

iqbal and ors. Vs. Hakimuddln and ors.

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Court : Rajasthan

Decided On : Jan-17-1995

Reported in : AIR1995Raj123

Judge : P.P. Naolekar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 16

Appeal No. : Civil Revn. Petn. No. 649 of 1987

Appellant : iqbal and ors.

Respondent : Hakimuddln and ors.

Advocate for Def. : Y.H. Muchhala,; S.C. Gupta and; N.P. Gupta, Advs.

Advocate for Pet/Ap. : L.B. Mehta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.P. Naolekar, J.

1. The decision in this revision shall also decide S.B. Civil Revision Petition No. 699/87 'Shri Abdeali Chanchuliwala Bohra v. Shri Harimuddin', S. B. Civil Revision Petition No. 700/87 'Shri Imran Hussain v. Shri Hakmuddin and S. B. Civil Revision

Petition No. 701/87 'Shri Mohammed Hussain v. Shri Hakuimuddin'. In all these revisions, a common question of law and fact is involved.

2. Brief facts necessary for deciding the question involved in the case are that the plaintiffs-respondents are Dawoodi Bohras belonging to the Dawoodi Bohra Community, which is a religious denomination and whose spiritual leader and the religious head is the Dai-UI-Mutlaq.

3. The plaintiffs have filed a suit claiming the relief:--

(a) That the defendants by themselves, their servants and agents or any person styling himself as Bohra Youth Association or any member thereof be restrained by permanent injunction from preventing the plaintiffs and other Dawoodi Bohras owing allegiance to their spiritual leader and religious head, the Dai-UI-Mutlaq from entering the Masjids/ mosques as described in the plaint and from offering or participating in the Imamat/ Jamaat Namaz/ prayers led by the Pesh Imam appointed or nominated or under the authority and/or permission and/or under the auspices of Dai-UI-Mutlaq and/or or attending or participating in any Vaiz, Majlis or other religious functions, gatherings and ceremonies held that the permission of and/or under the authority and/or under the auspices of the Dai-UI-Mutlaq or from in any manner interfering or disturbing Imamat/Jamaat Namaz being conducted in the four masjids/ mosques or from disturbing or interfering with Vaiz, Majlis or any other religious ceremony or function.

(b) That the defendants by themselves and by their servants and agents or any person claiming under or through them or any person styling as Bohra Youth Association or any members thereof owing allegiance to the so-called Dawoodi Bohra Jammata, Udaipur or any member thereof be restrained by a permanent injunction from holding their separate Imamat/Jamaat Namaz and/or from holding Vaiz Majlis and other religious functions, ceremonies or gatherings in their said four masjids/mosques.

4. The said reliefs are claimed on the allegations, that the present spiritual leader and religious head of the Dawoodi Bohra Community is His Holiness Dr. Syedna Mohammed Burhanuddin Saheb being the 52nd Dai-UI-Mutlaq. The Dawoodi

Bohra Community consists of Muslims of Shia sect, holding the belief that there is one God; that Mohammed is His Prophet to whom he revealed the Holy Book (Koran); that Ali, the son-in-law of Mohammed was the Wasi (Executor) of the latter and that Ali succeeded Mohammed by Nas-e-Jali. Dawoodi Bohra believe that Ali, son-in-law of Mohammed was succeeded by the line of Imams, each of whom in turn was appointed by Nas-e-Jali by his immediate predecessor. Later on, the Shia Sect itself became divided into two sects respectively as Ismailia and Ishna Asharia, Dawoodi Bohra belong to the former sect and believe that owing to persecution, Imam Teyeb (21st Imam) went into seclusion and that an Imam from his line will appear, it being their belief that an Imam always exists; that owing to the impending seclusion of the 21st Imam (Imam Teyeb), his predecessor, the 20th Imam, directed his Hujjat (a dignitary ranking next to an Imam), one Hurra-tul-Maleka, to appoint a Dai (Missionary), a Mazoon (a dignitary ranking next to a Dai) and Mukasir (a dignitary ranking next to a Mazoon) to carry on the Dawat of the Imam so long as the Imam, who remains in seclusion. It is the accepted tenet of the Dawoodi Bohra faith that God always had and still has a representative on Earth through whom His commands are conveyed to his people. The representative is the Imam. The Dai is the representative of the Imam and conveyed God's message to his people. When the Imam comes out of seclusion, the powers of the Dai would cease.

5. It is further alleged that Dai-UI-Mutlaq is not merely a spiritual leader and religious head of the said denomination, but is the sole Trustee of the property of the Dawoodi Bohra Community, and the sole right of management and general control thereof is vested in the Dai-UI-Mutlaq,

6. That Dai-UI-Mutlaq for the time being is the trustee of the four masjids/mosques, which are as under: --

(1) Moiyatpura Masjid, situated at Moiyatpur Bohrawadi, Udaipur.

