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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 879/2022, CM APPL. 37811/2022 and CM APPL. 37812/2022

SHANTI DEVI CHARITABLE TRUST & ORS..... Petitioners
Through: Mr. Alok Kumar, Sr. Advocate
with Mr. Amit Kumar Singh, Ms. Megha
Sony and Mr. Varun Maheshwari, Advs.

versus
DR. VIJYA SHRI Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)
% **30.08.2022**

1. CS SCJ 310/2021 was instituted by the respondent Dr Vijay Shri against the petitioners. Subsequently, an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) was preferred by the respondent (as the plaintiff in the suit) to amend the prayer clause in the suit. The precise amendment, that was sought, was to replace the words “Clause 8(d)” in prayer (a) with the words “Clause 8(c)”. In other words, all that was sought was to amend the reference, in the prayer clause in the plaint, to the Clause which was under challenge.

2. The aforesaid application of the respondent under Order VI Rule 17 of the CPC has been allowed by the learned Additional Senior Civil Judge (“the learned ASCJ”), by the impugned order dated 2nd



July 2022. Aggrieved thereby, the respondents, in the suit, have approached this Court under Article 227 of the Constitution of India.

3. Mr. Alok Kumar, learned Senior Counsel for the petitioners has sought to submit that the basic test, to decide whether an amendment should be allowed or not allowed, is whether the amendment is necessary to enable the Court to ascertain the real issue in controversy between the parties. He submits that a reading of the plaint in CS SCJ 310/2021 reveals that there is no reference, whatsoever, in the plaint to Clause 8(c) [of the Trust Deed dated 12th June 2006, as modified *vide* Supplementary Trust Deed dated 17th December 2012] . As such, he submits, Clause 8(c) does not constitute any part of the “controversy” raised in the plaint filed by the respondent. The amendment in the prayer clause, which the respondent sought to incorporate, therefore, according to Mr. Alok Kumar, was not necessary to adjudicate on the real issue in controversy between the parties.

4. Mr. Alok Kumar has also placed reliance, in this context, on Order VII Rule 1(e) of the CPC, which reads thus:

“1. Particulars to be contained in plaint – The plaint shall contain the following particulars:-

(e) the facts constituting the cause of action and when it arose;”

5. Mr. Alok Kumar submits that it Order VII Rule 1(e) of the CPC mandates that all facts constituting the cause of action are required to be set out in the plaint instituted by the plaintiff. As no facts relating to Clause 8(c) of the Trust Deed find place in the plaint in CS SCJ



310/2021, he submits that it would not be open to the petitioners to challenge the said clause in the prayer in the plaint, without any factual averments to back the challenge, as that would violate Order VII Rule 1(e) of the CPC.

6. To support his submission, Mr. Alok Kumar has placed reliance on the judgment of *Bachhaj Nahar v. Nilima Mandal*¹ and of a learned Single Judge of this Court in *India Yamaha Motor Pvt Ltd v. Seema Bhatia*².

7. To examine the submissions of Mr. Alok Kumar, as well as the vulnerability to challenge of the impugned order passed by the learned ASCJ, it would be necessary to briefly refer to the issue in “controversy” to the plaint in CS SCJ 310/2021, instituted by the respondent against the petitioners.

8. Petitioner 1 Shanti Devi Charitable Trust (“the Trust”, hereinafter) is a registered trust constituted under the Indian Trusts Act, 1882, *vide* Trust Deed dated 12th June 2006. Consequent to resignation of certain trustees from the Trust, the respondent was inducted as a trustee on 29th April 2019, and a Supplementary Trust Deed was drawn up on the said date. Petitioners 2 to 4 are stated to be brothers, and trustees in the Trust. The Trust was running a medical college under the name and style of “M.C. Medical College and Hospital” at Panipat, which was originally managed by Petitioners 2

¹ (2008) 17 SCC 491

² 2019 SCC OnLine Del 9554



to 4.

