

(2003) 07 BOM CK 0140

Bombay High Court

Case No: Writ Petition No. 2259 of 2003

Shri Arjun Dada
Gadage

APPELLANT

Vs

Mallappa Gurappa
Chougule and
Subhashchandra Bhau
Shahpure, Secretary,
Shedshal Shikshan
Prasarak Mandal

RESPONDENT

Date of Decision: July 23, 2003

Acts Referred:

- Bombay Public Trusts Act, 1950 - Section 51
- Civil Procedure Code, 1908 (CPC) - Section 9A

Citation: AIR 2003 Bom 441 : (2003) 4 ALLMR 39 : (2004) 1 BomCR 741 : (2003) 4 MhLj 256

Hon'ble Judges: A.M. Khanwilkar, J

Bench: Single Bench

Advocate: V.B. Rajure, for the Appellant; S.G. Deshmukh, for the Respondent

Final Decision: Allowed

Judgement

A.M. Khanwilkar, J.
Heard.

2. Rule. Rule made returnable forthwith, by consent.

3. As short question is involved, the matter is taken for final hearing forthwith, by consent.

4. Respondent No. 1 has died long back during the pendency of the proceedings before the lower Court. In this view of the matter, Counsel for the Petitioner orally prays for permission to delete Respondent No. 1. As per oral request, Petitioner is allowed to delete Respondent No. 1 at his risk. Amendment be carried out forthwith.

5. This Petition takes exception to the Judgment and Order passed by the Civil Judge, Junior Division, Kurundwad dated October 8, 2001 below Exhibit 45 in R.C.S. No. 66 of 1985. The Respondent along with the deleted Respondent No. 1 has filed suit for permanent injunction and declaration before the Civil Judge, Junior Division, being regular Suit No. 66 of 1985. In the said suit, application for interim relief (Exhibit 5) was filed, which was, however, rejected. The matter was carried in appeal by the Respondents, which appeal was also dismissed by the District Court on July 8, 1986. While considering that appeal, the District Court has dealt with the contention raised on behalf of the Petitioner that the Suit as presented by the Respondents was barred, as the Respondents had not obtained consent of the Charity Commissioner as required by Section 51 of the Bombay Public Trust Act. The District Court has, prima facie, accepted that contention raised on behalf of the Petitioner. Since the District Court was inclined to accept that contention, the appropriate course was to direct the Trial Court to decide the issue of jurisdiction in the first instance before passing any final order on the interim relief application, as filed by the Respondent. Be that as it may, the District Court rejected the appeal filed by the Respondents.

6. Later on, Respondents filed application for amendment of plaint on the ground that in view of the subsequent events, the amendment had become necessary. That Application was marked as Exhibit 45. The same has been allowed by the Trial Court by the impugned Judgment and Order dated October 8, 2001. Once again objection regarding jurisdiction to try the suit as presented was raised on behalf of the Petitioner. In fact the Petitioner has filed a formal application to decide the issue of jurisdiction but it is stated that the same is pending even now.

7. In this backdrop, the Petitioner contends that the Trial Court could not have proceeded to decide any other issue including the relief of amendment of the Plaint, unless the issue of jurisdiction was decided by the Trial Court in the first instance, having regard to the mandate of Section 9A of the Code of Civil Procedure, as application to the State of Maharashtra. Learned Counsel for the Petitioner has also criticised the impugned judgment and order on merits for allowing the amendment as prayed. Whereas, Counsel for the Respondent contends that the issue of jurisdiction is required to be considered at the first instance in terms of Section 9A of the Code of Civil Procedure, only if the Court was considering the application for interim relief and not otherwise much less while considering the application for amendment as filed by the Respondents Exhibit 45.

8. Having considered the rival submissions, I find no substance in the stand taken by the Respondents. Whereas, Section 9A of the Code of Civil Procedure, as applicable to the State of Maharashtra, clearly mandates the Court to decide the issue of jurisdiction in the first instance- "at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any Suit." The legislative intent and the purpose as well as the purport of the said provision has already been enunciated by the Division Bench of this Court in the case of [Meher Singh Vs. Deepak Sawhny and Another](#), . (Also see

9. In the first place, the trial Court was obliged to decide the issue of jurisdiction to try and entertain the suit as presented, before finally deciding the interim relief application (Exhibit 5), without which it could not have assumed jurisdiction unto itself to decide any other issue.

10. Be that as it may, having regard to the stated avowed purpose for introduction of Section 9A of the Code of Civil Procedure, it necessarily follows that the court is obliged to decide the issue of jurisdiction not only while considering the prayer for interim relief but also while considering any other incidental prayer(s) made during the pendency of such a suit. Only such liberal construction of the provision would subserve and further the legislative intent and the purpose of enactment. Even the plain language of this provision would reinforce this position. No doubt it mentions application for granting or setting aside an order granting any interim relief, but that does not mean that the said provision would come into play only while considering application for interim relief, as is contended. Inasmuch as, the language of this Section would suggest that it includes provision and includes "any application" for interim relief "or otherwise". To put it differently, the essence of the provision is that the issue of jurisdiction should not only be decided at the interlocutory stage but at the threshold, before the Court proceeds with the matter on any other issue; for if it has no jurisdiction to try and entertain the suit as presented, then obviously it should not dwell upon any other matter at all. The only exception is provided by Sub-section (2)- to grant ad-interim relief, pending determination of the preliminary issue of jurisdiction. A priori, the Court is obliged to decide the question of jurisdiction of the Court at the interlocutory stage itself to avoid hearing of any other issue or relief on merits.

11. As observed earlier, the District Court while considering the appeal filed by the Respondents against the order passed by the Trial Court refusing to grant interim relief, having prima facie observed that the Suit as presented is barred by jurisdiction, ought to have relegated the parties to the Trial Court to first resolve that issue. In the circumstances, the impugned order deserves to be set-aside and the subject application will have to be restored to the file of the Trial Court to consider it afresh only if the Court were to answer the issue of jurisdiction to try and entertain the suit as presented in the affirmative.

12. Accordingly, this Petition succeeds in the above terms. The Trial Court to decide the said proceedings as expeditiously as possible, preferably within three months from the receipt of writ of this Court.

13. All concerned to act on the ordinary copy of this order, duly authenticated by the Personal Secretary.