



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO. 1561 OF 2023

AND

CIVIL APPLICATION NO.1563 OF 2023

IN

SECOND APPEAL NO. 226 OF 2022

Vidarbha Youth Welfare Society, Amravati and others

.VS.

Sandip Ram Meghe and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr R. L. Khapre, Sr. Adv. Assisted by Mr R. D. Bhuibar, Advocate for the appellants
Mr C. S. Kaptan, Sr. Adv. Assisted by Mr Palash Mohta, Advocate for the respondents

CORAM : G.A. SANAP, J.

DATE : FEBRUARY 09, 2024.

The appellants, in Second Appeal No. 226 of 2022, have made Civil Application No. 1561 of 2023 seeking amendment to the written statement, more particularly set out in para No. 4 of the application. Civil Application No. 1563 of 2023 is made for the production of additional evidence in the form of two change reports dated 12.12.2022 and 03.08.2023.

2. Foundational facts for deciding these two applications are that respondent Nos. 1 to 4 filed a

Regular Civil Suit No.178 of 2015 seeking the following reliefs:

“1. Declare that act of passing resolution No. 13 in the alleged executive council meeting dated 17.11.2014 of issuing show cause notice and calling explanation from the plaintiffs about alleged misconduct on the part of plaintiffs, as null and void.

2. Declare that act of passing resolution no. 7 in the alleged executive council meeting dated 03.03.2015 of removing/terminating life membership of the plaintiffs of the defendant No. 1 Trust, as null and void, as it is contrary to the settled legal applicable provisions of law and in breach of provisions of the byelaws of the Trust.

3. The defendants be permanently restrained from implementing the alleged resolution No. 7 dated 03.03.2015 of the so called alleged executive council meeting of termination/removal of life. membership of the plaintiffs.

4. Issue mandatory injunction against the defendants directing them to communicate the plaintiffs about

continuation of their status as a life member of the Trust with retrospective effect from 03.03.2015.

5. Declare that holding of the A.G.M scheduled to be held on dtd. 14.06.2015 as per notice dtd. 03.06.2015 is illegal and void.

6. The defendants may kindly be directed to provide the copies of the so called alleged proceedings of the executive council meeting dated 17.11.2014 and 03.03.2015 to the plaintiffs.

7. The defendants be further restrained from taking any important policy decision, till their status as elected trustees is adjudicated/accepted by the competent authority under B. P. T. Act.

8. Award costs of the suit to the plaintiffs.

9. Grant any other relief, which this Hon'ble Court deems fit and proper in favour of the plaintiffs, in the circumstances of the case.

10. Direct the defendants to pay Rs. 4,00,000/- jointly and severally, as stated in Para No. 17-A, to the plaintiffs".

3. According to respondent Nos. 1 to 4, they were the life members of appellant No.1-Trust. Their explanation was called, pursuant to resolution No. 13 passed by the Executive Council Meeting, held on 17.11.2014, as to why they shall not be expelled. After the explanation to the show cause notice, in a meeting of the Executive Council dated 03.03.2015 vide communication/resolution dated 07.03.2015 they were removed/terminated as a life member of the appellant No.1-Trust. According to them, this entire exercise and action was null and void. According to them, this action, apart from being *mala fide*, was hit by the principle of law and natural justice. According to them, their expulsion, apart from being the stigma, has caused immense loss and prejudice to them.

4. The appellants filed the written statement and opposed the suit. In sum and substance, the appellants denied the material facts pleaded in the

suit. The appellants justified the show cause notice as well as the resolution to expel respondents from the life membership of the Trust. It was contended that the respondents were guilty of fabrication and manipulation of the documents of the Trust. The activities of the respondents, according to the appellants, were detrimental to the Trust. Besides, the appellants raised specific contention challenging the jurisdiction of the Civil Court to entertain and try the suit in view of the specific provision of the Maharashtra Public Trusts Act, 1950 (for short 'the Trusts Act') and the mechanism provided therein for redressal of the grievance of this nature. The appellants, in terms of the then existing Section 9A of the Code of Civil Procedure (for short 'the CPC') applicable to the State of Maharashtra, made an application for framing the issue of jurisdiction and trying the same as a preliminary issue. For the purpose of completing the narration, it would not be out of place to state that the issue of jurisdiction was framed and tried as a preliminary issue. The Civil Court held that considering the conspectus of the facts set out in the plaint, the Civil Court has jurisdiction to entertain and try the suit. The appellants, being aggrieved by this

order passed by the Civil Court, filed the Civil Revision Application in this Court. This Court in Civil Revision Application No.84 of 2015 decided on 15.03.2016 confirmed the order passed by the Civil Court.

