


MHKO140006932022 	<u>Regular Civil Suit NO.159/2022</u> Sharada Shikshan Prasarak Mandal, Yashwantnagar, Chandgad through Bharamu Subrao Patil V/s. Janaba Bhavaku Patil
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COMMON ORDER BELOW EXHIBIT 01 & 15

[Passed on: 16/03/2024]

1. The present suit is filed by Sharda Shikshan Prasarak Mandal, Yashvant Nagar, Chandgad through its president (hereinafter it is referred to as 'the plaintiff trust') and thereby prayed to restrain the defendant -
 - i) From referring himself as Secretary of the plaintiff Trust,
 - ii) From doing any activities as Secretary of the Trust,
 - iii) From using records, letterhead and seal of the plaintiff Trust.
2. So, considering the nature of suit and relief claimed, my learned predecessor passed order below exhibit-1, dated 21.10.2022 and thereby plaintiffs were directed to satisfy the Court, as to whether the suit is maintainable without compliance of section 50 and 51 of the Maharashtra Public Trust Act,1950 (hereinafter it is referred to as 'Public Trust Act'). Both parties were given an opportunity of hearing. I have perused record.
3. At the same time the defendant has filed application below **Exhibit 15** for rejection of plaint on the same ground. So, ultimately issue of jurisdiction is there for consideration. Considering aforesaid fact, it would be proper and necessary to pass common order below Exhibit 1 and 15. Heard the arguments of learned advocates for both side at length.

Contentions of the defendant(At exhibit-15):

4. The defendant submitted that, the plaintiff Trust is a Registered Trust as per provision of Public Trust Act. Its registration number is F-2278. It has its own Constitution and it works as per the provisions mentioned in the said Constitution. This suit is filed by public trust through its trustee or officials. The plaintiff has prayed for perpetual injunction against the defendant on the ground that, the defendant has no concern with the plaintiff Trust.
5. It is submitted that, the Plaintiff Trust is registered Trust and the provision of Public Trust Act is applicable to the said Trust. Therefore, the Civil Court has no jurisdiction to decide any dispute regarding administration of Trust. Jurisdiction lies with the Charity Commissioner or Tribunal. The present suit is filed without compliance of mandatory requirements provided under Section 50 and 51 of the Public Trust Act. Hence, the present suit is not tenable and plaint is liable to be rejected in view of Order 7 Rule 11 the Code of Civil Procedure (hereinafter it is referred to as 'the CPC').

Written say/reply of plaintiff:

6. The plaintiff has filed written say and opposed the application. It is submitted that defendant has not specifically mentioned as to under which clause the plaint is liable to be rejected. The contents of the application are false and application is not tenable. The change report bearing no.742/2006, dated 29/05/2018 filed by defendants before Asst. Charity Commissioner, Kolhapur is rejected. The defendant has preferred appeal bearing no.75/2018 against the said order. However, said appeal is also rejected. The defendant has not challenge the said order. Hence, the order of Charity Commissioner is binding on the defendant. Moreover, the membership of defendant is cancelled by resolution no.4 passed in the meeting of Trust dated 11/10/2010. The suit is filed by Vice President and Secretary of the Trust. They have every right to claim the relief of injunction. The membership of

defendant is cancelled as per procedure. Therefore, he is stranger to the plaintiff Trust and has no right to interfere in the business of the Trust. He is interfering in the daily business of the Trust. Hence, plaintiff has filed present suit for perpetual injunction. The suit is filed against stranger and therefore provisions for section 50 and 51 of the Public Trust Act is not applicable. Previous sanction of the Charity Commissioner is not necessary to file the suit for injunction. The objection raised by the defendant is false and application below Exhibit 15 is liable to be rejected.

