

S/L 6
13.04.2021
Court. No. 19
GB

C.O. 565 of 2021

Halim Chowdhury & Anr.
Vs.
Al-Haj Hazrat Moulana Sayed Misbahul Arufin & Ors.

(Through Video Conference)

Mr. Mahamudul Hassan
... for the Petitioners.

Mr. S.S. Arefin.
... for the Opposite Parties.

This revisional application has been filed against an order dated February 27, 2020 passed by the learned Wakf Tribunal, West Bengal in Suit No.16 of 2007.

The petitioners are aggrieved by the rejection of an application under Order VII, Rule 11 of the Code of Civil Procedure.

The contentions of the petitioners with regard to the rejection of plaint are, inter alia, as follows:

- a) That notices under Section 89 of the Wakf Act and Section 80 of the Code of Civil Procedure were not served upon the Board of Wakf and the State of West Bengal respectively.
- b) Although the plaint was filed on behalf of the public by the Committee of Musallies leave under Order I, Rule 8 of the Code of Civil

Procedure had not been taken by the plaintiffs.

- c) That one of the plaintiffs died and some resigned from the Committee of Musallies as such the suit could not continue only through the plaintiff nos. 1 and 2.

The learned Tribunal after considering the contentions of the petitioners in detail, arrived at the conclusion that on a careful reading of the plaint as a whole, no reliefs have been claimed against the Board of Wakf and the State of West Bengal. Thus, according to the learned Tribunal the notices were not mandatory. The next contention of the petitioners was with the resignation and death of some plaintiffs. The learned Tribunal came to a conclusion that it was for the plaintiffs to prove their case and the plaint could not be rejected at the stage of recording evidence on this ground. Ultimately, the learned Tribunal came to the conclusion that the grounds for rejection of the plaint were not covered by the provisions of Order VII, Rule 11(d) of the Code of Civil Procedure as on a plain reading of the plaint, the court could not come to a conclusive decision that the suit was barred by law. All judicial precedents have been discussed by the learned Tribunal while rejecting the said application.

Mr. Hassan, learned advocate appearing on behalf of the petitioners draws the attention of the Court to the observation of the learned Tribunal that the notice under Section 89 of the Wakf Act was not in proper form. However, the learned Tribunal in the order impugned has also dealt with this contention of the contesting defendants to the effect that as the reliefs claimed and the allegations in the body of the plaint do not appear to be against the Board and the suit does not appear to be against the Board, the compliance of Section 89 was not mandatory. The learned Tribunal also held that no reliefs had been claimed directly against the State of West Bengal has also been claimed.

Under such circumstances, the learned Tribunal was of the opinion that this was not a case for rejection of the plaint on the face of the plaint itself and the suit was required to be heard on all issues.

Mr. Hassan, learned advocate appearing on behalf of the petitioners submits that if one goes through the averments in the plaint carefully, it would be seen that the entire allegation of the plaintiffs was against the Board of Wakf and also the State authorities/revenue authorities as the foundation of the plaintiffs' case are erroneous entries in the record of rights.

I have heard the rival contentions of the respective parties. It has been settled by several judicial decisions that at the time of considering an application under Order VII, Rule 11(d) of the Code of Civil Procedure, the court should take into consideration only the plaint to be read as a whole without taking out a single line or a single paragraph from the entire plaint. In this case the defendants would not be permitted to do so in order to ascertain whether the application for rejection of the plaint should be allowed on the ground that the suit was barred by law. The decisions cited by Mr. Hassan, namely, ***M. S. Abdul Hameed Versus S.M. Sheik Mohammed*** reported in ***AIR 2003 Madras 179***, ***Karnataka Board of Wakfs, Bangalore Versus B.C. Nagaraja Rao & Ors.*** reported in ***AIR 1991 Karnataka 400*** and ***Bihari Chowdhary & Anr. Versus State of Bihar & Ors.*** reported in ***AIR 1984 Supreme Court 1043***, will not help him at this stage, inasmuch as, in all these decisions there were direct reliefs claimed against the Government or the Wakf Board as the case may be. Thus, the respective suits were held to be not maintainable in the absence of the mandatory notices.

In this case, the plaint read as a whole and the reliefs claimed do not indicate that the plaintiffs have

any claim whatsoever against the Board of Wakf or the Government authorities. Thus, at the stage of considering an application under Order VII, Rule 11(d) of the Code of Civil Procedure, the learned Tribunal could not go beyond the plaint, analyse each and every pleading from the body of the plaint and then arrive at the conclusion whether the reliefs were actually against the Government or the Board of Wakf or whether the reliefs were against the defendant nos.1 to 9 and 13. These are the issues which have to be decided in the suit.

Under such circumstances, I do not find any material irregularity or perversity in the order impugned. The order impugned is not interfered with, except the cost imposed is set aside.

With regard to the maintainability of the suit at the behest of the remaining plaintiffs and whether leave is required to be taken for instituting the suit are not to be decided at the stage of consideration of the application under Order VII, Rule 11 of the Code of Civil Procedure. "Whether the suit is maintainable in its present form" is an issue to be decided by the learned Tribunal at the trial. All issues raised by the defendants on maintainability will be decided at the final hearing of the suit. While deciding such issues the contention of Mr. Hassan will also be taken care of,

inasmuch as, if the plaintiffs fail to prove their case the reliefs would not be granted. The learned Tribunal will pass necessary orders and dispose of the suit accordingly.

In my view, this is not a case for rejection of the plaint under Order VI, Rule 11(d) of the Code of Civil Procedure. The learned Tribunal is directed to frame an appropriate issue on the basis of the observation made herein with regard to the maintainability of the suit in its present form.

With regard to the steps to be taken in view of the death of the plaintiff no.6 the opposite party no.1 shall file appropriate application in the learned court below. The suit should be disposed of expeditiously and neither of the parties shall be granted unnecessary adjournments.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)