5. It needs to be stated that after completion of the pleadings and framing of the issues, the parties adduced the evidence. Learned Civil Judge, vide judgment and decree dated 30.01.2020, decreed the suit to the extent of prayer clauses (1) and (2). The appellants, being aggrieved by the judgment and decree, filed the appeal before the District Judge, Amravati. The first appeal was decided on 06.05.2022 and by the said order, the appeal was dismissed. Being aggrieved by the dismissal of the first appeal, the appellants have filed this second appeal. It needs to be stated, at this stage, that the appellants did not raise the issue of jurisdiction either before the trial Court or before the first appellate Court. Perusal of the issues framed by the trial Court as well as the points for determination framed by the first appellate Court would show that the issue/point of jurisdiction was not framed. The Courts below seem to have accepted the decision of the High Court in a Civil Revision

Application, as a final word on this issue.

6. The appellants, in this second appeal, made these two applications. The fate of the second application, by and large, hinges on the decision of the first application, one way or the other. In the amendment application, it is contended that the election of the committee was held on 25.03.2014 and after the result of the election, the change report was submitted. It was registered as Change Report No.775 of 2014. It was decided and accepted on 12.12.2022. It is further contended that second time the election was held on 24.03.2019. After the result of the election, the change report bearing No. 132 of 2019 was filed and accepted on 03.08.2023. It is the contention of the appellants that the acceptance of change reports by a competent authority under the Trusts Act would substantially dent the decision rendered by the Civil Court in a suit filed by the respondents. According to the appellants, the decision/order of acceptance of change reports by a competent authority by exercising the powers under the Act would operate as *res judicata inasmuch* as the respondents, though required to raise objections, failed

to raise any objection. It is further stated that, in view of the acceptance of the change reports, the decision rendered by the Civil Court would cease to exist. It is stated that for the purpose of deciding the issue of jurisdiction of the Civil Court the amendment sought for is necessary. The amendment is based on the change reports and therefore, the appellants should not be denied an opportunity to agitate this ground on the specious ground of delay. It is further stated that for the purpose of deciding the issue, sought to be pleaded by way of amendment, the production of the change report is necessary.

7. The respondents filed reply to both these applications. They opposed the applications. According to them, the issue of jurisdiction raised by the appellants has been finally decided and therefore, the said issue cannot be re-opened. It is further contended that neither in the suit nor in the first appeal, the issue of jurisdiction was raised and contested by the appellants. It is further contended that the so-called change reports have no nexus with the principal cause of action pleaded in the suit. The suit was based on an independent cause of

action after the decision of the Executive Committee to expel the respondents from the life membership of the Trust. It is contended that this amendment application has been made with a *mala fide* intention to delay the adjudication of second appeal. It is further contended that there has been concurrent finding of fact recorded by the Courts below. The decision on merits rendered by the Courts below is sought to be stalled by such untenable contentions to seek amendment to the written statement.

8. I have heard learned senior Advocate Mr R. L. Khapare for the appellants and learned senior Advocate Mr C. S. Kaptan for the respondents. Perused the record and proceedings.

