

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.217 of 2019

ORDER :

This Civil Revision Petition is filed assailing the order dt.28.02.2018 passed in I.A.No.57 of 2016 in S.O.P.No.734 of 2015 on the file of XIII Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar.

2. The petitioner herein is the 1st respondent in the said O.P.
3. The said O.P. was filed by respondent nos.1 to 6 against the petitioner and respondent nos.7 to 12 under Section 23 of the A.P. Societies Registration Act, 2001 (for short 'the Act') to declare that :
 - (a) the claim of petitioner and respondent nos.7 to 12 that they are elected Office-Bearers of the 6th respondent-Society in the election held on 23.05.2015 is illegal;
 - (b) to declare that an alleged meeting of the Executive Committee of the 6th respondent-Society held on 12.04.2015 is illegal and void; and
 - (c) consequently direct the petitioner and respondent nos.7 to 12 not to claim any rights over the 6th respondent-Society and not to interfere with the day-to-day affairs of its management being conducted by respondent nos.1 to 5.
4. The petitioner herein and respondent nos.7 to 12 filed I.A.No.57 of 2016 under Order VII Rule 11(d) read with Section 151

of Civil Procedure Code, 1908, and Section 23 of Societies Registration Act, 2001 to reject the OP as not maintainable.

5. In the affidavit filed in support of the said application, they denied the allegation of respondent nos.1 to 6 that they are interfering with the day-to-day affairs of the 6th respondent-Society, and contended that respondent nos.1 to 6 had foisted a false case against petitioner and respondent nos.7 to 12 to harass them for illegal gains. They contended that the claim of respondent nos.1 to 6 is totally baseless, false and incorrect. They denied that respondent nos.1 to 5 are the Office-Bearers of the 6th respondent-Society and contended that the jurisdiction of the District Court under Section 23 could not be invoked by them, and the said O.P. has to be rejected as not maintainable. It is also their contention that respondent nos.1 to 6, instead of approaching the District Court, ought to have approached the Registrar under the Andhra Pradesh Societies Registration Act, 2001 either for permissions or approvals in order to get legality for their affairs as contemplated under the Act. The petitioner and respondent nos.7 to 12 contended that respondent nos.1 to 6 had created most of the records for this case which are self-declaratory and unauthenticated and that the claim of respondent nos.1 to 6 needs to be disbelieved. According to them, respondent nos.1 to 6 ought to have filed and obtained permissions and also ought to have filed authenticated records pertaining to the 6th respondent-Society before the Registrar as mandated under the Act. They also contended that

the filing of the O.P. is itself an abuse of process of law, that Section 23 has no application, and the District Court could not have entertained it particularly when many facts are suppressed by respondent nos.1 to 6. Quoting Section 23 of the Act, it is contended by petitioner and respondent nos.7 to 12 that if petitioner and respondent nos.7 to 12 are alleged by respondent nos.1 to 6 not to be members of the 6th respondent society, then the District Court would not have jurisdiction under Section 23.

6. Counter-affidavit was filed by respondent nos.1 to 6 opposing the said application. They contended that I.A.No.57 of 2016 is not maintainable. They denied the allegation of petitioner and respondent nos.7 to 12 that the District Court had no jurisdiction to entertain the O.P. Quoting Order VII Rule 11(d) of Civil Procedure Code, 1908 which permits the plaint to be rejected when the suit appears to be barred by any law from a statement in the plaint, they contended that the petitioner and respondent nos.7 to 12 had failed to show that there is a specific bar to the maintainability of the O.P. They contended that when respondent nos.1 to 6 alleged that petitioner and respondent nos.7 to 12 are not members of the 6th respondent-Society, the District Court only would have jurisdiction to entertain the O.P.; and that when the petitioner and respondent nos.7 to 12 raised the election dispute, the respondent nos.1 to 6 had no option except to approach the District Court under Section 23 of the Act. According to them, an election petition cannot be rejected at the threshold and has to be

decided only on merits. They therefore contended that the I.A. itself was filed with *mala fide* intention to drag on the proceedings and there are no *bona fides* therein. They also pointed out that the O.P. itself was filed in the year 2015, but the petitioner and respondent nos.7 to 12 did not file any counter in the main O.P., and this shows their *mala fide* intention to drag on the proceedings.

7. By order dt.28.02.2018, the Court below dismissed I.A.No.57 of 2016. It held that the perusal of the pleadings of petitioner and respondent nos.7 to 12 and the allegations and counter-allegations made by respondent nos.1 to 6 against them show that there is a dispute between the Members of the Society, and therefore, the O.P. is maintainable under Section 23 of the Act. It held that petitioner and respondent nos.7 to 12 did not establish that on the face of record the O.P. is barred by law or that there is no cause of action, etc. It observed that the merits and demerits of the contentions of the parties can only be decided after full-fledged trial, and not in the I.A.No.57 of 2016. It pointed out that since both parties contend that they are members of the Society, there is a dispute between the Members of the Society which has to be decided only after full-fledged trial.

8. Assailing the same, the present Civil Revision Petition is filed.

9. The counsel for petitioner contended that the Court below erred in entertaining the O.P. and ought to have allowed I.A.No.57 of 2016 holding that it was not maintainable. He extensively referred to the

contentions raised by petitioner and respondent nos.7 to 12 in the said I.A. and contended that on the basis of the said averments, the District Court ought to have rejected the O.P. invoking Order VII Rule 11 (d) of Civil Procedure Code, 1908. According to him, the dispute is not between Members of the Society in the light of the authenticated copies of documentary evidence filed by petitioner and respondent nos.7 to 12; and that respondent nos.1 to 6, who have invoked the jurisdiction of District Court, are not members of the 6th respondent-Society.

10. Section 23 of the Societies Registration Act, 2001 states as follows :

“Sec. 23 : Dispute regarding management : In the event of any dispute arising among the committee or the members of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996, or may file an application in the District Court concerned and the said court shall after necessary inquiry pass such order as it may deem fit.”

11. A reading of the same indicates that any dispute arising among the Committee or Members of the Society may be decided on an application filed in the District Court.

12. In the instant case, there is a serious dispute between the respondent nos.1 to 6 on the one hand *and* petitioner and respondent nos.7 to 12 on the other hand as to which of them are the lawfully elected Office-Bearers of the 6th respondent-Society. Each group is

asserting that the other group's membership is not genuine and they are not recognized Office-Bearers of the 6th respondent-Society.

13. A dispute of this nature would undoubtedly fall under Section 23 of the Act and it cannot be said that the District Court had no jurisdiction to entertain the O.P.

14. Whether the documents filed by either party establish their case or not is a matter to be decided during trial and the District Court cannot be compelled to express any opinion on the genuineness or relevancy or admissibility of the documents filed by either group while deciding I.A.No.57 of 2016 filed under Order VII Rule 11 (d) of Civil Procedure Code, 1908.

15. I am of the opinion that there are no merits in the Revision, and it is accordingly dismissed at the stage of admission. No order as to costs.

16. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.02.2019

Ndr/*