(2) Vajihpura Masjid situated at Vajihpura, Bohrawadi, Udaipur.

(3) Rasoolpura Masjid situated at Rasoolpura, (Gulamwadi), Udaipur.

(4) Khanpura Masjid situated at Khanpura, Udaipur.

7. The aforesaid four masjids situated at Udaipur belonging to Dawoodi Bohra Community and which are for the use/benefit of the Dawoodi Bohra Community and the management and administrative control of the same vests in him.

8. That in Udaipur the Dai-UI-Mutlaq had from time to time appointed Amils who have the authority and permission from the Dai-UI-Mutlaq for the time being to lead Imamat or Jamaat Namaz and also to give permission to a fit and proper person to lead Imamat or Jamaat Namaz and for holding religious functions and ceremonies in the Masjids and to manage and administer the same for and on behalf of the Dai-UI-Mutlaq.

9. That it is an article of faith of the Dawoodi Bohra Community that in any mosque vesting in the Dai-UI-Mutlaq for the time being and which is for the use, benefit of the Dawoodi Bohra Community, congregational prayers (Imamat Namaaz or Jamaat Namaz) can be offered or said by the Pesh Imam appointed or nominated by the Dai-UI-Mutlaq, and that no religious function or gatherings can be held without the permission of the Dai-UI-Mutlaq or his representative for the time being at a given centre or place.

10. That sometime in February, 1973, a section of the Dawoodi Bohras at Udaipur including the defendants formed Bohra Youth Association. Subsequently, they have formed their own separate Organisation known as Dawoodi Bohra of Udaipur, The members of the said Bohra Youth Association and Dawoodi Bohra Jammah have been unauthorisedly and wrongfully holding Vaiz and Majlis during the days of Mohurram and other religious festivals in the said Masjids. They have wrongfully interfered the plaintiffs right to offer Imamat/Jamaat Namaz led by the Pesh Imam appointed or nominated by or under the authority or permission of Dai-UI-Mutlaq in the said Masjids and have also wrongfully disturbed Imamat or Lamaat prayers being said in the said masjids and have also wrongfully interfered with and disturbed Vaiz and other religious gatherings and functions and ceremonies being conducted in the masjids with the permission and/or under the authority of Dai-UI-Mutlaq.

11. Thus, in a nut-shell the plaintiffs case is that 52nd Dai-UI-Mutlaq is the spiritual leader and religious head of the Dawoodi Bohra Community and he is the sole trustee of mosques and sole management and general control is vested in him. That the Imamat/ Jamaat prayers shall be conducted with the permission of and/or under the authority or under the auspices of Dai-UI-Mutlaq and other religious ceremonies shall be held with the permission and / or authority or under the auspices of Dai-UI-Mutlaq and that defendants shall not interfere with these rights of the plaintiffs. Whereas the defendant has raised plea among other defences that the defendants give all respect and devotion to Saiyadana Saheb. However, they do not believe that Dai-UI-Mutlaq is the sole trustee of the property of the Dawoodi Bohra community and the sole right of management and general control thereof is vested in him in physically and wordly-sense. Dai-UI-Mutlaq has no right, title or interest in the community property. The four sets of written statement have been filed by defendants Nos. 1 to 6, 9 to 11, 13 to 18, and defendants Nos. 20 and 21, and defendants Nos. 12, 19 and defendants Nos. 22 to 24.

12. The plaintiffs filed four applications under Order 6, Rule 16 of the Civil Procedure Code for striking out certain allegations made in the written statement, which according to the plaintiffs are unnecessary, scandalous, frivolous and are made to embarrass the plaintiffs and delay the fair trial of the suit.

13. The trial court directed for striking out certain portion of the written statement as prayed by the plaintiffs-respondents. The trial court has also directed striking out portion of the paragraph 5 of the plaint.

The plaintiffs have not challenged the order of striking out of portion of paragraph 5 of his plaint.

14. For the better understanding of the allegations made in the written statement, which have been directed to be struck off, are reproduced hereunder, which are more or less similar in all the written statements :--

I. 1.2 Lately, the priestly class has started certain practices in the name of religion hitherto unknown to Islam and amounted to commercialisation of religion. For example, 'Misaq' was never a religious doctrine or tenet. It was a mere

practice which grew up out of necessity to form a net work of resistance movement during the days when Imams were relentlessly persecuted and harassed by Sunni Khalifas. Gradually this necessity evaporated and 'Misaq' remained as a mere ritual bearing no particular significance. This ritual has particularly no place in secular India. Misas, as implemented today, require some of the declaration on oath as follows :--

(i) to be a slave and agree that his person, his soul and his property shall belong to the Dai, to abide by his wishes, command and directions absolutely and without demur, to be raised or degraded, and to love a person when Dai loves and hate whom he decries.