9. In the facts and circumstances, the following points fall for my determination:

- (i) *Whether the amendment sought for, by the appellants, to the written statement is necessary to decide the question in controversy ?*
- (ii) *What order ?*

10. Learned senior Advocate Mr R. L. Khapare for the appellants made the following submissions:

- (i) The decision on the issue of jurisdiction, at the preliminary stage, would not debar the appellants from raising the same in the second appeal.
- (ii) The decision of the High Court confirming the order of the trial Court would be transitory in nature and therefore, the issue would not get finally decided by the said decision.
- (iii) The Assistant Charity Commissioner, in view of the Scheme of the Maharashtra Public Trusts Act, 1950 was the competent authority to decide the issue of change in the composition of the trustees and therefore, the decision in the form of acceptance of change reports would operate as a constructive *res judicata inasmuch* as the respondents failed to object for the change, which they ought to have objected.
- (iv) The issue of *res judicata* cannot be confined only to Section 11 of the CPC. It is pointed out that the issue/ point analogous to the issue of *res judicata* has to be considered and decided by the Court.

(v) The party has the right to make an amendment application even in the second appeal and if the Court is satisfied that the said amendment application satisfies the relevant parameters of the law then it can be granted and at the same time the consequential reliefs, the parties found entitled, need to be granted.

(vi) The orders accepting the change reports could not be agitated either before the trial Court or before the first appellate Court *inasmuch* as those orders came to be passed subsequent to the decision of both proceedings.

In order to seek support to his submission on the point of *res judicata* learned senior Advocate for the appellants has placed heavy reliance on following judgments:

i. In the case of ***Lonankutty .v/s. Thomman and another***, reported in, ***AIR 1976 SC 1645*** it is held that former suit shall mean a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

ii. In the case of ***Laxman Vithal Rewankar .v/s. Rajaram Pohurkar***, reported in, ***AIR 1979 Bombay 305*** it is held that *res judicata* is a general principle of law

applies though not covered under Section 11 of CPC therefore, decision of Competent Authority operates as a *res judicata* and bars the consideration of the question by the Civil Court in the suit.

iii. In the case of ***Gulabchand Parikh .v/s. State of Gujarat***, reported in, ***AIR 1965 SC 1153*** it is held that the general principle of *res judicata* has been applied to suits even though the decision on the same matter in controversy had been previously given by a Competent Court in proceedings which were not suits under CPC.

iv. In the case of ***Kerala Hindi Prachar Sabha .v/s. Joseph***, reported in, ***(2010) SCC Online Ker. 3054*** it is held that in a suit under Section 92 of the CPC concerning public charities, the publication under Order I Rule 8 of the CPC is required if the decision in the suit were to bind all other persons interested in the subject matter of the suit.

v. In the case of ***Raje Anandrao .v/s. Shamrao and ors.***, reported in, ***AIR 1961 SC 1206*** it is held that in a suit under section 92 of CPC, which is a representative suit

concerning public charities, the decision in such suit binds not only the parties to the suit but all those who are interested in the Trust.

vi. In the case of *Shyam Behari Lal .v/s. Lalla Prasad, reported in, 1970 (3) SCC 591* it is held that the plea of *res judicata* on general principle can be successfully taken in respect of judgments of Courts of exclusive jurisdiction.

vii. In the case of *Mrs. Jankibai Prahladrai Brijlal Seksaria .v/s. Kashinath Kelkar and ors., reported in, AIR 1972 Bombay 199* it is held that the combined effect of Sections 79 and 80 of the Maharashtra Public Trusts Act, 1950 is that if a particular question is under Section 79 to be decided by the authorities under the Trusts Act, the jurisdiction of a Civil Court to decide that question is expressly ousted by Section 80 of the Trusts Act.

viii. In the case of *Church of North India .v/s. Lavajibhai Ratanjibhai and ors., reported in, AIR 2005 SC 2544* it is held that jurisdiction of Civil Court under Section 9 of CPC stands ousted if the suit involves

questions within exclusive domain of the authorities under the Maharashtra Public Trusts Act, 1950.

ix. In the case of ***Ghaziabad Zilla Sahkari Bank Ltd. .v/s. Addl. Labour Commissioner and ors., reported in, AIR 2007 SC (Supp.) 425*** it is held that it is settled principle of interpretation of statutes that the special Act prevails over the general Act.

x. In the case of ***Rajesh Kumar Aggarwal and ors. .v/s. K. K. Modi and ors., reported in, (2006) 4 SCC 385*** it is held that Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to sub-serve the ends of justice and therefore, subsequent events can be brought on record under Order VI Rule 17 of the CPC.

