BALAJI GOVINDRAO PANCHAL
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.6 OF 2022

Sharad Sahakari Bank Limited, Manchar,
Through Chief Executive Officer ..Applicant
Versus
Sunni Jumma Masjid Education Trust,
Through President Nasir S/o Mohemood
Miya Shaikh and Ors. ..Respondents

Mr. P. B. Shah i/by Shah Kavyal P., for the Applicant
Mr. Vishal Kanade a/w M. S. Dehlvi i/by Dehlvi & Co., for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th FEBRUARY, 2022

P.C.

1. The non-applicant has initiated waqf suit seeking injunction claiming to be the person interested in the waqf. Vide impugned order, the temporary injunction is ordered against the present applicant, a cooperative financial institution, whereby the applicant is injuncted and directed to maintain *status-quo* in respect of suit property being Gat No.7/4C, which is described in paragraph 1 of the suit till final disposal of the suit.

2. In the Waqf Suit being No.49 of 2016, the non-applicant/plaintiff has come out with following prayers :-

"A. The suit of plaintiff may kindly be decreed with costs.

B. It be declared that lease deed of 99 years executed in between the defendant no.01 on behalf of Sunni Jumma Masjid Education Trust at Manchar, Tq. Ambegaon, Dist. Pune and Defendants No.02 and 03 on behalf of the Sunni Jumma Masjid Education Society at Manchar, Tq. Ambegaon, Dist. Pune in respect of Waqf property at Gat No.7/4 क (c) admeasuring 80 – Aar situated at Manchar, Tq. Ambegaon, Dist. Pune bearing registration No.102/2003 dated 03.03.2003 is illegal, ab-initio, void and not binding on the Waqf Institution as per the provisions section 56 of the Waqf Act, 1995.

C. It be declared that, the Mortgage Deed bearing registration no.2061/2005 dated 30.08.2005, Mortgage Deed bearing registration no.304/2006 dated 04.02.2006 and Mortgage Deed bearing registration no.1229/2006 dated 02.05.2006 executed by the defendants no.01 to 08 on behalf of the Sunni Jumma Masjid Education Society at Manchar and Sunni Jumma Masjid Education Trust at Manchar, Tq. Ambegaon, Dist. Pune in respect of Waqf Property Gut no.7/4_(c), admeasuring 80 aar, situated at Manchar, Tq. Ambegaon, Dist. Pune in favor of defendant no.09 is without any legal authority, without permission of Waqf Board U/s.51 of the Waqf Act, 1995 is illegal, ab-initio, void and not binding on the Waqf Institution.

D. By passing a Decree of Perpetual Injunction, Defendant no.01 to 09, its power of attorney holder if any, its agreement holder if any, its employees, servants, agents or anybody claiming through it from alienating, creating third party interest or making encumbering in any manner on Gut no.7/4 क (c), admeasuring 80-aar, including constructed area, situated at Manchar, Tq. Ambegaon, Dist. Pune whatsoever, boundaries and description of which are mentioned in the **Claim Clause No.D** of the plaint.

E. By passing a Decree of Perpetual Injunction, the Defendant No.09 their power of attorney holder if any, their agreement holder if any, their employees, servants, agents or anybody claiming through them from interfering in peaceful possession of the Waqk Institution over the Gut No.7/4 क (c), admeasuring 80-aar, including constructed area, situated at Manchar, Tq. Ambegaon, Dist. Pune over the Waqf Property boundaries and description of which are mentioned in the **Claim Clause No.D** of the plaint."

3. The factual matrix to decide the present revision application are as under :-

The respondent No.1/waqf claimed to have executed a lease of 99 years in favour of respondent No.2, who in turn, mortgaged the said property against loan obtained from the applicant. As a consequences of the same, the applicant has proceeded against the said Waqf Trust for recovery of its loan dues thereby attaching the property.