(ii) to consider as his own enemies the enemies of the Dai and to be ever ready to make war on them, even if they be friends or near relatives, and even at the risk of losing life or property, to cancel all intercourse with Dai's enemies. It would be sin even to correspond with them openly or secretly.

(iii) Any transgression, any breach, indeed any disobedience of the oath of allegiance would be a sin. The wife of the person breaking oath becomes forbidden to him. Breach will work 'Talaq' and cessation of worldly relationship.

(iv) The breaker of oath will have to face God as a Kafir and apostate. He shall be beyond redemption, even by the grace of God. He will be consigned to the tortures of hell.

(v) All the property of the breaker of oath is liable to be looted and the wrath of the Dai be upon him.

Every boy and girl on attaining the age of puberty, i.e. the age of 13 to 15 years, is required to take this oath which is administered by an Amil. The parent of the child taking oath have to pay to the High Priest through the Amil at the time of taking of the oath large sums of money. Taking, a misaq is considered condition precedent for the acquisition of the status of a Dawoodi Bohra. Accordingly to Syedna no one is Dawoodi Bohra unless he gives MISAQ to him in the prescribed form and once he given misaq he has got to obey all the orders of Dai in all things. The misaq in

such a form is being administered since the time of 51st Dai who used it to build personality cult. He used it as a weapon for centralising power. No other Muslim sect except Dawoodi Bohras, practices Misaq or its equivalent. Even among Bohras most of the Dais never exploited misaq for worldly ends as it has been happening 'since the time of 51st Dai. The 51st Dai-UI-Mutlaq saw in it a potentiality to subjugate his followers into absolute obedience and utilise the same for personal gain and it becomes a weapon par excellence in the hands of the priestly class for dominance over the body, soul and the property of the faithful. This is put out from the fact that such a claim was brazenly made in the case of the Advocate General Bombay v. Yusufali Ibrahims, AIR 1921 Bombay 338 but rejected by the Court. Notwithstanding the judgment the priestly class continued in his exploitation of the faithful and consolidating its position.

Couples with the rituals of Misaq there were two other rituals i.e. 'Raza' and 'Barrat'. Raza means blessing or ordaining and Barrat means ex-communication or social boycott. These three rituals have become deadly weapons in the hands of the priestly class.

It is customary that all religious persons and faithfuls before doing anything of importance invariably invoke blessing of their religions head or preacher. Among Hindus it is the Brahmins and among Bohras it is Dai-UI-Mutlaq or his rap representative called 'Amil'. As a practice every Bohra before commencing any work or performing any religious ceremony would invariably; performing approach the Dai or his representative an Amil for blessings. Thus on birth, death marriages or such other ceremonies or starting any new venture the blessings were invoked and were given freely. The Dai-UI-Mutlaq (51st) saw a great potential of exploitation in these rituals. Gradually he started asking for money or gifts for giving his 'Raza' and if anybody resented this, it was considered that he has breached the 'Misag' and Barrat was enforced against him.

Raza (permission) from the priestly class which was always optional and voluntary was made compulsory and introduced even in secular, educational, cultural social, economic business and political and welfare activities. If a member of the community were to start a new business, or a new shop or an association or any

enterprises etc. he had necessarily to seek Raza for which purpose a large amount of tax or fee has to be paid to Mullaji directly or to his Amil. These amounts reach in cases to over rupees one lakh. Later, Raza stood extended to betrothals where permission had to be sought and monies paid before permission for betrothal was granted by the Mullaji. Dead bodies could not be lifted and burials could not be made without Raza accompanied by the payment of money. Many such incidents took place in Udaipur when Amil refused to grant Raza or permission for lifting the dead bodies, for example the case of Fatima, a Dawood Bohara Female. This, gradually leads to commercialisation of religion through the process of Raza.

There has been large scale infringement of civil liberties and human rights of the Bohras at the hands of the priestly class and those who do not obey the orders of Mullaji and his Amils even in a purely secular matter, are subjects to 'Baraat' resulting in their social boycott, mental torture and frequent physical assaults. In recent years, practice of Baraat has been more frequent. No opportunity is given to the person boycotted to show cause against it. The reason for declaring Baraat are mainly exercised whenever there is dissent or non-observance of dictates of the priestly class for carrying on any activity even like social work etc. without the permission of the head priest. Baraat is lifted if a very humiliating apology is tendered. Substantial number of persons and families have suffered from this practice of Baraat. Various methods are used to harass and persecute the socially boycotted persons, such as attack on residence, shop, physical attacks on persons, separation of wife from husbands, brother from brother etc.