9. The plaint alleged that, consequent to inspection conducted by the erstwhile Medical Council of India (MCI), the Trust was restrained from admitting new students for the batches 2016, 2017 and 2018 for the MBBS Course. Further hardship faced by the Trust, as per the plaint, drove with to the brink of closure by 2018. In these circumstances, according to the plaint, Petitioners 2 to 4 approached the respondent to make efforts to obtain approval for the college run by the Trust to admit students for the 2019 MBBS batch. As a *quid pro quo*, the plaint avers that Petitioners 2 to 4 agreed to induct one of the family members of the respondent as a trustee in the Trust and later, as the Director in the medical college run by the Trust. Believing these assurances and proceeding on this understanding, according to the plaint, the respondent assisted the petitioners in raising funds for the medical college run by the Trust. Owing to the efforts of the respondent, the medical college was allowed to admit students for the 2019 batch. The plaint further avers that the college run by the Trust attained the standards prescribed by the MCI owing to the inputs and efforts of the respondent.

10. In these circumstances and in compliance with the understanding between them, the petitioners inducted the respondent as one of the trustees of the Trust and also made her a Treasurer of the Trust. These found place in the Supplementary Trust Deed executed and registered on 29th April 2019.



11. The respondent-plaintiff alleged, in the plaint, that, as the petitioners did not adhere to the assurance of making the respondent a Director in the medical college run by the Trust and did not inform the bank, in which the accounts of the Trust were held, that the respondent was an authorized signatory, the *bonafides* of the petitioners became suspect. The plaint further alleges that the respondent was never given any notice regarding meeting of the Board of trustees of the Trust, access to the account books of the Trust and its income and expenditure data. The plaint goes on to allege that Petitioners 2 to 4 were illegally siphoning and misusing funds of the Trust. Subsequently, the petitioners are alleged to have completely disassociated the respondent from the working and functioning of the Trust.

12. Para 17 of the plaint alleges that the Supplementary Trust Deed dated 29th April 2019 contained certain clauses under which Petitioners 2 to 4 had vested all powers in themselves and effectively made the respondent a trustee with no powers. This, it is alleged, was in violation of the Trusts Act. Para 18 of the plaint avers, therefore, that the said Clauses are required to be struck down.

13. That concludes the recital of facts in the plaint. In the backdrop of these factual recitals, the original prayer clause in the plaint read thus:

“It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- a) pass a decree of declaration thereby declaring the Clause-7(2), 8(d) to be in operative and further



declare that the clauses which are not in consonance with the Indian Trust Act, 1882; to be null and void and any clause empowering the defendant no. 2 to 4 to decide any matter of the trust as invalid; and/or

b) pass a decree of mandatory injunction in favour of the plaintiff and against the defendants thereby directing the defendant no.2 to 4 to provide access to the records, account books and documents etc. of the defendant no. 1 i.e. Shanti Devi Charitable Trust; and/or

c) pass a decree of mandatory injunction in favour of the plaintiff and against the defendants thereby directing the defendant no.2 to 4 to include the plaintiff as a signatory in the bank accounts of the defendant no.1 i.e. Shanti Devi Charitable Trust; and/or.

d) pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendant no.2 to 4, their agents, employees etc. from siphoning off or misusing the funds of the defendant no. 1 i.e. Shanti Devi Charitable Trust; and/or

e) Pass a decree for rendition of accounts of the defendant no.1 i.e. Shanti Devi Charitable Trust, since April, 2019 till date.

f) Cost of the suit may also be awarded in favour of the Plaintiff.

g) Any other or further order which this Hon'ble Court may deem fit and proper in the present facts and circumstances as aforementioned may passed in favour of the plaintiff and against the defendants, in the interest of justice”

14. As already noted, the respondent, in her application under Order VI Rule 17 of the CPC, averred that the reference to Clause 8(d) of the Supplementary Trust Deed in prayer (a) of the plaint was an



inadvertent error and that the actual clause that the respondent desired to challenge was Clause 8(c).

