

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2021

DATE OF DECISION: 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

O.S.A.No.303 of 2019

1. Agila Munnal Pond's Employees Nalasangam
rep.by its President Mr.K.J.Mohankumar
having General Secretary
 2. Mr.K.C.Sebastian, General Secretary
Agila Munnal Pond's Employees Nalasangam
Both are having office at
No.139-142, AA Block, 4th Avenue
Shanthi Colony, Anna Nagar
Chennai 600 040
- ..Appellants/Plaintiffs

-vs-

1. Ponds Employees Welfare Trust
 2. Ponds Management Staff Welfare Trust
 3. Ponds Supervisory Staff Welfare Trust
 4. Hindustan Unilever Limited
Defendants 1 to 4 are having office
at Ponds House
No.101, Santhome High Road
Chennai 600 028
- ...Respondents/Defendants

Original Side Appeal filed under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, against the judgment dated 19.08.2019 passed in C.S.No.497 of 2018 on the file of the Original Side of this Court.

For Appellants :: Mr.M.K.Kabir
Senior Counsel for
Mr.S.Sridhar

For Respondents :: Mr.Madhan Babu
for R1 to R3
Mr.Krishna Srinivasan for R4

JUDGMENT

T.RAJA, J.

Agila Munnal Pond's Employees Nalasangam represented by its President and Mr.K.C.Sebastian, General Secretary have brought this appeal, aggrieved by the order of revocation of leave and the rejection of plaint in C.S.No.497 of 2018 passed by the learned single Judge, on the ground that when the appellant Nalasangam was registered under the Tamil Nadu Societies Registration Act on 4.10.2016 for the welfare of the former employees of Ponds India Limited with the object of promoting social and financial betterment of the former employees of Ponds India Limited, the fourth respondent took over the Ponds India Limited and after amalgamation of the three Trusts, namely, Ponds Employees Welfare Trust created in May, 1980; Ponds Management Staff Welfare Trust incorporated in July, 1981 and the Ponds Supervisory Staff Welfare Trust formed in November, 1984, the beneficiaries of the aforementioned Trusts were deprived of their benefits, as the fourth respondent failed to carry out the objects of the three Trusts in spite of repeated reminders. When the Trust had the corpus of Rs.1,765,00,00,000/-, the said amount has not been utilized by the fourth respondent for the benefit of the members of the Trusts, as a result, all the ex-employees of Ponds India Limited have suffered. Therefore, on 22.01.2016, 22.02.2016 and 05.02.2018, the appellants wrote letters to the fourth respondent requesting to provide medical assistance and other benefits to the retired employees, who are the members of the appellant Nalasangam. Although the fourth respondent received the letters, failed to send any reply. When the fourth respondent refused the medical claim and other benefits to the members of the Trusts on the ground that no surplus fund was available, the appellants/plaintiffs filed the suit for evolving a scheme for proper administration of the above Trusts after merging the same into a single Trust by appointing two more persons who are the office bearers of the appellant Nalasangam to be the trustees of the Trust and for furnishing the statement of accounts relating to the corpus fund as well as the reimbursement of medical expenses and other benefits to the beneficiaries. It is also the claim of the appellants that when the respondents 1 to 3 were founded, established and situated for providing medical assistance to the retired employees of the appellants, they are entitled to question how the trustees are administering the corpus fund and the trustees are also duty bound to answer how the corpus fund of the Trusts are being spent. Moreover, it has been learnt from reliable sources that the corpus fund of the Trusts were diverted to various other activities depriving the true beneficiaries, namely, the members of the appellants. Therefore, Application No.5036 of 2018 was filed seeking leave to file the above suit under Section 92 of

the Code of Civil Procedure for the reliefs claimed thereunder and when the learned single Judge, while allowing the said application, came to the prima facie conclusion that it is a fit case where the leave is to be granted, the fourth respondent/Hindustan Unilever Limited, cannot maintain the Application No.375 of 2019 to revoke the leave granted in Application No.5036 of 2018 to file the suit in C.S.No.497 of 2018.