4. The Waqf Tribunal while granting injunction has taken shelter of Sections 51 and 56 of the Waqf Act.

5. The applicant/financial institution feeling aggrieved has preferred this revision application.

6. The contentions are, even if the plaintiff is considered to be a person interested, before granting an order of temporary injunction, the Waqf Tribunal should have weighed equities between the parties. Mr. P. B. Shah, learned counsel appearing for the applicant/financial institution/a credit cooperative society submits that applicant is holding interest of its depositors and shareholders to the extent of such amount advanced to the respondent No.2, who has mortgaged the property in question to the applicant way back in 2005-06. According to him, plaintiff has initiated suit seeking injunction taking shelter of Sections 51 and 56 of the Waqf Act as it is claimed that prior approval of the Waqf Board is not obtained. He would further claim that the applicant has no objection in maintaining *status-quo* provided the plaintiff should be put to condition to the extent of deposit of outstanding loan amount or shall be directed to furnish security. Mr. P. B. Shah would urge that further transaction, if any, in relation to the suit property shall be subject to the outcome of the suit. He would further urge that the plaintiff is set up by the trustees of the Defendant-Trust so as to frustrate the claim of the applicant. That being so, according to him, the impugned order is liable to be interfered with.

7. Mr. Vishal Kanade, learned counsel for the respondent/original plaintiff would support the impugned order thereby applicant/financial institution is directed to maintain *status-quo* till the final disposal of the suit. Mr. Vishal Kanade would urge that the plaintiff is a person interested under the provisions of

clause k(i) of Section 3 of the Waqf Act and as such suit at the behest of the applicant is maintainable. He would further claim that the trustees of the respondent/educational trust have practiced fraud and thereby mortgaged property with the applicant and siphoned of the funds. He would further claim that the impugned order is in tune with Sections 51 and 56 of the Waqf Act as admittedly, no permission was obtained before mortgaging property of the Trust. As such, according to him, Revision Application is liable to be rejected.

8. This Court has to keep in mind principle of equities while adjudicating claim for grant of injunction during the pendency of the suit particularly wherein financial stakes of either of the parties are involved. Mr. P. B. Shah, learned counsel appearing for the applicant, in my opinion, was justified in pointing out that the applicant/financial institution holds money of the shareholders so also depositors. His further contentions are that plaintiff should be put to condition appears to be quite justified, as in case if the suit before the Waqf Tribunal fails, Respondent/Plaintiff has nothing to lose in the matter, however the Applicant shall suffer huge business loss.

9. In the aforesaid background, plaintiff was called upon to make submission as to in what manner he can secure the interest of the applicant/financial institution, in case suit fails.

10. Counsel for the plaintiff fairly conceded that the plaintiff is not in an advanced position to secure the interest of the applicant/financial institution. However, he would claim that this Court is required to appreciate the very scheme of Sections 51 and 56 of the Waqf Act.

11. No doubt, the aforesaid contentions are based on legal provision. However, if this Court appreciate the said submissions on the basis of pleadings in the plaint so also the relief claimed, the fact remains that the plaintiff has not come out with any specific case of fraud being practiced by Trustees and as such no relief against the trustees is claimed in the suit. Rather, the intention of the plaintiff appears to be to safeguard interest of the trustees.

12. Oral contention that the trustees have siphoned of funds of the trust is not substantiated by the documentary evidence. Further claim of the plaintiff that applicant/financial institution has acted hand-in-glove with the other parties to the suit and practiced fraud and thereby siphoned of funds, cannot be established at this stage. That being so, I hardly see any reason which warrants continuation of the order of *status-quo*.

13. In the backdrop of aforesaid observations, it can be easily gathered that the plaintiff has failed to demonstrate *prima facie* case, so also the balance of convenience in his favour. That being so, the order impugned directing defendant Nos.1 to 9 to

maintain *status-quo* is hereby quashed and set aside. The application Exh.5 stands rejected.

14. Application stands allowed in above terms.

[NITIN W. SAMBRE, J.]