15. The learned ASCJ has, in paras 7 to 9 of the impugned order dated 2nd July 2022, relied on the judgment of the Supreme Court in *Rajesh Kumar Aggarwal v. K.K. Modi*³, thus:

“7. It sounds correct that the some of the prayer clauses of the plaint are vague and does not clearly mention as to which clauses plaintiff is seeking to be declared as null and void. At the same time law for seeking amendment in pleading was well defined and construed in land marks judgment of *Rajesh Kumar Aggarwal and others versus K.K.Modi and others, 2006 (1) PLJ, 556 (SC)*, in which, it is held in para 15 and I6 as under:

7. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow the amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. Order 6 rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

8. The ambit of Order VI Rule 17 of the Code of Civil Procedure, 1908 is fairly wide. It needs to be seen that whether any prejudice will be caused to the respondent/defendant if the present amendments are allowed. The court only has to see that the amendment is necessary for determining the real controversy between the parties and that no injustice is caused to the other side.

9. Liberal view towards amendment is warranted by Code itself before issues are settled. The court cannot delve into the

³ (2006) 4 SCC 385



merits of the amendment sought at this stage. It can not be even seen that whether suit can be decreed or not or whether prayers can be granted or not. It is important to consider that whether amendment sought brings about the real question in controversy to the forefront. In this matter, liberal view as provided by provision contained under Order VI Rule 17 CPC is warranted. The amendment sought would definitely bring real question for controversy to the forefront. Thus, application u/o VII Rule 17CPC is allowed. Amended plaint is taken on record. Written statement to the amended plaint, if any, be filed within four weeks from today. Advance copy be supplied. Replication to follow in three weeks thereafter. Advance copy be supplied. Application is accordingly disposed off.”

16. There are decisions galore to the effect that ordinarily a liberal approach is required to be adopted while dealing with applications for amendment of plaints, the approach being required to be even more liberal where the written statement is proposed to be amended. The only statutory interdict, in that regard, is to be found in the proviso to Order VI Rule 17 of the CPC, which proscribes allowing of an amendment after trial has commenced. In such an event, the Court has to come to a finding to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

17. Prior to commencement of trial, however, the law is, entirely in favour of a liberal approach while allowing prayers for amendment. One may refer, in this context, to *B.K.N Narayana Pillai v. P. Pillai*⁴, *Baldev Singh v. Manohar Singh*⁵ and *N.C Bansal v. Uttar Pradesh*

⁴ (2000) 1 SCC 712

⁵ (2006) 6 SCC 498



***Financial Corporation*⁶.**

18. There is no dispute that, in the present case, the prayer for amendment was made before the trial commenced. As such, the proviso to Order VI Rule 17 of the CPC does not apply, and the impugned order has to be tested on the anvil of the substantive part of Order VI Rule 17 of the CPC.

19. Mr. Alok Kumar's submission is that, inasmuch as the body of the plaint in CS SCJ 310/2021 makes no reference to Clause 8(c) of the Supplementary Trust Deed, and contains no averments on the basis of which Clause 8(c) could be struck down or declared illegal, the amendment that the respondent sought to incorporate in the plaint was not necessary to determine the real issue in controversy between the parties.

20. There are two reasons, why, in my considered opinion, this submission cannot merit acceptance.

21. The first, which is more general in nature, is that a "controversy", whether in a petition or a plaint or, indeed, in any other form of pleading, would include not only the averments in the petition or the plaint but also the prayer clause contained therein. If, for example, in a case in which a prayer in a plaint is for declaration of a particular clause as illegal, legality of the clause under challenge would indisputably form part of the "controversy" in the plaint. The

⁶ (2018) 2 SCC 347



sufficiency, or even existence, of averments in the plaint, which could sustain the prayer, is another matter altogether. The mere fact that, in the body of the plaint, averments sufficient to sustain the prayer are not to be found (as the defendant may seek to contend), does not derogate from the fact that the “controversy” in the plaint nonetheless includes the legality and validity of the clause under challenge. Once the plaintiff has chosen to pray, in the plaint, that the clause should be declared as illegal, the legality or illegality of the clause becomes an issue of “controversy” between the parties – assuming, of course, that the defendant/respondent traverses the prayer. The question of whether the prayer is supported by the averments in the plaint is an entirely different issue.