Issues/points for determination:

7. Perused the record. Heard Shri P. Y. Chitnis, the learned advocate for plaintiff and Shri A. T. Badkar, learned advocate for defendant. Following are the points for determination along with my finding and reasons thereon-

Sr. No.	POINTS	FINDINGS
1	Whether Civil Court has Jurisdiction to try and entertain the present suit?	No
2	Whether plaint is liable to be rejected?	Yes
3	What order?	As per final order

REASONS

As to Point no. 1 and 2

Material Points raised by learned advocates during the arguments:

8. The learned Advocate Shri A. T. Badkar for defendants argued that, this suit is filed by the public trust registered under the provision of Public Trust Act. He further argued that, while deciding an application for rejection of plaint the only averments of the plaint has to be considered and not the written statement or documents. He referred

the contentions of plaintiff and argued that, the plaintiffs in plaintiff para-2 admitted that defendant was President of the said Trust and change report in respect his removal from the Trust is pending before The Hon'ble Asst. Charity Commissioner. He further argued that the matter in dispute is in respect of administration of the Trust. The suit is filed by Trust against the Trustee. He further argued that, the relief claimed in the present matter shows that it is in respect of management and administration of the Public Trust. The learned advocate for defendant referred say filed by plaintiff and contention of plaintiff in para-2, 5 and 16 and he argued that the plaintiff has made contrary contention. At one place plaintiff contended that the defendant is stranger and on the contrary plaintiff pleaded that the change report is pending. He further argued that, if the relief claimed and pleading is considered then it is clear that the suit is expressly barred under the provision of section 50 and 80 of the Public Trust Act. The learned advocate referred Order 7 Rule 11(d) of the Code of Civil Procedure and argued that the plaintiff is liable to be rejected as plaintiff has not complied the mandatory requirements enumerated under the provision of section 50 and 51. He argued that, the action of plaintiff is not approved by the Hon'ble Asst. Charity Commissioner and therefore it cannot be said that the defendant is stranger to the Plaintiff Trust. He argued that, in this suit the right is invoked by the Trust against its Trustee in respect of management of the said Trust. Therefore, the Civil Court has no jurisdiction to decide the issue which can be decided by the Tribunal. The learned advocate referred section 22, 50, 51 and 80 of the Public Trust Act and argued that the Charity Commissioner has power to conduct the inquiry and also has power to grant injunction. The learned advocate for defendant referred section 41(e) of the Act and argued that there is provision for grant of injunction. He argued that, the purpose of aforesaid provision is to prevent false and malafide suit.

Thus, the learned advocate for defendant prayed to reject the plaint in view of Order VII Rule 11 of the CPC.

9. On the other side, **the learned advocate Shri. P. Y. Chitnis for plaintiffs** argued that, while deciding application for rejection of plaint the contents of plaint are to be considered but it is to be read in its entirety. He argued that, the present suit is filed for the relief of injunction and plaintiff has not suppressed any facts. They have specifically pleaded about the conduct of defendant and pleaded about the incidents. He further argued that the membership of the defendant is already cancelled and change report is accepted by the Hon'ble Asst. Charity Commissioner. Now, the defendant has no concern and nexus with the plaintiff Trust. Therefore, he is stranger to the Trust and suit for injunction is maintainable against the stranger. He further argued that, the defendant has no right to interfere with the administration of the Public Trust and hence it is necessary to restrain him from causing interference. He further argued that, section 50 and 51 of the Public Trust Act are not applicable in the present case. Therefore, the plaint is not liable to be rejected at this stage. Accordingly he prayed to reject the application.

10. **The learned advocate for defendant relied on following authorities:**

i) Social and Cultural Association and another V/s. State of Maharashtra, (2014(4) Bom.C.R.284)

I have gone through the aforesaid authority. *In this case, the suit was filed for declaration that the resolution dated 16th July 2012 whereby the membership the plaintiffs no.1 to 13 was cancelled, be declared as illegal. The defendants have filed an application for rejection of plaint under order 7 rule 11. The Trial Court held that even in the absence of the sanction of The Charity Commissioner u/s 50 of the Trust Act, the suit is maintainable. The Hon'ble Bombay High Court*

held that, the right to membership cannot be said to be divorced from being member of the Trust. The right emanates a basically from being member of the trust. If the right is to be enforced against the trust then the consent of the Charity Commissioner is necessary under section 50 of the Public Trust Act.

ii) Church of North India V/s. Lavajibhai Ratanjibhai, (2005 AIR Supreme Court, 2544).

