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Court : Mumbai Nagpur

Decided On : Feb-27-2014

Judge : A.P. Bhangale

Appeal No. : Second Appeal No. 501 of 2009

Appellant : Avinash

Respondent : Ganpat and Others

Judgement :

1. This Appeal under Section 72 (4) of the Bombay Public Trusts Act, 1950 (now 'Maharashtra Act' instead of Bombay Act) is arising from the Judgment and order dated 10-08-2009 passed by the District Judge, Nagpur rejecting Change Report and Regular Civil Appeal No. 5 of 2009.

2. Heard the submissions at the bar.

3. This second appeal was admitted on 15-06-2012 by this Court on the following substantial questions of law:-

i) Could the finding recorded by the Joint charity Commissioner and then confirmed by the District Judge upholding disqualification of the Members admitted to the Trust as was held by the Assistant Charity Commissioner is the result of the misinterpretation of clause (6) of the scheme of the Trust and thus, the finding of the Courts below is wholly unwarranted and unsustainable in law?

ii) Whether the learned District Judge and Learned Joint commissioner were right in upholding the finding that the members of the Trust were rightly disqualified when the opportunity of hearing was not given and thus, the decision of the Courts below impugned are bad in law?

My answer for question nos.(i) and (ii) is that " for non-compliance of the principle of natural justice, the impugned orders are unsustainable for the following reasons.

4. Learned Counsel for the appellant submitted that there was no any breach of any provision of the Constitution of the Trust and therefore, the District Judge ought to have accepted the Change Report. Learned District judge erred in holding that the Committee, while enrolling the members, committed legal error by accepting less amount than prescribed in the Scheme of the Trust. Learned Counsel for the appellant contended that there was no intention to make it mandatory to pay more than the sum of Rs.1,00,000/-, Rs.10,000/- and Rs.1,000/- for patron, life and ordinary membership respectively. Learned Counsel argued that the members enrolled were not invalid members for paying a rupee less. Learned Counsel urged that the contract do not become voidable for the miniscule amount.

5. Reference is made to the ruling in **Vinayakvs. State of Goa** reported in 1995 (2) Mh.L.J. 905.

6. On the other hand, it is contended that specific emphasis is laid by the Deputy Charity Commissioner, Nagpur, who framed the Scheme in clause (6) of the Scheme to mention prefix that a person who pays œmore than or aboveœ Rs.1,00,000/- be called œPatron Member?, a person who pays more than or above Rs. 10,000/- be called œLife Member? and a person who pays more than or above Rs.1,000/- be called as œordinary member?. Thus, the intention of the Authority to lay emphasis on the word œmore than or above? applied to all different membership was made clear showing that something more than was necessary to achieve a category of membership, Patron, lifetime, or ordinary. Learned Counsel for the respondent submitted that the legal lacunae cannot be allowed to be filled in at the stage of Second Appeal as illegality would remain as it is. Reference is made to the ruling in **LomdasVs State of Maharashtra,** 1993

Mh.L.J 1056 .The inquiry under Section 22 is judicial and legality and validity of membership is the subject of inquiry.

7. It is further contended that in Second Appeal, as observed in **F. M Irani vs. Sardar**, 2001 (2) Mh.L.J. 654 only substantial question of law should be entertained and findings of facts must not be interfered as legal lacunae cannot be allowed to be filled in at the stage of the Second Appeal. In other words, illegality would remain as it is. It is contended that legality and validity of membership is subject of the inquiry under Section 22, which is judicial. Learned Counsel for the respondent submitted this Court ought not to interfere in the concurrent findings of the Courts below.

8. In **Hero Vinoth (minor) vs. Seshammal,** (2006) 5 SCC 545, Hon'ble Supreme Court has observed that : "The general rule is that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the Courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

9. I must consider this as an exceptional case wherein interference is felt necessary. Really speaking small difference of a rupee can be mutually rectified between the member and the Public Trust. The Court ought to note that the venerable maxim 'de minimis non curat lex' ('the law cares not for trifles') is part of the established reasonable legal principle which all enactments have adopted, or otherwise also which all enactments are deemed to accept. The difference of one rupee is so trivial and small. Such little, short or discountable petty amount could have been ignored in the modern day context to get more memberships for serving the charitable objects of the Trust. Hence, such minimal sum must not change the nature and status of membership of the charitable Trust by donations, patron, life and ordinary as the case may be, merely for the nonpayment for a very

small or fractional difference of a rupee particularly in a situation when the member concerned is voluntarily ready and willing to pay the difference. Reasonable and rational view should be taken in such matters so as to ensure that object of the donor/contributory to serve the Trust as an appropriate member is served in larger public interest.

10. Principle of natural justice ought not to be forgotten. In **MohinderSingh Gill and another vs. The Chief Election Commissioner, New Delhi and Others,** [(1978) 1 SCC 405], Honble Supreme Court has observed:

"Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam and of Kautilya's Arthasastra the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

11. In the light of the principle discussed as above, Joint charity commissioner can consider the representation of the appellant in this regard to settle the controversy in the larger interests of the public Trust to accommodate the members accordingly by giving the members the opportunity of hearing. Substantial questions of law raised have to be answered accordingly. I, therefore, set aside the impugned Judgment and Order by the Authority and the Court below to order that the proceedings be remanded before the Joint charity commissioner concerned to give opportunity of hearing to the appellant and to decide the representation of the appellants in accordance with law bearing in mind the principles stated above The Second Appeal is allowed and disposed of

accordingly.