rajiv K. Mehta** (supra) and in case of **Gaud Saraswat Brahmin Temple Trust** (supra).

160. If the plaintiffs would have applied for such prior permission under Section 51 of the MPT Act, the Charity Commissioner in that event would have decided whether the cause of action for which such permission was sought whether fell under any of the sub-Sections of Section 50 of the MPT Act or not or could be decided by authority under Section 22 of the MPT Act. The Judgment of this Court in case of **Global Aviation Services Private Limited** (supra) and in case of **Ashraf Ahmed Aziz Siddiqui** (supra) relied upon by Mr. Anturkar, learned Senior Counsel for the plaintiffs would not advance the case of the plaintiffs and are clearly distinguishable in the facts of this case.

161. In my view, there is no substance in the submission of the learned Senior Counsel for the plaintiffs that since there may be delay in deciding the change report plaintiffs cannot wait indefinitely. The plaintiffs can always apply for early disposal of the change report before the authority depending upon the urgency in the matter. Only on such ground the suit cannot be held maintainable. There is no

substance in the submission of Mr. Anturkar, learned Senior Counsel for the plaintiffs that the powers of Civil Court are not taken away till change report is decided by the authority under Section 22 of the MPT Act.

162. In so far as the various Judgments relied upon Mr. Anturkar, learned Senior Counsel for the plaintiffs in support of his submissions that the provisions of Sections 50 and 51 of the MPT Act are not attracted in the facts of this case and thus no such prior permission was mandatory is concerned, after considering the averments made by the plaintiffs and the prayers in entirety, I am of the view that since issues relating to resolution can be considered by the authority under Section 22, this Court need not deal with the issue as to under which sub-Section of Section 50, the reliefs claimed would fall.

163. In so far as the submission of Mr. Anturkar, learned Senior Counsel for the plaintiffs that the plaintiffs have been removed from membership also is concerned, there is no such prayer in the suit filed by the plaintiffs impugning the said action on the part of the defendants. In my view, the Judgments of this Court in case of ***Vidharbha Youth Welfare Society, Amravati*** (supra) would not advance the case of the plaintiffs. In so far as the submission of the learned Counsel for the plaintiffs that the enquiry under Section 22 of

the MPT Act is a summary enquiry is concerned, a perusal of Section 22 read with the Rules framed under the MPT Act clearly provides that the authority has to conduct the detailed enquiry after recording evidence of the parties in a particular manner and after complying with the principles of the natural Justice. There is thus no substance in this submission of the learned Senior Counsel.

164. In my view, Mr. Dhakephalkar, learned Counsel for the Applicants is right in his submission that since Civil Court did not have jurisdiction to entertain the suit filed by the plaintiffs, there was no question of any waiver on the part of the defendants. In my view, the parties even by consent cannot confer jurisdiction on Court, which does not have such jurisdiction.

165. The Judgments relied upon by Mr. Anturkar, learned Senior Counsel for the plaintiffs are already considered by this Court in several Judgments already referred to aforesaid including in case of ***Dr. Rangnath Pandurang Joshi and others*** (supra), ***Rajesh Chunilal Meghani*** (supra), ***Mr. Rajiv K. Mehta*** (supra), ***Gaud Saraswat Brahmin Temple Trust*** (supra), ***Charu Mehta*** (supra), etc.

166. In so far as the submissions of Mr. Anturkar, learned Senior Counsel for the plaintiffs that the application filed by the defendants under Order VII, Rule 11(d) of the CPC, 1908 at the first

instance itself was not maintainable and the issue of jurisdiction could be raised only under Section 9(A) of the Code of Civil Procedure and thus in view of the amendment to Section 9(A), this Civil Revision Application stands abated is concerned, in my view there is no merit in this submission of the learned Senior Counsel. The aforesaid Judgments relied upon by the learned Senior Counsel for the defendants have clearly held that application under Order VII, Rule 11(d) of the CPC, 1908 was maintainable inter-alia praying for rejection of plaint on the ground that the reliefs sought in the plaint could be considered only by the authorities under Section 22 of the MPT Act in view of clear bar under Section 80 of MPT Act.