In this case the Hon'ble Supreme Court held that a plea of bar to jurisdiction of a Civil Court must be considered having regard to the contentions raised in the plaint. The the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The Court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed de hors the factual averments made in the plaint. The rules of pleadings postulate that the plaint must content material fact. When the plaint read as a whole does not disclose material facts giving rise to the cause of action which can be entertained by the Civil Court, it may be rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure.

iii) Gaud Saraswat Brahmin Temple Trust others V/s. Vasudeo P. Shetye @ Kamlesh P. Shetye and others (2010 {3} Bombay C.R. 499).

In this case the defendant had challenged the jurisdiction of the Court under section 50 and 51 of the Public Trust Act as suit was filed for declaration that the resolution passed by trust is illegal. The Hon'ble High Court held that an exclusion of the jurisdiction of the Civil Court is not to be readily inferred. While determining the jurisdiction of the Civil Court it is necessary to look into the averments and the reliefs prayed in the plaint in its entirety. It is also held that, the plaintiff being the managing trustee falls in the definition under section 2(10) of the Act. Assistant Commissioner is empowered to conduct an inquiry

u/sec.22 before passing any order of the change and while conducting the inquiry the Charity Commissioner has to issue notice to the plaintiff being a necessary party and will have to decided the issue of legality of removal of the plaintiff and the resolution. The Public Trust Act itself is a complete code and under the said Act, Deputy Charity Commissioner, Charity Commissioner enjoy the procedural powers available under the Code of Civil Procedure at the time of inquiry including taking statement, recording evidence etc.

iv) Vijay Raghuram Shetye V/s. Baun Foundation Trust and others. (2012 {2} All M.R. 482) *The Hon'ble Bombay High Court held that there can be no dual opinion about the proposition that the change takes place once the resolution is adopted. Whether the defendant ceases to be a Trustee of the Trust is to be determined by the Civil Court after taking in to consideration of various aspect and the questions of fact on the basis of the interpretation of the provision of Public Trust Act. In the present matter, admittedly the suit is filed by the Public Trust and issue involved is that, whether the suit is tenable in view of section 50, 51 and 80 of the Act. Hence with utmost respect I am of the view that, the facts and circumstances in present case are different and aforesaid authority is not applicable in favour of defendant.*

v) H. C. Patel (Prof.) and others. V/s. Kaushik Desai and another (2006 {1} Bombay C.R.162).

The Hon'ble Bombay High Court held that once a person is holding an office of Trust then any method of which his removal is sought would be hit by sec.50 of the Public Trust Act and suit is not maintainable and without jurisdiction in the absence of permission obtained by plaintiff from the Charity Commissioner as per sec.51.

vi) Chebur Trombay education society and others V/s. D. K. Marathe and others. (2002 {3} Bombay C.R.161)

The Hon'ble High Court held that the change about resolution

reported to the appropriate authority under section 22 of the Public Trust Act, will be effected from the date of resolution and not from its approval. Section 22 does not provide that the change will take effect only after approval of the authority. It only provides that the change is to be notified to the authority within 3 months. Section 22 requires that where any change occurs in any of the entries recorded in the register kept u/sec.17, the Trustee shall within 90 days from the date of the occurrence of such change, report such change to the Deputy Assistant Charity Commissioner as the case may be. In aforesaid case the change which was reported to the authority was about the deleting the provisions which ordained that Shri Marathe shall remain life president of the society. And the Governing Council members shall be filled by election only and the terms of their office would be upto a period of three years from the date of assuming office. Thereafter the election was held and president was elected. In this case the Hon'ble High Court ordered the trial court to first frame issue of jurisdiction and decide the same in accordance with the procedure established by section 9-A of the Code of Civil Procedure. Considering this fact, with utmost respect I am of the view that, aforesaid authority is not applicable in favour of the defendant.

