

ORDER BELOW EXH.154 IN REG. CIVIL SUIT NO.13/2005.

1. By filing this application defendant nos.1 to 3 & 5 prayed for framing preliminary issue in respect of jurisdiction of this Court contending that, defendant no.7 is a public trust and the plaintiff are claiming that they are tenants of the said trust. So, in view of the provisions of sections 50 and 51 of The Bombay Public Trust Act, 1950, it is necessary to obtain the prior permission of the Charity Commissioner before filing the suit and as such this suit is filed without obtaining the permission of Charity Commissioner, this Court has no jurisdiction to try & entertain the present suit and also in view of section 2 (4) of the Act, the suit is necessary to be instituted before District Court, therefore it is necessary to frame the issue in that respect.

2. The present application is strongly opposed by the plaintiffs by filing say at Exh.155 contending that, this application is filed by the defendants only to delay the matter, as such previously also they have filed the similar type of application at Exh.25, which was rejected by this Court. It is further contended that, this suit is filed by the plaintiffs for their personal rights and they are not claiming any relief against defendant no.7 i.e. a public trust. So, the provisions of sections 50 and 51 of The Bombay Public Trust Act, 1950 are not applicable to the present suit and as in this case already the necessary issues were framed at Exh.109 and thereafter the plaintiff has also filed his chief examination affidavit, it is not necessary to frame the preliminary issue as contended in this application. Considering all these aspects, the plaintiff prayed for rejection of this application.

3. Perused application and say filed by the plaintiff. Heard both respective advocates at sufficient length and time. I have also gone through the record & proceeding.

4. Considering the rival submissions and contentions of both sides, the following points arise for my determination, on which I have

recorded my findings, with reasons, thereon as under.

POINTS	FINDINGS
1 Does it necessary to frame preliminary issue as contended in application ?	:- No.
2 Whether the application is liable to be allowed?	:- No.
3 What order?	:- Application is rejected.

REASONS

5. **As to point nos.1 to 3 :-**

The learned advocate for defendant nos.1 to 3 & 5 strongly argued that, though the plaintiffs have filed this suit for permanent injunction, but they claiming that they are the tenants of defendant no.7 i.e. the public trust and in view of sections 50 (iv) of The Bombay Public Trust Act, 1950 when any declaration or injunction in favour of or against a public trust or trustee and beneficiary thereof is asked, it is necessary to obtain the permission of Charity Commissioner as they have an interest in the said public trust. He also pointed out me section 2(4) of the said Act and submitted that, as per this provision the 'Court' means in the Greater Bombay, the City Civil Court and elsewhere, the District Court. So, this Court has no jurisdiction to try and entertain the present suit. Accordingly, he prayed for framing necessary issue as contended in this application. *Per contra*, to slap down the argument put forth by the learned advocate for defendants, the learned advocate for plaintiffs argued that, the provisions of sections 50 and 51 of The Bombay Public Trust Act, 1950 is not at all applicable to the present case, as such the plaintiffs are claiming that they are the tenants of defendant no.7 i.e. the public trust and as such the provisions of section 50 & 51 of the Act are not at all applicable to the tenants and also the plaintiffs are asking the relief of injunction protecting their civil rights, for which it is not necessary to obtain the prior permission of the Charity Commissioner. Accordingly, he prayed for rejection of this application. He further pointed out me that, previously also the defendants have filed the similar type of application at Exh.25, which was rejected and by pointing out the Rojnama he further submitted that this application is

filed by the defendants only to delay the matter, as this application is filed after filing the chief examination affidavit by the plaintiff. Accordingly, on that count also he prayed for rejection of this application.

6. I gave thoughtful consideration to the submissions made by both sides. I again gone through the record & proceeding, particularly the pleadings of the parties and previous application filed by the defendants at Exh.25. It is admitted fact on record that, previously also the defendants have filed the similar type of application at Exh.25, which was rejected. But, against the said order they have filed Writ Petition before Hon'ble Bombay High Court bearing No.5538/2012, in which the Hon'ble Bombay High permitted the petitioner to withdraw the application at Exh.25 with liberty to file a fresh application by giving details. So, under such circumstances, this application filed by the defendants is to be considered a fresh without considering the facts that previously they have filed similar type of application and it was rejected.

