

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Wednesday, the Twenty Ninth day of January Two Thousand Twenty

PRESENT

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

CMA No.2305 of 2019

and CMP NO.10234 of 2019

1 SALEEMA YACOOB [APPELLANTS/PETITIONERS]

2 K. BATHOOLA

Vs

HAZRATH NEELAM BASHA DARGAH [RESPONDENT/RESPONDENT]
AND MASJID WAKF, REP.BY ITS HEREDITARY
MUTHAVALLI, MR. G. GULAB ALI SHAKHADERI,
NO.65, NEELAM BASHA DARGAH,
DR. BESANT ROAD,
ICE HOUSE, TRIPPLICANE, CHENNAI 600 005.

Appeal against the fair and Decreetal order dated 13.2.2019 passed in Old I.A.No.11650 of 2018, New I.A.No.160 of 2018 in Old O.S.No.3315 of 2018 New O.S.No.67 of 2018 on the file of the Hon'ble Wakf Tribunal, Chennai (in CMA.2305/2019) and

(2) To stay all further proceedings arising out of the ex-parte judgment and decree dated 11.12.2017 in Old O.S.No.3315 of 2018, New O.S.No.67/2018 on the file of the Honble Wakf Tribunal, Chennai.(in CMP.10234/2019) respectively

Order : This appeal coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. M.J. JASEEM MOHAMMED, Advocate for the appellant/petitioner the court made the following order:-

It is represented by the learned counsel appearing for the appellant that originally the matter was filed as Civil Revision Petition and the Registry has returned the same, stating that Civil Miscellaneous Appeal alone will lie and Civil Revision is not maintainable, but in the Court bundle, there was no endorsement to that effect.

2. A reading of Section 83 (9) of The Waqf Act, 1995 states as follows;

Section 83 (9) of The Waqf Act, 1995:

83. Constitution of Tribunals , etc.

(1)....

.....

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.'

3. The Wakf Act, 1995, extracted supra would make it very clear that the appeal cannot be filed from the decision rendered or order passed by the tribunal, whether it is an interim order or other order.

4. The learned counsel for the appellant drew the attention of the Court to the order of the Tamil Nadu Wakf Tribunal dated 01.08.2019 made in I.A.No.287 of 2019, wherein, it has been observed in paragraph 2 (iv) as follows;

'This Hon'ble Court after taking into consideration of the various aspects of the matter dismissed the petition and against which a CMA was filed. The proper remedy for the petitioners is to prosecute the CMA and the order passed by this Hon'ble Tribunal in O.S.No.3315 of 2017 will operate as res judicata in the present suit and the present suit is absolutely not maintainable.'

5. Merely because the tribunal has made an observation that Civil Miscellaneous Appeal has got to be prosecuted, cannot be a ground to prefer Civil Miscellaneous Appeal instead of Civil Revision Petition, and such observation has been made, as the parties have preferred Civil Miscellaneous Appeal and the tribunal may not render any finding as to whether Civil Miscellaneous Appeal is maintainable or revision could be filed, as rightly pointed out by the learned counsel for the appellant. The remedy to question the order impugned in the Civil Miscellaneous Appeal is filed by way of Civil Revision Petition and the petitioner has rightly filed it, by way of Civil Revision Petition, but it has been numbered as Civil Miscellaneous Appeal as it was stated that the Registry had insisted that Civil Miscellaneous Appeal alone is maintainable and not Civil Revision Petition. It is the duty of the Registry to seek clarification from the Advocate who filed the matter, whether it is Civil Miscellaneous Appeal or Civil Revision Petition. So also, the Advocate cannot convert Civil Revision Petition into Civil Miscellaneous Appeal, merely because the Registry insisted to do so. Parties are going to get orders from this Court and only order copies from the Registry.

6. Learned counsel for the petitioner should have also made an endorsement that the matter should be posted before the Court for maintainability and at that stage, this Court would have directed

the Registry to number the Civil Revision Petition and not Civil Miscellaneous Appeal.

7. In any event, as the matter has been filed recently in September 2019, instead of rejecting the same, the petitioner may be permitted to make necessary corrections to convert Civil Miscellaneous Appeal into Civil Revision Petition, so that, the matter could be decided on merits and in accordance with law. It is needless to mention that difference in Court fee, if any, to be paid.

8. The Registry is directed to convert the present Civil Miscellaneous Appeal into Civil Revision Petition within a period of three weeks from today.

-sd/-
29/01/2020

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE WAKE TRIBUNAL,
CHENNAI.

COPY TO

1 THE ASSISTANT REGISTRAR,
AE SECTION, HIGH COURT,
CHENNAI-104.

C.C. to M/S. M.J. JASEEM MOHAMMED Advocate on payment of
necessary charges

WEB COPY

Order

in

CMA.2305/2019

and CMP.10234/2019

Date :29/01/2020

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format

VS 12.02.2020

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