11. The learned advocate for plaintiff relied on following authorities:

i) *Adi Burjor Banaji & Ors. V/s. Bakhtawar Mneksha Jijina (2022(5) ALL MR 81)*

In this case the subject matter was immovable property owned by the Trust and defendant was claiming interest/title in the trust property. The Hon'ble Bombay High Court held that the suit by Trustee against the person who are strangers to Trust and who setup title adverse to Trust are not cover by Sec.50 of the Public Trust Act.

ii) *Yamunabai Dhankude & Ors. V/s. Rao Saheb Mohanlal Chimanlal Maniyar (2012 {2} Bombay C.R.203).*

In this case the pliant was rejected by the trial Court on the ground that it was filed without approval from Charity commissioner. The suit was filed in the Civil Court and not in the Court as define u/sec.2(4) of the Public Trust Act. Suit was for injunction against apprehended obstruction to the Trust property. The Hon'ble Bombay High Court held that the suit is outside purview of Public Trust Act.

iii) Bhau Ram V/s. Janak Singh & Ors. (2012 Supreme Court 3023).

The Hon'ble Supreme Court held that rejection of plaint under Order 7 Rule 11 has to be on the basis of averments made in the plaint. Pleas taken in written statement are totally irrelevant.

iv) Shri. Bishvanath Banik V/s. Sulanga Bose. (Civil appeal no.1848 of 2022).

In this case the plaint was rejected on the ground that the suit is barred by limitation and suit for a declaration simplicitor under section 53-A of the Transfer of Property Act would not be maintainable against the actual owner. The Hon'ble Supreme Court held that the issue whether the suit can be said to be barred by limitation or not, at this stage what is required to be considered is the averments in the plaint. For the said purpose the Court has to consider and read the averments in the plaint as a whole. Rejection of plaint under Order 7 Rule 11-D by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible.

v) K. Akbar ali V/s. K. Umar Khan & Ors. (Special leave petition Civil no.31844 of 2018).

The Hon'ble Supreme Court held that it is well settle that while considering an application under Order 7 Rule 11 of the C.P.C., the question before the Court is whether the plaint discloses any cause of action and whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering the application for rejection of plaint the Court is not to look in to the

strength or weakness of the case of the plaintiff or the defense raised by the defendant.

vi) **Sejal Glass Ltd. V/s. Navilan Merchants Pvt. Ltd. (Special leave petition no.5862/2017).**

The Hon'ble Supreme Court held that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order 7 Rule 11 in all such cases if the plaint survives against certain defendants or properties, order 7 Rule 11 will have no application at all and the suit as a whole must then proceed to trial.

vii) **Govind Krushna Abhyankar V/s. Kamlakar Vishnu Ganpule (1979 {2} G.L.R. 517)**

The Hon'ble Gujrat High Court held that, any of the three conditions contained in clauses (i), (ii), and (iii) must be present in the first instance to attract the provisions of the section. Accordingly the Hon'ble High Court held that, the case is not covered by clause 3 of section 50.

viii) **Ghat Talab Kaulan Wala V/s. Baba Gopal Dass Chela Surti Dass (Dead) by Lrs. Ram Niwas.** (Civil Appeal no. 724 of 2020, arising out of SLP (Civil) no. 35520 of 2016)

In this case the suit was filed by trust/ Mandir Management against Sewadar to vacate the management of Mandir. In this case the Hon'ble Supreme Court held that sec.92 of the Code contemplates a suit against a Trust either for removing any Trustee, appointing new Trustee, vesting any property in a Trustee etc. But the present suit itself is by a Trust against Sevadar. Therefore the procedure prescribed u/sec.92 of the Code would not be applicable in a suit by Trust.

ix) **Charu K. Mehta V/s. Lilavati Kirtilal Mehta Medical Trust and others. (2013{3} All, M.R.206).**

