

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Civil Revision Application No.73/2017
Anandrao Aadbale and Ors. Vs. Narayan Zade and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.S.O. Ahmed, Advocate for applicants
Ms. Kavita Prajapati, Advocate for respondents

CORAM : MANISH PITALE, J.

DATED : DECEMBER 18, 2019

By this application, the applicants (original defendants) have challenged order dated 03/05/2012, passed by the Court of Civil Judge (Junior Division), Rajura (Trial Court), whereby an application filed on their behalf under Order 7 Rule 11 of the Code of Civil Procedure (Exh.33) for rejection of plaint, was rejected by the Trial Court.

2. The respondent had filed a suit for declaration and permanent injunction against the petitioners herein. The respondent No.1 is Trustee of Saraswati Shikshan Prasarak Mandal (original defendant No.1) and Trust registered under the Maharashtra Registration of Trust Act, 1950. The suit was filed challenging a specific resolution passed by the petitioners, who are trustees of the said Trust, to induct a member in the category of *Sahanubhuti* member or sympathetic member, as per the

Constitution and bye laws of the Trust.

3. The petitioner arrayed the Trust as defendant No.1 and the petitioners herein as trustees of the said Trust and defendant No.10 was the person, who was added as sympathetic member in pursuance of the aforesaid resolution.

4. In this suit, an application was filed on behalf of the petitioners under Order 7 Rule 11 of the Code of Civil Procedure that rejection of the plaint on the ground that the suit filed by respondent No.1 was not maintainable in the absence of permission of the Charity Commissioner as required under Sections 50 and 51 of the aforesaid Act. It was claimed that since the petitioner was seeking decree of declaration and injunction against the Trust and trustees, under Section 50(iv)(p) of the said Act, in the absence of permission of the Charity Commissioner, the suit could not have been filed before the Civil Court. The said application was opposed by the respondent No.1.

5. By the impugned judgment and order, the Trial Court rejected the application, holding that since the respondent No.1 (original plaintiff) was seeking to vindicate his civil rights the suit was clearly maintainable despite the said provisions of the Act. Reliance was placed on certain judgments of this Court while passing the impugned order.

6. Mr. S.O. Ahmed, learned counsel appearing for the petitioner submitted that the Trial Court in the present case committed error in rejecting the application filed by the petitioner because a perusal of the array of the parties in the suit, the contents of the plaint as also the nature of the pleadings raised therein and perusal of the reliefs sought in the aforesaid suit would demonstrate that the respondent No.1 could not claim that any specific civil right, was sought to be vindicated. It is submitted that the resolution passed by the petitioner as trustees of the said Trust was the subject matter of challenge in the suit and act of inducting sympathetic member (defendant No.10) was squarely challenged in the said suit. According to the petitioners, this was covered under the category of suits specified in Section 50 of the said Act, particularly Section 50(iv)(p) thereof. On this basis, it was submitted that the impugned order was rendered erroneous. The learned counsel for the petitioner sought to distinguish the judgment of this Court in the case of **Kedar Shivkumar Kale Vs. Digamber Shridhar Mhapsekar and others** 2017(4) Mh.L.J 77 and **Namgonda Jingonda Patil Vs. Appasaheb Bapurao Walwekar & others** 2000 (Supp.) Bom.C.R.582. Reliance was placed on the judgment of this Court in the case of **Shikshan Prasarak Sanstha Vs. Baburao Virupaksha Kore & Ors.** in Civil Revision Application No.98 of 2006, decided on 12/02/2008, which was

claimed to be closer to the present case on the facts.

7. On the other hand, Ms. Kavita Prajapati, learned counsel appearing for respondent No.1 submitted that a perusal of the plaint in the present case, particularly paragraph 6 thereof, would show the respondent No.1 (plaintiff) had demonstrated violation of his civil rights, in as much as notice of the meeting in question was never sent to him despite being trustee and on this basis, it was claimed that the civil suit was maintainable. It was submitted that the law laid down by this Court in the case of **Kedar Shivkumar Kale Vs. Digamber Shridhar Mhapsekar and others** (supra), and **Namgonda Jingonda Patil Vs. Appasaheb Bapurao Walwekar & others** (supra) covered the issue in favour of respondent No.1. Additionally, reliance was placed on the judgment in the case of **Gerald Shirley & Ors. Vs. Dipesh Mehta & Ors.** 2015(3) ALL MR 748, to contend that the impugned order passed by the Trial Court was justified and that the revision application deserved to be dismissed.

8. Heard learned counsel for the rival parties and perused the material on record. In order to examine whether the respondent No.1 was seeking to vindicate his civil right in the suit filed before the Trial Court, it would be necessary to peruse the plaint in the present case and to analyze as to what was the crux of the dispute sought to be raised by respondent No.1

before the Trial Court.

9. A perusal of the plaint in the present case would show that the defendant No.1 is the Trust itself and the defendants No. 2 to 9 are the trustees (petitioners herein). The defendant No.10 is a person, who was inducted as sympathetic member in the Trust and whose induction was subject matter of challenge raised in the suit by respondent No.1. The contents of the plaint demonstrated that respondent No.1 has quoted from the Constitution and bye laws of the Trust. It is claimed that the original defendant No.10 could not have been inducted as sympathetic member of the Trust. In paragraph 6, it is claimed that the respondent No.1 had a right to take part in the meeting in question and yet notice of the meeting was not given to respondent No.1. Thereafter, from paragraph No.7 onwards again the respondent No.1 has emphasized on violation of Constitution and bye laws in inducting defendant No.10 as sympathetic member in the Trust. The prayer clause of the aforesaid suit reads as follows :

- “(i) Declare that the resolution passed in the meeting of the Executive Committee of the trust held on 14/2/2010 to enroll Shri Vikesh Haridasji Dohe as a Sahanubhuti Member of the trust and resolution passed in the General Meeting of the trust held on 10/10/2010 to ratify the resolution passed in the meeting of Executive Committee of the trust held on 14/2/2010 to enroll Shri Vikesh Haridasji Dohe as Sahanubhuti Members of the trust are illegal.
- (ii) Grant permanent injunction

restraining defendants or any person on their behalf from issuing the notice of the General Meeting of the trust and election of Executive Committee of the trust to be held in the month of October, 2011 and in future to Shri Vikesh Maridasji Dhoe.

