



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

CIVIL REVISION APPLICATION NO. 96 OF 2024

Municipal Council, Wardha, Through its Chief Officer, Wardha, Tq. & Dist. Wardha	}	... Applicant
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Versus

Sarvodaya Goshala Charitable Trust, Amboda – Through its Secretary - Shri Manoj S/o Vasantryao Panchbhai Aged about 41 years, Occ.: Cultivator, R/o. Near Bhagatsingh Putala, Ramnagar, Wardha, Tq. & Dist. Wardha	}	... Non-applicant
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Mr. Mahesh Ishwarrao Dhattrak, Advocate for applicant.

Mr. M.P. Khajanchi, Advocate for non-applicant.

CORAM	:	VRUSHALI V. JOSHI, J.
RESERVED ON	:	11.07.2025.
PRONOUNCED ON	:	22.07.2025.

JUDGMENT:

Heard.

2. **Rule.** Rule made returnable forthwith. The Civil Revision Application is heard finally with the consent of the learned counsel appearing for the parties.

3. The learned counsel appearing for the applicant is challenging the order dated 05.07.2024 passed by the learned Civil

Judge Senior Division, Wardha, below Exhibit 36 whereby the application filed by the applicant for rejection of plaint under Order VII, Rule 11 of the Code of Civil Procedure, is rejected. The facts in brief are as under :

4. That the applicant is the Municipal Council constituted and governed by the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The non-applicant is the registered Charitable Public Trust as per the provisions of the Bombay Public Trusts Act, 1950 (hereinafter referred to as “Act of 1950”).

5. The learned counsel for non-applicant filed a suit for declaration and recovery of amount of Rs.37,93,800/- along with interest against the applicant @ 18% per annum with a declaration that the act of non-applicant to transfer the ownership of unclaimed cattle in favour of applicant will not discharge their liability to payment enhanced for the previous period till transfer of ownership.

6. The applicant herein has filed the application under Order VII, Rule 11 of the Code of Civil Procedure, on two grounds that :

- (i) the suit cannot be filed against the Municipal Council for its bonafide action as there is a bar under Section 302 of the Act of 1965 and
- (ii) also on the ground that the non-applicant/Trust has filed the suit without seeking permission or consent of the Charity Commissioner in terms of provisions of Section 50 and 51 of the Act of 1950.

7. The non-applicant has opposed the application stating that the permission of the Charity Commissioner is not required, if the relief is in favour of the Trust and filed for the protection of the property of the Trust and prayed to reject the application.

8. Learned counsel for the applicant has stated that the suit is barred for want of permission of the learned Charity Commissioner before filing the suit by the Trust, which is mandatory provision, it was barred by law, therefore, it comes under Order VII, Rule 11 (d) of the Code of Civil of the Procedure. The suit stands covered under Section 50 of the Act of 1950 and the prior permission of the Charity Commissioner before institution of the suit is required. As the permission is not obtained, prayed to set aside the order passed by the trial Court, rejecting the application. Learned counsel for the applicant

has stated that he is not pressing the ground bar under Section 302 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

9. Heard both the learned counsel for the respective parties.

10. Learned counsel for the applicant by placing the reliance on Clause (iv) of Section 50 stated that the suit would be covered by the provision, on perusal of the prayer clause of the plaint, which is filed by the non-applicant. It appears that it is filed for declaration, thereby declaring that the act of defendant to transfer the ownership of unclaimed cattle in favour of plaintiff will not discharge their liability to pay the maintenance for the previous period i.e. till the transfer of ownership and also prayed for recovery of Rs.37,93,800/- along with interest @ 18% per annum.

11. After going through the provision of Clause (iv) of Section 50, it is seen that the suit for declaration or injunction in favour of or against the public trust or trustee or trustees or beneficiary thereof would be covered by Clause (iv) of Section 50 of the Act of 1950. However, merely because the relief in the suit is for declaration or injunction, that *per se* would not attract the requirement of obtaining

prior permission within the meaning of this Section. The provisions are mentioned under Section 50 for obtaining the prior permission of the Charity Commissioner to institute the suit which are specified in Clauses (a) to (q).

12. In the present case, the applicant has relied on the provision of Section 50 of the Bombay Public Trust Act, Clause (iv), Sub-Clause (f), (g) and (q), which reads are as under :

(f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default ;

(g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust ;

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief or is necessary in the interest of the trust ;

13. The prayer Clause (a) in the Civil Suit does not come under the purview of Sub-Clause (f) of Clause (iv) of Section 50 of the Act of 1950. Sub-Clause (g) : - a declaration as to what proportion to the trust property or of their interest therein shall be allocated to the particular object of the trust.

14. Herein the Trust has filed the civil suit praying for recovery of maintenance amount of cattles which the defendants has transferred the ownership of unclaimed cattles, it does not come under Sub-Clause (g).

15. The applicant has relied on Clause (q) of Section 50, this Court in **2002 SCC Online Bombay 274** has observed that :

“Clause (q) cannot be read in isolation. Plain reading of that provision indicates that the Civil Court could grant any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the relief (s) in Clauses (a) to (p). This provision is, therefore, to be invoked only for granting other relief in and of any of the reliefs specified in Clauses (a) to (p) to meet the ends of justice. However, the same cannot be interpreted to mean as a residuary Clause to cover any other suits in which the substantive and the main relief is not covered by any of the Clauses in (a) to (p) referred to above. Understood thus, Clause (q) of Section 50 will have no application to the present case. In other words, it is seen that the reliefs claimed in the present suit are not covered by any of the Clauses (a) to (q) of Section 50. A priori, the requirement of obtaining prior sanction of the Charity Commissioner will have no application to the present case.”

16. The applicant has relied on the judgment of this Court in

Second Appeal No.208/2022 wherein this Court has observed that :

“17. As far as maintainability of the suit in the absence of permission of Charity Commissioner under Section 51 of the Act, it is trite that when a suit is filed for protecting the property of the Trust and for its benefit, the question of absence of such permission becomes secondary. Therefore, even the submission of the learned Advocate Mr. Shinde that in the absence of such permission the suit was not maintainable, is not legally sustainable.”

17. The trial Court has also relied on this judgment and rejected the application. The trial Court is right in rejecting the application that the present case does not warrant taking prior sanction of the Charity Commissioner in writing as contended by the petitioner. Since the other ground which is not pressed by the applicant under Section 302 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. No case is made out in favour of applicant. Hence, I pass the following order :

- (i) The civil revision application stands dismissed.
- (ii) If any interim order is granted, it stands vacated forthwith.

[VRUSHALI V. JOSHI, J.]

Prity