The Hon'ble Bombay High Court held that, section 80 of the

Public Trust Act, contains an express bar to the Jurisdiction of a Civil Court, but that is subject to satisfaction of dual conditions. The existence of those conditions must be strictly established before an ouster of jurisdiction can result. The correct test in law to apply is whether the controversy which is sought to be raised before the civil court requires an adjudication of a matter or question which has to be decided or dealt with by an officer or authority under the Act while exercising his power under the Act and whether such a decision is made final or conclusive. In determining this issue, the Court has to consider the substance and not merely the form in which the claim before the civil court is made and the underlying object of seeking the real relief. The Hon'ble High Court held that, section 50 applies to a suit of a specified nature in any case which attracts the provisions of clauses (i) to (iv) thereof. Section 50 requires the consent of the Charity Commissioner to institute a suit for the reliefs of a specified nature.

x) Madhav Prasad Agrawal & Ors. V/s. Axis Bank Ltd. & Ors. (Special Leave Petition (C) no.31579 of 2018).

The Hon'ble Supreme Court held that if the plaint survives against certain defendants and properties, then order 7 rule 11(d) of CPC will have no application at all, and the suit as whole must then proceed to trial. The Hon'ble Supreme Court also held that, the plaint can and must be rejected in exercise of power under Order 7 Rule 11(d) of the C.P.C., on account of non-compliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of plaint ascribable under Order 7 Rule 11(a to f) of CPC.

12. So, on perusal of the rival contentions of both side, at this stage, the material question for consideration are that, **whether this Court has jurisdiction to try and entertain the present suit?**

Whether the suit is maintainable without obtaining consent of the competent authority as contemplated under section 51 of the Public Trust Act?.

13. I have also gone through the relevant provisions of the **Public Trust Act.** and for ready reference, I have reproduced relevant portions of those provisions as under -

“50. Suit by or against or relating to public trusts or trustees or others-

In any case-

(i).....

(ii)

(iii)

iv) suit for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub clauses (i) to (iii), or one or more such persons, in case the suit is under sub clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51, may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject matter of of the trust is situate, to obtain a decree for any of the following reliefs :

(a).....To (o).....

(p) declaring or denying any right in favour of or against, a public trust or trustee or trustees or beneficiary thereof and issuing Injunctions in appropriate cases; or

(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 necessary in the interest of the trust.

Section 51 provides that,

(1) if the persons having interest in any public trust intend to file as suit of the anture specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing the parties and making such inquiries, if any, as he thinks fit is satisfied that there is a prima facie case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit.

(2) if the charity commissioner refuses his consent to the institution of the suit under

sub section (1) the persons applying for such consent may file an appeal to the Marashtra Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1957.

(3) in every suit filed by person having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.

Section 80 of the Reads as under-

14. **Bar of jurisdiction** : *Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive.*

Section 22 reproduced as under:

15. 22. *Change.—(1) Where any change occurs in any of the entries recorded in the register kept under Section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.*

(1A) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall, along with the report, furnish a memorandum in the prescribed form containing the particulars including the name and description of the public trust, relating to any change in the immovable property of such public trust, for forwarding it to the Sub-Registrar referred to in sub-section (7) of Section 18. Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf.

(2) For the purpose of verifying the correctness of the entries in the register kept under Section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner:

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under sub-section (1) and holding an inquiry, if necessary under sub-section (2), or merely after holding an inquiry under the said sub-section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under Section 17 in regard to a particular public trust, or that the trust should

be removed from the register by reason of the change, resulting in both the office of the administration of the trust and the whole of the trust property ceasing to be situated in the State, he shall record a finding with the reasons therefor to that effect; and if he is not so satisfied, he shall record a finding with reasons therefor accordingly. Any such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend or delete the entries in the said register in accordance with the finding which requires an amendment or deletion of entries and if appeals or applications were made against such finding, in accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made subject to any further amendment on occurrence of a change or any cancellation of entries, shall be final and conclusive.