(iii) Grant temporary injunction restraining defendant or any person on their behalf from issuing notice of the General Meeting of the trust and the Election of Executive Committee of the trust to be held in the month October 2011 and in future to Shri Vikesh Maridasji Dohe.

(iv) Saddle the cost of the suit on defendants Under Order 20-A of Civil Procedure Code.

(v) Grant any other relief as this Hon'ble Court deems fit in favour of plaintiff."

10. In order to come to a conclusion as to whether the Trial Court in the present case was justified in rejecting the application for rejection of plaint filed by the petitioners, it would be relevant to refer to the position of law as laid down in the aforementioned judgments of this Court. In the case of **Kedar Shivkumar Kale Vs. Digamber Shridhar Mhapsekar and others** (supra), in paragraph 5, this Court had held that when a suit was instituted in order to vindicate civil rights of the plaintiff, such a suit would neither be barred by Section 80 of the said Act nor would consent of the Charity Commissioner be required as a prerequisite for filing of suit under Section 50 thereof. It was found in the said judgment that the plaintiff therein was seeking declaration on the basis that his civil rights were violated. In the said

judgment reliance was placed on the earlier judgment in the case of **Namgonda Jingonda Patil Vs. Appasaheb Bapurao Walwekar & others** (supra). The learned counsel appearing for respondent No.1 also relied upon the judgment of this Court in the case of **Gerald Shirley & Ors. Vs. Dipesh Mehta & Ors.** (supra), wherein also suit filed by the plaintiff was held to be maintainable. It was found that in that case some of the suspended members were challenging their suspension from the Trust on the ground of violation of principles of natural justice and they had claimed damages for physical and mental harassment. In this situation, it was held that the suit was maintainable despite Sections 50 and 80 of the aforesaid Act.

11. In the case of **Shikshan Prasarak Sanstha Vs. Baburao Virupaksha Kore & Ors.** (supra), relied upon by the learned counsel for the petitioner, this Court held that the suit was not maintainable despite the position of law as laid down by this Court in the case of **Namgonda Jingonda Patil Vs. Appasaheb Bapurao Walwekar & others** (supra). In the said case, this Court found that when trustees were made party defendants to the suit along with Trust and what was made subject matter of challenge in the suit was resolution passed by the Trust, the declaration sought was clearly against Trust and trustees concerning the management of the Trust. This would show that the said suit in absence of permission of the Charity Commissioner was not

maintainable. It was held in the said judgment that challenge to the resolution as being illegal concerned management of the Trust and since the plaintiff was not seeking vindication of any civil rights, the suit would be hit by Section 50(iv)(p) of the aforesaid Act.

12. Considering the aforesaid judgment of this Court, the facts in the present case need to be appreciated. The contents of the plaint and prayer have been noted. A perusal of the same shows that thrust of the grievance of respondent No.1 in the aforesaid suit is the action of the Trust and the trustees in inducting original defendant No.10 as sympathetic member of the Trust. In fact, declaration is sought in respect of resolution inducting defendant No.10 as sympathetic member as being illegal. Further injunction is sought against the Trust and trustees to restrain them from sending notices to the said defendant No.10 as sympathetic member for participating in meetings and elections of the Trust.

13. While seeking such relief the respondent No.1 has copiously referred to the Constitution and bye laws of the Trust, apart from joining the Trust and trustees as defendants in the aforesaid suit. The nature of the pleadings in the plaint and specific reliefs sought in the prayer clause quoted above, makes it clear that the grievance sought to be raised by the respondent No.1 concerns management of the Trust and

declaration and injunction is sought against the public Trust and trustees. In this context, relevant portion of Section 50 of the aforesaid Act needs to be perused to which reads as follows :

“50. Suit by or against or relating to public trusts or trustees or others – In any case -

(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof,

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs :-

(p) declaration or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunction in appropriate cases; or”

14. The said provision prohibits filing of the civil suit seeking reliefs of the nature that the respondent No.1 in the present case has sought, without prior permission of the Charity Commissioner. The reliance placed on behalf of the respondent No.1 on paragraph 6 of the plaint to claim that the suit concerned violation of civil rights of the said respondent cannot be accepted because thrust of the grievance in the suit is challenge to the action of the trust in inducting defendant No.10 as a sympathetic

member of the Trust. The prayer clause does not reflect any such grievance concerning infraction of civil rights of the respondent No.1 and, therefore, law laid down by this Court in the case of **Kedar Shivkumar Kale Vs. Digamber Shridhar Mhapsekar and others** (supra) and **Namgonda Jingonda Patil Vs. Appasaheb Bapurao Walwekar & others** (supra) is not applicable in the present case. Hence, the suit was clearly not maintainable in the absence of permission of the Charity Commissioner required under Sections 50 and 51 of the aforesaid Act.

15. This aspect was not appreciated in the correct perspective by the Trial Court and reference was not made to the nature of the pleadings raised in the suit filed on behalf of respondent No.1.

16. In view of above, the revision application is allowed. The impugned order passed by the Trial Court is quashed and set aside and the application filed for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure is allowed.

JUDGE