

08.02.2021
Court No. 19
Item No.42
CP

C.O. 354 of 2020

B. S. Damodar Maharaj & ors.
vs.
Mayapur Sri Chaitanya Math & ors.

Ms. Deblina Lahiri
Ms. Samapti Roy
Mr. Mrinmoy Chatterjee

....for the petitioners.

Despite service, none appears on behalf of the opposite parties.

This revisional application has been filed by the defendants in Title Suit No. 58 of 2018 challenging an order dated January 4, 2020, passed by the learned Civil Judge (Junior Division), Nabadwip, Nadia.

By the order impugned, the learned court below rejected an application filed by the defendants/petitioners in the suit, for framing a preliminary issue on the point of jurisdiction of the court to try the suit. According to the petitioners, the learned court below lacked jurisdiction with regard to the subject matter of the suit and the suit should have been filed before the principal civil court, i.e., in the court of learned District Judge at Nadia.

Ms. Lahiri, learned advocate for the petitioners, submits that the principal civil court as defined

under Section 2(a) of the West Bengal Societies Registration Act, 1961, would mean the District Judge and the suit could not have been filed before the Civil Judge (Junior Division), Nabadwip, Nadia in terms of Section 15 of the Code of Civil Procedure. Referring to the provisions of Sections 9, 34 and 37 of the Arbitration and Conciliation Act, 1996, Ms. Lahiri submits that similarly in the said statute also 'court' has been defined as the principal civil court having ordinary, original and civil jurisdiction. She further refers to the decision of this court as also the Bombay High Court in order to assert before this court that the principal civil court would be the court of the learned District Judge and not any court inferior to the court of the learned District Judge. In this regard, reference has been made to the decision of the Bombay High Court in the matter of M/s. Fountain Head Developers & etc. etc. vs. Mrs. Maria Arcangela Sequeira deceased by L.R.'s & ors., reported in AIR 2007 Bombay 1491 and in the matter of Sri Sushanta Malik @ Susanta Malik vs. Srei Equipment Finance Limited & anr., reported in (2015) 6 Arbitration Law Report 485, Cal. Reference was also made to the decision of the Hon'ble Apex Court in the matter of Official Trustee, West Bengal vs. Sachindra Nath Chatterjee, reported in AIR 1969 SC 823, in order to emphasise that apart from

lacking pecuniary or territorial jurisdiction, a court may also lack jurisdiction as to the subject matter in dispute. Reliance was also placed on the decision of the Hon'ble Apex Court in the matter of P. Kasilingam & ors. vs. P.S.G. College of Technology & ors., reported in AIR 1995 SC 1395, in order to assert that the term 'mean' referred to in Section 2(a) of the West Bengal Societies Registration Act should be interpreted strictly and could not be given any other interpretation apart from making a literal interpretation thereof. Reliance was also placed on the decision of the Hon'ble Supreme Court in the matter of Mathura Prasad Sarjoo Jaiswal & ors. vs. Dossibai N. B. Jeejeebhoy, reported in AIR 1971 SC 2355, in order to urge before this court that there could not be any res judicata with regard to the point of jurisdiction. Lastly, reference was made to the decision of the Delhi High Court in the matter of Anjini Devi vs. V.S.T. Industries Ltd., reported in 1996 (63) DLT 394, in order to show that the question of jurisdiction if decided as a preliminary issue, would cut short the litigation and would not drive the parties to an unending prolonged legal battle.

From a bare reading of the West Bengal Societies Registration Act, 1961, the only Section where court has been referred is Section 25 of the

said Act. I do not find any Section where the jurisdiction of the civil court has been barred. The prayers in the plaint are for declaration and injunction. Thus, I do not find any reason to interfere with the order of the learned court below as the learned court below has held that the question of lack of subject matter jurisdiction would be a mixed question of law and fact and the same could not be disposed of as a preliminary issue without evidence on trial. Tentative mention has also been made to a proceeding in some other suits where the point was decided.

Thus, this revisional application is disposed of. The learned court below shall proceed to hear the point of jurisdiction of the court and maintainability of the suit as a separate issue at the trial. All observations made hereinabove are tentative in nature and only relevant for the purpose of disposal of this revisional application. The learned court below shall proceed independently and in accordance with law.

It is submitted that the suit relates to affairs of a charitable society. The learned court below is directed to dispose of the interlocutory applications expeditiously and upon disposal of the interlocutory applications, serious effort should be made by the learned court below to dispose of the suit

expeditiously upon affording an opportunity of hearing to all the parties concerned and in accordance with law.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)