(3A) The Deputy or Assistant Charity Commissioner may, after such detailed and impartial inquiry and following such procedure as may be prescribed, deregister the trust on the following grounds :— (a) when its purpose is completely fulfilled; or (b) when its purpose becomes unlawful; or (c) when the fulfillment of its purpose becomes impossible by destruction of the trust- property or otherwise; or (d) when the trust, being revocable, is expressly revoked; or (e) when the trustees are found not doing any act for fulfilling object of the trust: Provided that, no trust shall be de-registered under Clause (e) unless its trustees have committed default in reporting the change under sub-section (1), in submission of the audited accounts as prescribed by sub-section (2) of Section 33 or sub-section (1A) of Section 34 or in making any other compliance prescribed by or under this Act for a period of five years from the last date of reporting the change, submission of the accounts or making the compliance, as prescribed by or under this Act or the rules made thereunder, as the case may be.

(3B) The Deputy or Assistant Charity Commissioner may take over the management of properties of the trust de-registered under sub-section (3A) and pass such necessary orders for the same as he deems fit and may, if he considers it expedient, dispose them of by sale or otherwise and deposit the sale proceeds in the Public Trusts Administration Fund established under Section 57.

(4) Whenever an entry is amended or the trust is removed from the register under sub-section (3), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the memorandum furnished to him under subsection (1A), after certifying the amended entry [or the removal of the trust from the register to the Sub-Registrar referred to in sub-section (7) of Section 18, for the purpose of

filing in Book No. 1 under Section 89 of the Indian Registration Act, 1908 (XVI of 1908) in its application to the State of Maharashtra.

16. I have read the aforesaid authorities of the Hon'ble Supreme Court and the Hon'ble High Court. The facts of the present matter and case cited above, are different but, it is settled position of law as laid down in the authorities relied on by the defendant is that, if the suit is instituted in respect of the dispute or any right in favour of the Trust or against the trustees or beneficiary which is covered under section 50 of the Act, then it is not tenable unless the necessary requirement provided under section 51 is complied. If the right claimed by or against Trust or Trustees is in respect of the administration and management of the Trust, then the consent of Charity Commissioner is necessary under section 51. If the said mandatory requirement is not fulfilled then the suit is not tenable and Civil Court has no jurisdiction to try. There is specific bar to the jurisdiction of the Civil Court under section 80 of the Public Trust Act. It is settled law as laid down in the case of **Gaud Saraswat Brahmin Temple Trust¹, Bhau Ram², Sri. Bishvanath Banik³ and in K. Akbar ali⁴** that while deciding an application for rejection of plaint, the averments of plaint are to be considered as whole and not in part. It is also settled that, if the suit claim attracts any of the provisions section 50(i to iv) then prior permission of the Charity Commissioner is required and not taking the prior permission of the Charity Commissioner plaint is liable to be rejected.

17. Now, in view of averments, facts, and relief claimed, it is necessary to see, whether the aforesaid provisions are applicable to the present case? And whether the plaint is liable to be rejected or not?

Contentions of the plaint:

1 2010 {3} Bombay C.R. 499).

2(2012 Supreme Court 3023).

3(Civil appeal no.1848 of 2022).

4(Special leave petition Civil no.31844 of 2018).

18. I have gone through the contentions of the plaint. The plaintiffs in plaint para 3 pleaded that the defendant was Secretary and Member of the Public Trust. It is also pleaded that on 11/06/2010 monthly meeting of Trust was conducted and the Members present in that meeting submitted their vote as to the removal of defendant from the Trust. Several allegations are pleaded against the defendant. It is also pleaded that, as per resolution no.4 passed in meeting dated 22/08/2010 and as per votes filed by members of the trust, resolution no.4 was sanctioned. Accordingly, defendant was removed from the post of Secretary from the plaintiff Trust. It is specifically pleaded in plaint para-5 that the plaintiff has filed change report no.2362/2010 and it is pending for hearing. The relevant para is mentioned as it is-