As far as the right to apply for amendment and the scope while deciding such amendment application, he has relied upon following decisions:

i. In the case of ***Chanchalben Shah and ors. .v/s.***

Municipal Corporation of Greater Mumbai and another, reported in, 2002 (4) Mh.L.J. 382 it is held that amendment can be allowed even at the appellate stage if it is necessary for effective adjudication of the controversy.

ii. In the case of *Krishnarao .v/s. Jeevraj, reported in, 2010 (2) Mh.L.J. 31* it is held that merely because somebody pays a sum of money, he cannot become a member and cannot foist his membership on those who desire not to be associated with such person.

iii. In the case of *Bakshish Singh .v/s. Prithvi Pal Singh and ors., reported in, (1995) Supp. 3 SCC 577* it is held that amendment application is ought to have been allowed at the second appellate stage.

iv. In the case of *State Bank of Hyderabad .v/s. Town Municipal Council, reported in, (2007) 1 SCC 765* it is held that all amendments ought to be allowed if the same does not cause injustice to the other side and is necessary for the purpose of determining the real questions in controversy between the parties.

v. In the case of *Mahila Ramkali Devi and ors. .v/s. Nandram (dead) through LR's and oth., reported in, (2015) 13 SCC 132* it is held that amendment is to be allowed unless the party applying for amendment was acting *mala fide* or that by his blunder he had caused injury to the opponent which cannot be compensated by costs.

vi. In the case of *Vijay Agarwal and ors. .v/s. Hari Narayan Bajaj and ors., reported in, 2013 (4) Mh.L.J. 298* it is held that an amendment of written statement is subject to a more liberal dispensation than an amendment of a plaint as the question of prejudice would ordinarily be far less.

vii. In the case of *Wadi .v/s. Amilal and ors., reported in, (2015) 1 SCC 677* it is held that in order to decide an application under Order 41 Rule 27(1)(b) of CPC, the relevant consideration is as to whether the documents sought to be produced would throw light on germane issue and is necessary for pronouncing judgment.

viii. In the case of *Madhukar Agrulwar and anr. .v/s.*

Shriram Bhalavi and ors., reported in, 2010 (1) Mh.L.J. 775 it is held that change report filed on the basis of resolution passed in illegally convened meeting of the society is illegal and cannot be accepted.

11. Learned senior Advocate Mr C. S. Kaptan for the respondents made the following submissions:

(i) The amendment application is nothing but an attempt to protract the litigation by raising insignificant pleas and grounds.

(ii) The issue of jurisdiction was tried as a preliminary issue and it has attained finality by the decision rendered in Civil Revision Application No. 84 of 2015, decided on 15.03.2016, by this Court. The issue of jurisdiction was not agitated before the trial Court as well as before the first appellate Court.

(iii) The civil suit was filed on an independent cause of action before the Civil Court. The change report was neither submitted nor proposed in respect of the change, that occurred after the expulsion of the respondents from the life membership of the Trust by the Executive Committee of the Trust.

(iv) The issue of jurisdiction has been finally decided. While deciding the issue of jurisdiction, this Court by its decision dated 15.03.2016 has taken into consideration the relevant provisions of the Maharashtra Public Trusts Act and more particularly the provisions of Sections 51 and 80 of the Trusts Act.

(v) The respondents were not given a notice of the proceedings adopted for recording the change. The suit filed by them was based on principal cause of action to redress their grievance, for which no remedy was provided under the Maharashtra Public Trusts Act. The change reports were with regard to the change in composition of the Trust after the elections, first in 2014 and second in 2019. The application, made on the basis of the changed circumstances by citing the two change reports, is *mala fide*. The amendment sought for is not necessary to decide the question in controversy in the suit.

(vi) The principal and independent cause of action pleaded in the suit could not be remotely connected with the so-called change in the circumstances in the form of the orders passed by the Assistant Charity Commissioner accepting the change reports.

