

Spl.C.S.No. 454/2022
(Kalpruksha vs Dr.Mahesh)
(CNR: MHSN020024802022)

Order below Exh.16

1. The defendant filed this application under Order VII Rule 11 CPC to reject the plaint on the ground that the suit is barred by the provision of the Maharashtra Public Trust Act. By filing Exh.18 the plaintiff opposed the application on the grounds mentioned therein.

2. According to the defendant, the plaintiff society is a public trust registered under the Maharashtra Public Trust. All the provisions of the said Act are applicable to the plaintiff society. According to this provision, if prayer is to be made of the purpose of the plaintiff's institution, it must be made to the Charity Commissioner, the Civil Court has no jurisdiction to try the suit. And if the case is to be tried before the Civil Court, the prior permission of the Charity Commissioner is required. Hence, in absence of requisite permission, suit before this Court is barred by Law

On the contrary, the plaintiff contended that the dispute between the plaintiff and the defendant has nothing to do with the plaintiff's trust or its management, hence no prior permission of the Charity Commissioner is required. The present suit is for recovery of rent so only the Civil Court has jurisdiction. The defendant has filed this application only to prolong the matter, hence prayed to dismiss it with costs.

3. From rival contention of the parties following points arise for my consideration to which I have recorded my findings for the reason given below.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaint is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure?	No
2.	What order?	Application is rejected.

REASON

As to point No.1;-

4. Ld. Counsel for the defendant submitted that the suit in the present case is for the recovery of the rent of the trust property and therefore, it is the suit of the type mentioned in clause (a) of Section 50 of the Act.

On the other hand, Ld. Counsel for the plaintiff submitted that relief claimed in this suit does not cover in any clause of Section. 50. The requirement of Section 50 of obtaining prior permission of the Charity Commissioner to institute the suit, would arise only when the suit is for any of the reliefs specified in clauses (a) to (q) thereof. In support, he has relied upon the decision in case of Mohd. Hassan Vs. Peer Hazarath 2002(6) Bom. C.R. 253.

5. It is well settled that while considering the application under Order VII Rule 11 CPC, the Court has to look at the averments made in the plaint by taking the same as correct on its face value and also the documents filed in support thereof. The defense of defendant has not to be given any weightage. Thus, in order to decide whether the plaint in the instant case ought to be rejected as per Order VII Rule 11 CPC, as barred by the provision of Maharashtra Public Trust Act, this Court has confine itself to the averments stated in the plaint and the documents produced therewith.

As per the averments, the plaintiff society is a registered public trust bearing registration number E 1020. It runs various public projects like schools, colleges, hospitals, free ambulance etc. The suit property described in para 1 owned by the plaintiff trust and gave it in possession of the defendant on 29.07.2020 for a period of 60 months at rate of license fee of Rs 1,30,000/ per month by registered leave and license agreement dated 18.01.2021 for medical business and sale of medicine. The defendant, had deposited Rs 2 lakhs and was required to pay the electricity and water charges of the suit property. However, the defendant has canceled the leave and license agreement on 04.07.22 due to availability of alternative place of business. But he was in arrears of license fees from 01.06.2021 to 30.06.2022 of Rs. 16,90,000/, Deducted T.D.S.Rs. 26,000/, electricity charges Rs. 40,000/ and water charges Rs. 35,000/ i.e. total Rs. 17,91,000/. After deducting Rs. 2 lakhs from that, the defendant

has to pay an amount of Rs.15,91,000/ to the plaintiff. Hence, prayed to pass decree against the defendant for recovery of Rs. 15,91,000/ with interest at the rate of 6 % p.a. from the date of the suit till its realization.

6. In case of Mahomed Hassan Samru case (supra), it has held that the reliefs claimed were not covered by any of the Clauses (a) to (q) of Section 50. Therefore, the requirement of obtaining prior sanction of the Charity Commissioner will have no application to the case.

7. It is therefore necessary to consider the provisions of Section 50 of the Bombay Public Trust Act. Section 50 reads as under:

Section 50. Suit by or against or relating to public trusts or trustees or others.- In any case-

(i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees,

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or the proceeds thereof or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee,

(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or

(iv) 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 having an interest 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 the trust is situated, to obtain a decree for any of the following reliefs :

(a) an order for the recovery of the possession of such property or proceeds thereof,

(b) the removal of any trustee or manager,

(c) the appointment of a new trustee or manager,

(d) vesting any property in a trustee,

(e) a direction for taking accounts and making certain inquiries,

(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 willful default.

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

(h) a direction to apply to the trust property or its income cy pres on the lines of section 56 if this relief is claimed alongwith any other relief mentioned in the section.

(i) a direction authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged, or in any manner alienated on such terms and conditions as the court may deem necessary

(j) the settlement of a scheme, or variations or alterations in a scheme already settled,

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same

(j) an order for winding up of any trust or applying the trust for other charitable purposes

(m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust

(n) an order exonerating the trustees from technical breaches etc.

(o) an order varying altering amending or superseding any instrument of trust

(p) declaration 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 reliefs or is necessary in the interest of the trust.

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof:

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled:

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under sub-section (4) of section 1.

The present suit is filed for a recovery of rent from licensee of the suit property. Section 50(ii) would come into

play when decree is sought to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or the proceeds thereof or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee. The sanction of the Charity Commissioner for institution of a suit for the aforesaid reliefs is required only if it is filed by "a person having an interest" and instituted for the reliefs stipulated u/s 50. The recovery of rent sought by the plaintiff is against licensee of the suit property. Therefore, the submission of the learned counsel for the defendant that sanction of the Charity Commissioner is required since the suit is filed for a recovery of rent from licensee is without merit. Hence, recorded my finding to point No.1 in the negative.

As to point No.2 :-

8. In view of the finding recorded against point No.1, the application is liable to be rejected. Hence, passed the following order.

ORDER

Application stand rejected.

Sangli
Date: 31.08.2023

(D. R. Deshmukh)
Jt. Civil Judge, Sr. Dn., Sangli.

CERTIFICATE

I affirm that the contents of this PDF file are same as per original.

Name of Stenographer	: Sou. S. A. Mane (Grade-II)
Name of the Court	: Shri. D. R. Deshmukh Jt. C.J.S.D., Sangli.
Date of decision	: 31/08/2023
Order signed by P.O. on	: 31/08/2023
Order uploaded on	: 01/09/2023