19. दिनांक ११/०६/२०१० चे मासिक सभेच्या शिफारशीस अनुसरून दिनांक २२/०८/२०१० रोजीच्या संस्थेच्या वार्षिक सर्वसाधारण सभेमध्ये विषय क्र.४ नुसार प्रतिवादींच्या गैरकारभाराबाबत दिनांक ११/०६/२०१० रोजीचे मासिक सभेचे शिफारशीनुसार चर्चा करण्यात आली व ठराव क्र.४ सर्वानुमते मंजूर करण्यात आला. त्यानुसार प्रतिवादीचे वादी संस्थेकडील सेक्रेटरीपद व प्राथमिक सदस्यत्व हे रद्द करण्यात आले व त्यानुसार प्रतिवादींनी चार्ज देणेची कारवाई आठ दिवसांत करावी अन्यथा भस्मू सुबराव पाटील यांनी प्रतिवादीकडे असेलेले संस्थेचे रेकॉर्ड शिके याचा ताबा घ्यावा असे निश्चित केले. तसेच त्यानुसार महाराष्ट्र सार्वजनिक विश्वस्त व्यवस्था अधिनियम, १९४९ चे तरतुदीनुसार वादी संस्थेने बदल अर्ज क्रमांक २३६२/२०१० हा बदल अर्ज दाखल केला असून सदरचा बदल अर्ज अद्यापही सुनावणीसाठी प्रलंबित आहे.

20. So, apparently on perusal of plaint it appears that, the defendant was secretary of the plaintiff Trust. Moreover, the plaintiffs have mainly opposed the present application on the ground that, the defendant is stranger to the plaintiff Trust and he has no concerned with it. This fact is also pleaded in plaint para 7, 10. So, as per contention, the plaintiff has to prima facie establish that, the defendant is stranger to the plaintiff Trust and he has no concern with the Trust.

21. In the case of ***Adi Burjor Banaji vs Bakhtawar Maneksha Jijina, Yamunabai Dhankude vs Rao Saheb Mohanlal Chimnalal Maniyar***, the suit was filed for in respect of the Trust property. The stranger was claiming it and suit was filed for injunction against the apprehended obstruction to the Trust Property. In ***Sejal Class Ltd. Vs Navilan Merchants Pvt Ltd***, and in ***Madhav Prasad Agrawal vs Axis Bank Ltd.*** (as cited above) the issue involved was regarding rejection of plaint in part and as to survival of plaint against the certain defendants and properties. The Hon'ble Supreme Court held that, the plaint as a whole must be rejected and not in part. In ***Govind Krushna Abhyankar vs Kamlakar Vishnu Ganpule*** (as cited supra) In this case the preliminary issue was framed- whether the Civil Court has jurisdiction in view of sec.50 and 51 of the Public Trust Act. The facts of the case was that the plaintiff was one of the Trustee of the Trust. The defendant was also a trustee. Other Trustee, in pursuance of the mandate from the General body were trying to let the newly constructed premises to an outsider in illegal suppression of a previous resolution passed by the general body and in disregard of the rules concerning the Trust. Hence, plaintiff filed suit for declaration and injunction restraining the defendant from committing such an unauthorized illegal Act. Moreover in ***Ghat Talab Kaulan Wala vs Bab Gopal Dass Chela Surti Dass***, the suit was filed against the Sewadar of Mandir. The Hon'ble Supreme Court held that, the procedure prescribed under section 92 of the CPC would not be applicable in a suit by Trust.
22. But in the present matter the suit is filed for injunction by Trust against its beneficiary. Therefore, with utmost respect I am of the view that, the facts of present case are different and aforesaid authorities are not applicable in favour of the plaintiff.
23. I have gone through the entire record and documents filed on record. The plaintiffs have filed on record, documents of plaintiff Trust,

several change reports and orders of Charity Commissioner accepting the same. It is also seen from the documents filed on record that, notices were issued by plaintiff Trust to defendant as to meeting for no confidence motion against him. It is also seen that, on 01.09.2010, resolution no.4 was passed and thereby defendant was removed from the post of secretary of the plaintiff trust. Accordingly change report bearing no. 2362/2010 was filed. It is also seen (doc no. 20 list exh.3) that, the said change report 2362/2010 is pending. So, prima facie it is clear that, the removal of the defendant from the post of secretary of plaintiff Trust is reported to the Hon'ble Asst. Charity Commissioner. But as on today there is nothing on record which reveal that, the said report is accepted. Hence, no inference can be drawn that the removal of defendant from the Trust is accepted & confirmed by The Hon'ble Asst. Charity Commissioner.