12. At the outset, it would be necessary to consider the issue of jurisdiction. It needs to be stated that in the written statement filed by the appellants in the suit, the jurisdiction of the Civil Court was challenged on the ground that the complete mechanism with regard to the change is provided under Section 22 of the Trusts Act and as per Sections 51 and 80 of the Trusts Act, the jurisdiction of the Civil Court was barred. The appellants, taking advantage of the then existing Section 9A of the CPC made an application before the Trial Court for framing the issue of jurisdiction and for trying the same as a preliminary issue. The issue of jurisdiction was tried as a preliminary issue. The trial Court held that, considering the facts pleaded in the plaint and the cause of action set out in the plaint the dispute would fall within the jurisdiction of the Civil Court. The challenge to this decision was made before the High Court. The High Court has recorded its agreement with the finding recorded by the trial Court. The High Court, on perusal of the facts stated in the plaint, observed that the suit was filed seeking redressal of their grievances for infringement of their individual or personal rights. They

did not make any grievance against the Trust or its Trustees. They did not claim any change in the name of the Trustees or Manager, which had occurred. The High Court further observed that dismemberment of the respondents from life membership would not be a change within the meaning of Section 22 of the Trusts Act. The grievance of the respondents was their individual and private grievance and not connected with the administration of Trust and its properties. The High Court categorically held that thus, the bar to jurisdiction of the Civil Court provided under Section 80 was not attracted. At the cost of repetition, it is necessary to state that the issue of jurisdiction was not raised either before the trial Court or before the first appellate Court. It appears that the parties and particularly the defendants, remained content with this decision of the High Court. They did not apply for framing of issue of jurisdiction and the opportunity to lead the evidence. Similarly, they did not raise said issue before the first appellate Court.

13. Learned senior Advocate submitted that the decision on this issue was transitory and that the same would not prevent the parties from re-agitating the

same before the trial Court as well as before the first appellate Court. Even if this submission is accepted as it is, the record would show that the appellants chose not to exercise their right. The evidence was not adduced and the Court was not called upon to decide the said issue again. In my view, for the purpose of addressing the issue at this stage, this observation would suffice the purpose. Any further observation/elaboration may come in the way of the parties while arguing the second appeal. However, the fact remains that the suit was filed on a principal cause of action, which arose on account of the expulsion of the respondents from the life membership of the Trust by the Executive Committee. It needs to be stated that no proceeding was adopted in terms of Section 22 of the Trusts Act for recording any change in the Trust. The cause of action pleaded in the suit by the respondents is separate, distinct and independent. The main thrust of the cause of action was their illegal expulsion from the life membership of the trust. According to me, it was not remotely concerned with the change reports and the subject of the change reports.

14. It is evident that the change report,

sought to be made a paramount weapon to nonsuit the plaintiffs, at this stage, has no direct nexus with the action of the expulsion of the respondents from the life membership of the Trust by the Executive Committee. The first change report, dated 12.12.2022, pertains to the composition of the Trust after the elections held on 25.03.2014. The second change report dated 03.08.2023 pertains to the change of the composition of the Trust pursuant to the election dated 24.03.2019. It is further apparent that the suit was based on a totally separate and independent cause of action. The subsequent events, with regard to the acceptance of the change report, have no direct nexus with the cause of action pleaded by the plaintiffs in the suit. At the most, it could be said that after the expulsion of the respondents, subsequent events occurred, particularly with regard to the change in the composition of the Trust pursuant to the elections. The cause of action on expulsion of respondents was separate, distinct and independent. The subsequent change in composition of trust, in view of the acceptance of change reports, was independent issue and cause of action and as such, it could not be said to be remotely connected with cause of

action in respondent's suit. The first election was held in the year 2014. The suit was filed in the year 2015. The plaintiffs did not plead any cause of action on the basis of the said election. It is evident that the respondents, as can be seen from the chronology of the events, were satisfied and remained content with the principal cause of action pleaded in the plaint. It needs to be stated that the said cause of action was taken cognizance of and appropriately adjudicated upon by the Civil Court. The decree came to be passed in their favour. The decree was confirmed by the appellate Court. In my view, the principal cause of action pleaded in the plaint, needs to be appreciated for the purpose of addressing the question, now sought to be raised in this amendment application.