167. A perusal of the application filed by the applicants before the Trial Court and the submissions made by the plaintiffs opposing the said application clearly indicates that the said application was made under Order VII, Rule 11(d). The application under Section 9(A) of the Code of Civil Procedure, 1908 and application under Order VII, Rule 11(d) are filed in two different situations and are not overlapping. An application under Section 9(A) of the Code of Civil Procedure for raising an objection to the jurisdiction of the Court to entertain a suit has to be raised at the hearing of any application for interim relief whether by way of stay, injunction, appointment of receiver or

otherwise. Such application has to be decided by the Civil Court before granting interim relief though ad-interim relief can be granted during the pendency of such interim application.

168. Application under Order VII, Rule 11(d) is filed for rejection of plaint where the suit appears from the statement in the plaint to be barred by any law. Such application under Order VII, Rule 11(d) can be filed at any stage of the suit. In my view, there is thus no substance in the submission of Mr. Anturkar, learned Senior Counsel for the plaintiffs that this Civil Revision Application stands abated, in view of the Trial Court rejecting an application under Order VII, Rule 11(d) or that the said application should be treated as an application under Section 9(A) of the Code of Civil Procedure, 1908 at this stage. The Judgment of the Supreme Court in case of ***Bhairavi Construction and others*** (supra) applies to the facts of this case. I am respectfully bound by the said Judgment.

169. In my view, various findings rendered by the Trial Court holding that the plaintiffs were trying to vindicate their civil rights connected with the management of the trust and only against trustees in their private capacity and not board of trustees and other findings in that regard are perverse. The findings that no directions are prayed by the plaintiffs for the administration of the Public trust, reliefs were

sought only against defendant nos.1 to 10, suit not relating to the management of the trust, the suit was filed to establish an individual rights, the issues raised in the plaint were not triable by the authorities, prior consent of the Charity Commissioner was not required, since no change report was filed, the suit filed against the trust was maintainable are totally perverse and contrary to the principles of law laid down by the Supreme Court and this Court in several Judgments referred to aforesaid and thus deserves to be set aside.

170. I therefore pass the following order:-

- i) Impugned Order dated 14<sup>th</sup> October 2014 passed by the learned 3<sup>rd</sup> Jt. Civil Judge, Senior Division, Pune below Exhibit 21 in Special Civil Suit No. 826 of 2014 is quashed and set aside.
- ii) Application (Exhibit 21) filed by the Applicants under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908, is allowed.
- iii) Civil Revision Application is made absolute in terms of prayer clauses (a) and (b).
- iv) The Applicants are directed to file a change report in respect of Resolution No. 24(b) and 24(c) passed in the meeting of board of trustees held on 24<sup>th</sup> June 2014 for removal of the

plaintiffs from the board of trustees within 4 weeks from today and shall serve a copy thereof upon the plaintiffs within 1 week from the date of filing of such change report.

- v) The plaintiff would at liberty to oppose the said change report by filing reply within 4 weeks thereafter. The hearing of such change report, if filed within the time prescribed in this order is expedited. The Authority under Section 22 of the Maharashtra Public Trust Act, 1950 shall make an endeavour to dispose of such change report within 12 months from the date of the plaintiffs filing reply to the change reports, in accordance with the law.
- vi) None of the parties shall seek any unnecessary adjournments before the Authority who would be assigned to hear such change report. The Authority under Section 22 shall decide the change report without being influenced by the observations made and the conclusion drawn in the impugned Order dated 14<sup>th</sup> October 2014 passed by the 3<sup>rd</sup> Jt. Civil Judge, Senior Division, Pune below Application Exhibit 21) in Special Civil Suit No. 826 of 2014.
- vii) The interim protection granted by the Trial court below Exhibit 27 on 8<sup>th</sup> July 2014, read with Order dated 24<sup>th</sup> June

2014 below Exhibit 5 to continue during the pendency of the said change report and for a period of 2 weeks from the date of communication of the order that would be passed by the Authority under Section 22 of the Maharashtra Public Trust Act, 1950, if the same is adversed against the plaintiffs.

- viii) In the event of the plaintiffs succeeding before the Deputy Charity Commissioner or Assistant Charity Commissioner as the case may be, the plaintiffs would be at liberty to file appropriate proceedings for recovery of damages against the applicant nos.1 to 10.
- ix) Civil Revision Application is disposed of on aforesaid terms. The parties as well as the authority to act on the authenticated copy of the order.
- x) There shall be no order as to costs.

**(R. D. DHANUKA, J.)**