24. The Hon'ble High Court in **Gaude Saraswat Brahimin** (as cited above) held that, the plaintiff being managing Trustee falls within the definition of section 2(10). It is also held that, *Assistant Commissioner is empowered to conduct an inquiry under section 22 before passing any order of the change and while conducting the inquiry, he has to issue notice to the plaintiff being a necessary party and will have to decide the issue of legality of removal of the plaintiff and the resolution. The Public Trust Act itself is a complete code and under the said Act, Deputy Charity Commissioner, Charity Commissioner enjoy the procedural powers available under the Code of Civil Procedure at the time of inquiry including taking statement, recording evidence etc.* However, the resolution of plaintiff Trust is pending before the Hon'ble Asst. Charity Commissioner for consideration and it can be decided.

25. Moreover, in view of the guidelines of the Hon'ble High Court in **Gaude Sarswats case**, the Asst. Charity Commissioner has power to decide the legality of the removal of the defendant. Therefore, at this

stage, it cannot be said that the defendant is stranger to the plaintiff Trust. On perusal of contents of the plaint it is seen that the defendant was secretary of the plaintiff Trust and issue of his removal from the Trust is not finally decided. The present suit is filed for injunction against the Secretary of the plaintiff Trust to restrain him from interfering in the management of the plaintiff Trust. Therefore, considering the nature of relief claimed I am of the view that the relief claimed comes under the provision of sec.50(i to iv). Therefore, the plaintiffs must have applied for the consent vide section 51 of the Act. The suit is tenable only After obtaining the consent of Charity Commissioner. However in case of refusal of consent the plaintiff could have preferred appeal against the said refusal. In the case of **Charu K Mehta (as cited supra)** the Hon'ble High Court held that, *section 80 of the Public Trust Act contains an express bar to the jurisdiction of Civil Court, but the correct test in law to apply is whether the controversy which is sought to be raised before the Civil Court requires an adjudication of a matter or question which has to be decided or dealt with by an officer or authority under the Act while exercising his power under the Act.*

26. However, in the present case, as discussed above, the resolution for removal of defendant is not approved & accepted by the Hon'ble Asst. Charity Commissioner and inquiry thereof is pending and the Asst. Charity Commissioner has power to decide the said issue. Hence, with utmost respect I am of the view that, authority in **Charu K Mehta (as cited supra)** is not applicable in favour of plaintiff. Thus, I am of the view that, present suit for injunction is instituted by Trust against its trustees or beneficiary. The relief claimed is touching with the management or administration of the plaintiff Trust. The plaintiff has not complied with the mandatory requirement of section 51. Therefore, it is clear that, the Civil Courts Jurisdiction expressly barred vide Section

80 of the Public Trust Act. Hence, the plaint is liable to be rejected in view of Order 7 Rule 11(d) of the Code of Civil Procedure.

27. Accordingly I answer point no. 1 in Negative and 2 in affirmative.

As to Point no. 3

28. To answer point no. 3 I pass following order.

ORDER.

1. The application below Exh.15 is allowed.
2. The plaint is rejected vide Order 7 Rule 11(d) of the Code of Civil Procedure.
3. Decree be drawn up accordingly.
4. The suit is disposed off.
5. (Dictated and Pronounced in open Court)

Date:16/03/2024

Sd/-

[Waman D. Jadhav]

Joint Civil Judge Junior Division, Chandgad

[Judge Code- MH3143]