2. Mr.M.K.Kabir, learned Senior Counsel appearing for the appellants contended that the order passed by the learned single Judge revoking the leave granted to the appellants/plaintiffs is unsustainable in law, since the learned single Judge has ignored the contention of the appellants that the objects of the three Trusts specifically state that the trustees may at any time invite and receive or without such invitation receive any voluntary contributions or donations either from the Settler or from any other persons or members of the public by way of donation, contribution, grant, subsidy, legacy or otherwise for all or any of the objects and purposes mentioned therein. Moreover, when all the three Trusts are functioning by utilizing the contributions and donations received from the public, the fourth respondent failed to carry out the objects of extending the medical benefits and educational benefits to the members of the appellants, as the Hindustan Unilever Limited, having amassed huge amounts in the corpus of the Trusts, is not spending anything from the corpus but from the donations from the public. The learned Senior Counsel also argued that the learned single Judge ignored the fact that the fourth respondent has not filed any document to substantiate their claim that the Trusts are private, because the burden is on the fourth respondent to prove that the objects of the Trusts are carried out through the funds of Hindustan Unilever Limited and in the absence of any document filed by the fourth respondent that the Trusts are a private one and not a public trust, the impugned order revoking the leave granted is liable to be set aside and the leave has to be restored. Mr.Kabir further argued that when Hindustan Unilever Limited, who manage all the three Trusts as charitable through donation, contribution, grant, subsidy from the general public for the 35 objectives mentioned in the Trust Deeds, failed to carry out the objects of the Trusts like providing medical benefits, educational benefits to the beneficiaries, the impugned decretal order ought to have held that the Trust fund is for the benefit of the public. In support of the above submission, relying upon a judgment of the Division Bench of this Court in R.Kannan Adityan and 4 others v. B.S.Adityan and others, 1996-2-L.W. 364, the learned Senior Counsel stated that the Division Bench of our High Court has held that the plaintiffs who are having substantial interest in the Trust, can file the suit under Section 92 of the Code of

Civil Procedure. Again referring to another judgment of the Apex Court in the case of Kt.N.Rm.Thenappa Chettiar and others v. N.S.Kr.Karuppan Chettiyar, AIR 1968 SC 915, for the proposition that even in case of a private trust, a civil suit is maintainable for settlement of a scheme for the purpose of effectively carrying out the objects of the Trust. Therefore, the learned Senior Counsel pleaded that when leave was granted to the appellants for institution of the present suit, the impugned order passed by the learned single Judge revoking the leave and rejecting the plaint is liable to be set aside.

3. On the other hand, Mr. Krishna Srinivasan, learned counsel appearing for the fourth respondent, heavily urging this Court to dismiss the appeal on the ground that the instant suit filed by the appellants is not legally maintainable, as it is hit by the principles of res judicata, further argued that once the Division Bench of this Court in O.S.A.No.181 of 2004 dated 18.08.2008 (Ponds India (Ltd) Retired Employees Welfare Association and others v. Ponds Employees Welfare Trust and others), in a similar matter, has already affirmed the order passed by the learned single Judge revoking the leave holding that the suit under Section 92 of the Code of Civil Procedure would not be maintainable against a private trust, the impugned order does not call for any interference.

4. Heard learned counsel appearing for the parties.

5. We also find that the issue raised in this appeal is no longer res integra. When Ponds India Limited Retired Employees Welfare Association and others filed O.S.A.No.181 of 2004 challenging the order passed in Application No.938 of 2003 seeking revocation of the leave originally granted in Application No.2918 of 2002 in C.S.No.579 of 2002, a Division Bench of this Court, by order dated 18.08.2008, has come to the conclusion that at no stretch of imagination, either the Trust in question can be considered as a public trust or the association which was constituted by the retired employees, can be allowed to say that they have got any interest much less clear or substantial interest in the trust in question. Going one step further, the Division Bench of this Court has held that even assuming that the retired employees were taken care of by the Trust, at no stretch of imagination, it can be taken that it would confer a right on them calling the Trust as a public trust or they are the persons having interest over the same, inasmuch as a perusal of the clauses in the entire trust deed nowhere indicates to hold that the employees would include the retired persons also, because the beneficiaries who can seek for the benefit can only be the spouse, children and dependants of the employees. In this context, it is necessary to refer to the relevant clauses in the Pond's Supervisory Staff Welfare Trust

Deed dated 23.11.1984, which is given as under:-

"WHEREAS:

A. The Settler is desirous of providing or assisting in the provision of the education, training, marriage, medical facilities, housing facilities, sports, games, cultural and other activities and the welfare in general of the Supervisory Staff, their spouses, children and dependants;