15. I am conscious of the fact that the application seeking amendment to the pleadings can be made even at the stage of second appeal. The right of a party to apply for amendment in such a situation could not be the paramount question. The paramount question is as to whether the amendment sought for is necessary to decide the question in controversy. The question in

controversy pleaded in the plaint remained as it is throughout. The principal cause of action was founded on their primary grievance with regard to their expulsion from the life membership of the trust by the Executive Committee. The Courts below have recorded concurrent finding that the expulsion of the respondents was illegal. It was held that it was null and void and contrary to the principle of fairness and justice. The question that needs to be addressed is whether the amendment sought for would be necessary to decide that principal cause of action or the question in controversy. In my view, keeping in mind the above-stated factual aspects, on merits the amendment sought for would not be necessary to decide the question in controversy. The acceptance of the change reports could not be said to be directly or indirectly connected with the expulsion of the respondents from the membership of the Trust. As such, it could not be said to be a question in controversy in the suit filed by the respondents. It is pertinent to note, at this stage, that this plea now sought to be raised would be a futile exercise in view of the decision rendered by the High Court on the issue of jurisdiction. Whether the amendment is necessary to decide the question in

controversy is a question of fact. By any stretch of imagination it cannot be said to be a pure question of law. Therefore, it has to be addressed in totality of the disputed and undisputed facts. In my view, once it is held that the amendment sought for is not necessary to decide the question in controversy and the change sought to be asserted and placed on record has no direct nexus with the principal cause of action, the issue of *res-judicata* sought to be contended relying upon the above decisions becomes insignificant.

16. Certain facts having bearing with the conduct of the appellants need to be highlighted. The respondents were not party to the change report proceedings. The change was reported by the office-bearers of the Trust to the Assistant Charity Commissioner. During the pendency of the suit and appeal, the change report proceeding was very much pending. The respondents were not called upon by the Assistant Charity Commissioner to have their say in the matter. This fact would indicate that the Assistant Charity Commissioner did not find the presence and participation of the respondents necessary in those

proceedings. It is further pertinent to mention that even if the decision on a change report was awaited before the Assistant Charity Commissioner, no amendment was sought for in the written statement by the appellants to bring on record the said facts. This application has been made on the basis of the so-called change reports. It has to be appreciated, keeping in mind the above-stated facts. The amendment application if found by the Court to have been made just for the sake of application and for the purpose of delay the same has to be nipped in the bud. It is seen that in the totality of the facts this seems to be *mala fide* attempt on the part of the appellants to stall the further proceedings of the appeal. It needs to be stated that the expulsion of the respondents from the life membership of the Trust has been held to be null and void by the Civil Court. The decision of the Civil Court has been confirmed by the first Appellate Court. It therefore goes without saying that the Courts below have recorded a concurrent finding of fact in favour of the respondents and against the appellants. While deciding the amendment application in such a matter, the Court is required to take great care. The Court has to be vigilant. If the Court finds a semblance of material to indicate that

it is nothing but an attempt to stall further progress of the litigation, the application for amendment shall not be granted. In this case, it is evident that the amendment sought for is not at all necessary to decide the question in controversy. The suit was based on separate, distinct and independent cause of action. The change reports, in the factual background, would have no nexus or relevance with the cause of action pleaded in the main suit.

17. I am in full agreement with the submissions advanced by the learned senior Advocate Mr R. L. Khapare that the plea of *res judicata*, which is not directly covered by Section 11 of the CPC, could be entertained on the specious plea of principle analogous to the *res judicata*. Similarly, I am in full agreement with the learned senior Advocate that even at the stage of second appeal, the amendment application can be entertained and granted. However, for the reasons recorded above, I am not inclined to accept the submissions made on merits of the facts. As such, the judgments relied upon as mentioned above would be of no help to the case of the appellants.

18. In view of the above, I conclude that no case has been made out to grant the application for the amendment similarly there is no need to grant permission for production of the change report. As such, both applications are rejected and disposed of, accordingly.

19. Both civil applications stand **disposed of**, accordingly.

(G. A. SANAP, J.)

Namrata