22. If the prayer is not supported by the averments in the plaint, or if the averments in the plaint are insufficient to maintain the prayer, the suit may very well fail. Quite possibly, in a given instance, a case for dismissal of the suit under Order VII Rule 11 of the CPC may also be made out. That, however, in my considered opinion, is not really material to understand the ambit of the expression “controversy” as implied in Order VI Rule 17 of the CPC. The “controversy” would include the averments in the plaint as well as prayer clause. By amending the prayer clause, what the respondent effectively has done is to substitute, in the “controversy” which was originally contained in the plaint, a challenge to Clause 8(c) instead of Clause 8(d).

23. The clause that the plaint seeks to challenge is a matter which is entirely within the domain of the plaintiff. The plaintiff is at liberty to



challenge any or all clauses of the documents which form subject matter of the plaint. As such, it cannot be said that, by substituting the challenge, in the prayer to Clause 8(d) from Clause 8(c), the scope or ambit of the suit has been altered.

24. The second reason why the submission of Mr. Alok Kumar cannot merit acceptance is with reference to the specific averments in the plaint itself. I have earlier, in this judgment, set out, in precis, the averments in the plaint. The only paragraph in the plaint which alleges that the clauses in the Supplementary Trust Deed are illegal, is para 17, which reads thus:

“17. That thereafter, the plaintiff got a certified copy of the Supplementary Trust Deed dated 29.04.2019 and after going through the contents of the same, the plaintiff was astonished that there were certain clauses wherein the Defendant No. 2 to 4 and vested all the powers in themselves and also the plaintiff was made a trustee having no powers. The said clauses in the Trust Deed are in violation of Indian Trust Act, 1882; and needs to be struck down by this Hon'ble court.”

25. Para 17 of the plaint, as reproduced hereinabove, asserts that there were “certain clauses” in the Supplementary Trust Deed dated 29th April 2019, which were in violation of the Indian Trust Act and were required, therefore to be struck down by the Court. It does not refer to any particular clause; either Clause 8(c) or Clause 8(d). If, therefore, the averments in the plaint are vague insofar as Clause 8(d) is concerned, they would be equally vague insofar as Clause 8(c) is concerned. The plaintiff has chosen not to make specific reference to clause with which it is aggrieved in the body of the plaint. She has,



nonetheless, incorporated a submission that there were certain clauses in the Supplementary Trust Deed dated 29th April 2019 which, being in violation of the Indian Trusts Act, were vulnerable to challenge.

26. In that view of the matter, it cannot be said that the reference to Clause 8(c) in the prayer clause would be any more distant, from the averments and assertions in the body of the plaint, than the reference to Clause 8(d). No specific Clause of the Supplementary Trust Deed having been alleged to be illegal in the averments contained in the body of the plaint, the petitioner cannot challenge the decision to allow substitution, in the prayer clause, of the reference to Clause 8(d) with Clause 8(c) on the ground that there is no specific reference to Clause 8(c) in the body of the plaint, or that the requisite factual averments, as would make out a “cause of action” to challenge Clause 8(c), are missing.

27. Whether the averments in the plaint are sufficient to maintain a challenge to Clause 8(c) of the Supplementary Trust Deed, is a consideration alien to Order VI Rule 17 of the CPC. That issue rests entirely within the subjective domain of the learned Trial Court and, therefore, it would not be proper for this Court to express any view thereon.

28. Sufficient it to state that the submission of Mr. Alok Kumar that the prayer for amendment in the plaint by substituting the words “Clause 8(d)” in the prayer with “Clause 8(c)” was not required to be allowed and that, by doing so, the learned ADJ has committed an error



amenable to interference under Article 227 of the Constitution of India, fails to impress.

29. In this regard, I may also refer to the following passage from *Sadhana Lodh v. National Insurance Co. Ltd.*⁷, which delineates the exact scope of Article 227 jurisdiction:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

30. Within the parameters and peripheries of Article 227 of the Constitution of India, as thus delineated, I am of the opinion that no case is made out, for this Court to interfere with the impugned order.

31. The petition is, accordingly, dismissed in *limine* with no order as to costs. Miscellaneous applications are also disposed of.

C. HARI SHANKAR, J.

AUGUST 30, 2022

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⁷ (2003) 3 SSC 524