B. In furtherance of the Settler's aforesaid desire, the Settler is desirous of creating an irrevocable trust to be called as hereinafter mentioned;

C. In furtherance of the Settler's aforesaid desire, it is intended that the Settler shall forthwith deliver to the Trustees, the sum hereinafter mentioned for the purpose of being held upon the trusts hereinafter contained; and

D. The Trustees have consented to act as the first Trustees of these presents and to accept the trusts under these presents as testified by their being parties to and executing the same:

NOW THIS INDENTURE WITNESSETH as follows:

1. In those presents unless there is anything repugnant to the subject or context thereof:

a. The expression "Supervisory Staff" shall mean any person who is in the employment of the Company in S1, S2, S3 grades or any other equivalent grade that may be introduced by the Company in future.

b. The expression "the Beneficiaries" shall mean the Supervisory Staff of the Company -

(i) Who are in the employment of the Company at the date of these presents; or

(ii) Who will be in employment of the Company after the date of these presents; and

(iii) Who have been in the continuous service of the Company upto a date not earlier than two years from the date of these presents;

And their respective spouses, children (natural or adopted) and dependants;

c. The expression "Dependants" in relation to an Employee shall mean:

(i) The parents, brothers and sisters of the Supervisory Staff or any of them, wholly or mainly dependant on the Employee; and

(ii) Such other relations of the Supervisory Staff as may from time to time be determined by the Trustees as being dependants on the Employee in their sole and absolute discretion."

6. A mere perusal of the expression 'beneficiaries' would mean the supervisory staff of the company who are in the employment of the Company at the date of these presents or who will be in employment of the Company after the date of these presents and who have been in the continuous service of the company upto a date not earlier than two years from the date of these presents and their respective spouse, children either natural or adopted and dependants. Again the expression 'dependants' also has been explained clearly meaning thereby the parents, brothers and sisters of the supervisory staff or any of them wholly or mainly dependant on the employee. When the Trust Deed clearly mentions that only the persons who are in employment of the company alone would be protected by the Trust in question and not an outsider, the relief sought for in the plaint that the retired employees should also be taken care of by the Trust, is without any merit, because the Trust Deed does not confer any right on them to file the suit seeking the same as a public trust. Therefore, when the issue has already been answered in O.S.A.No.181 of 2004, merely by changing the parties, the appellants cannot come to this Court repeatedly for the same relief for which they lost the case before this Court, as the appeal is clearly hit by the principles of res judicata.

7. Although Mr. Kabir, learned Senior Counsel appearing for the appellants, citing a judgment of the Apex Court in the case of Kt.N.Rm.Thenappa Chettiar and others v. N.S.Kr.Karuppan Chettiyar, AIR 1968 SC 915 stated that it is a settled legal position that even in the case of private trust, a suit can be filed for removal of the trustees for the purpose of effectively carrying out the objects of the Trust and if there is a breach of trust or mismanagement on the part of the trustees, a civil suit can be filed by any person for removal of the trustees for proper administration of the endowment, the said legal position cannot be disputed by us, because, if there is a breach of trust or mismanagement on the part of the trustees, a suit can be filed by any person interested for the removal of the trustees. But in the present case, the issue is totally different. What the appellants are asking is against the scope of the Trust Deed. When the Trust Deed says that the Trust has been created for the beneficiaries who are in the employment of the Company at the date of these presents or who will be in employment of the Company after the date of these presents and who have been in the continuous service of the company upto a date not earlier than two years from the date of these presents and the

expression "dependants" in relation to an employee clearly means the parents, brothers and sisters of the supervisory staff or any of them who are mainly depending on the employee, the arguments advanced by Mr.Kabir that it should also include the retired employees, in our considered opinion, is beyond the scope of the Trust Deed. Accordingly, finding no merits whatsoever to interfere with the order passed by the learned single Judge, the original side appeal stands dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ss

To

The Sub Assistant Registrar (O.S.)
High Court, Madras - 104.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to M/s.R.Parthasarathy, Advocate, S.R.No.38716

+1cc to M/s.S.Ramasubramaniam, Advocate, S.R.No.39098

O.S.A.No.303 of 2019

RGN(CO)
RGA(20/07/2022)