7. Admittedly, the plaintiffs have come before the Court with a specific case that, they are the tenants of defendant no.7 i.e. a public trust and as per their further case, they used to give rent (रुंढ) to the said public trust. So, eventhough on the strength of imagination also it cannot be said that they are having an interest in the public trust or they are beneficiary thereof as contended by the learned advocate for defendants. So, on this simple ground I found that the provisions of sections 50 & 51 of The Bombay Public Trust Act, 1950 now The Maharashtra Public Trust Act is not at all applicable to the present suit. Here, I would like to mention that, in the definition column of this Act, section 2(10), the definition of "person having interest" is specifically defined in which the tenant is not at all included. On the contrary, in view of section 50(ii) of the Act, the tenant and licensee were specifically excluded. So, considering this aspect, I found the submission of learned advocate for defendants is devoid of merits.

8. Here, it is worthwhile to refer the authority of Hon'ble

Supreme Court in the case of **Sopan Sukhdeo Sable & others Vs. Assistant Charity Commissioner & others, AIR 2004 Supreme Court, 1801**, in which, while dealing with the jurisdiction of the Court, it is specifically observed by Hon'ble Apex Court that, the reliefs relatable to section 50 of the Act would require a prior consent in terms of section 51. If the plaintiff given up those reliefs claimed in accordance with law, the question would be whether a cause of action for the residual claims/reliefs warrant continuance of the suit. The nature of dispute is to resolve by the Civil Court by further observing that, section 51 is applicable only to suits which are filed by a person having interest in the trust by ruling that a tenant and trust does not fall within the category of a person having interest in the trust. In this connection, there are dearth of authorities of our Hon'ble Bombay High Court, but to eschew the prolixity, I am referring few of them as under,-

1) **Maharashtra Shetkari Seva Mandal Vs. Baburao Bayaji Garud, 2010 (2) Mh.L.J. 612** and 2) **Pandurang Sakharam Patil Vs. Nanded Parsi Anjuman Trust, 2011 (1) Mh.L.J. 524.**

9. Further, while going through the sections 50 & 51 of the Act, it is specific for the business of trust. But as such, in this case the plaintiffs are asking the relief of injunction for protecting their personal rights against the third person and not against the trust, I do not found that it is necessary to frame a preliminary issue as contended in the present application, in view of authority cited supra.

10. Thus, considering all above aspects and discussion in foregoing paragraphs, I in-hesitantly come to the conclusion that, in this case the plaintiffs are asking a relief of injunction to protect their personal civil rights, which is also not against the public trust and also the business of public trust is not at all involved in the present suit. So, the provisions of sections 50 & 51 of the Act is not at all applicable to the present case. As such, the provisions of The Bombay Public Trust Act is not applicable to the

present suit, the further submission of learned advocate for defendants that, as per provisions contended in section 2(4) of the Act the Court does not include the present Court and so plaintiffs have to file the present suit before the District Court, is also has to be rejected because these provisions applicable only when the suit is likely to institute under the provisions of The Bombay Public Trust Act. This clear cut legal provision does not require the authority to be cited, but to strengthen my view, I am referring the authority of Hon'ble Bombay High Court in the case of **Vidharbha Kshatriya Mali Shikshan Sanstha Vs. Mahatma Fule Shikshan Samittee, 1986 Mh.L.J. 773**, in which it is held by his Lordship that,-

“Suit by Public Trust for enforcing its civil rights does not bar on the ground of want of permission from Charity Commissioner and such suit not required to be filed in the Court as defined in section 2 (4) of The Bombay Public Trust Act, but lies in the ordinary forum.”

On relying this authority as well as on the authorities cited supra of Hon'ble Bombay High Court, recently in the case of **Shri Samarth Seva Mandal, Sajjangad & others Vs. Shri Ramdas Swami Sansthan Trust, Satara & others, 2011 (4) Mh.L.J. 254**, his Lordship of Bombay High Court again reiterate the above view.

11. Taking in into consideration all above aspects and the ratio laid down in the authorities cited supra, I hold that in the present suit, which is filed simpliciter for injunction against third person and also not against a public trust, it is not necessary to frame a preliminary issue as contended in the application and consequently the application deserves to be rejected. Accordingly, I answer point nos.1 & 2 in negative and to answer point no.3, I proceed to pass following order.

ORDER

- 1) Application stands rejected.
- 2) Cost on defendant nos.1 to 3 & 5.

Vengurla.
Date:- 21/06/2016.

(D. S. Zanvar)
Civil Judge Jr.Dn., Vengurla.