The aforesaid practices gave rise an impetus to a reformist movement in the community against commercialisation of religion which become a worldwide movement. The said Bohra Youth movement is led by the Bohra Youth Association and those who continue to hold orthodox views are called the 'Shababs'. At no time did the Bohra Youth Association adjure the religious hardship of the Dai-UI-Mutlaq and on the other hand even today they accept him fully and whole heartedly as the religious head of the community. They merely wanted reforms in regard to Raza, misaq, barat etc. and are for social improvement and uplift etc. of the community. In retaliation, the Syedna Saheb

took various corrective measures against the members of the Youth Association.

In 1972 four candidates of Bohra Youth Association contested the Udaipur Municipal election against the four candidates of the Sahbab Group with Raza and humiliating defeat was given to the Raza candidates which infuriated Sayedna and orthodox followers which resulted in repression of the reformist group.

Repression of the reformists started at Galiakot Urs women of Youth group were mercilessly beaten and asked to pronounce 'Laanat' (curse) on their son, brother or husband who may be reform activist. The Bohra Youth supporters were placed under the curse of 'Baraat'. Baraat has been translated as 'Excommunication'. But that does not give a correct idea of its actual consequences. A 'Baraat' involves positive prosecution, harassment, torture, assault, exclusion from mosque graveyard, cessation of material. Once the Youth were placed under 'Baraat', it becomes the religious duty, as undertaken by the plaintiffs when Misaq oath was taken, to wage war against to relentlessly prosecute the defendants. That resulted in the street fighting. 'Raza' was closed. That resulted in riots.

This social boycott was condemned from every corner. An independent Commission set up by the citizens for Democracy at the behest of the late Shri Jai Prakash Narayan known as Nathwani Commission, was constituted in 1977 to go into the affairs of the Dawoodi Bohra community. The Commission was constituted, among other, of eminent jurists namely Shri M. P. Nathwani, M.P., Ex. Judge of the Bombay High Court and Miss Alu Dastoor who was head of Department of Minorities Commission and two Muslim Professors Mr. Alam Khundmiri of Osmania University, Hyderabad and Mr. Moin Shakia of Maharashtra University, Bombay. The commission has, after recording evidence and due deliberations, shown how 'Baraat' and 'Raza' have been pressed into service to enable the Dai-UI-Mutlaq to lay claim to the properties of the community and to the sole trusteeship thereof. The Defendants will rely on the findings of the Commission and will support and amplify them.

II. '5..... This practice is being exploited illegally and contrary to Islam, and all those who have refused to take oath or having taken refused to renew it or otherwise refused to accept the exploitation under the garb of Misaq have suffers

heavily.....'

III. '27..... Here the defendants may be permitted to say that they are not permitted to enter any of the community mosques, Musafirkhanas etc. outside Udaipur or at other places of Bohra settlements, grave-yards every where including Khanjipur grave-yard of Udaipur is closed against them. Instances where a member of Youth Group had to seek police protection to bury his relation are in legion. In some cases dead body buried without (sic) were uprooted from its grave and thrown out.'

IV. '33. Even when it is said that a head of religion has necessarily the power of excommunication, that power can only be exercised in the interest of the religion and always for the welfare of the community. The power can be used in the manner and within the limitation laid down authoritatively by the Privy Council aforementioned. Wherever it has been stated above that the Youth or any member thereof has been put under the curse of 'Baraat' or is being considered as under 'Baraat', it will not be read any admission that was anything like a valid pronouncement of 'Baraat' against the Youth or against the member.

A displeasure shown by Dai-ul-Mutlaq or his Amil is sufficient to set a chain of reaction. It is contended that 'Baraat' was always arbitrary and illegal.'

The allegations in the aforesaid paragraph has a reference to the rituals Misaq Baraat and Raza, which according to defendants are the practices started by the priestly class in the name of religion, which are unknown to Islam.

15. While exercising jurisdiction under Order 6, Rule 16 of the Civil Procedure Code, the Court should consider whether the allegations complained of is or is not necessary for establishing the defence. In deciding the question, whether the allegation, which is objected to, is relevant on any of the issues, the correct test, which is to be applied is whether the controversial allegations should be spoken to by the defendants in their evidence for the purposes of establishing his defence, which if established, would non-suit the plaintiff, and that with reference to the matter, it would be admissible in evidence with reference to the relief that is prayed.

16. In *Singhai Karelal Kundanlal Trust v. Kesri Dal Mill*, AIR 1976 Madh Pra 54, it has been held that where the allegations cannot afford a defence to the action and which was if not struck out, would unnecessarily delay the suit, it must be struck out.

17. In *Dal Chand v. Satish Chandra*, AIR 1983 Raj 23, it has been held that the question whether a plea is embarrassing within Order 6, Rule 16 of the Civil Procedure Code is to be decided by the Court in view of the facts and circumstances of a particular case. A claim or defence which a party is not entitled to make use of or a pleading which contents irrelevant allegations is embarrassing.

18. The law on subject and the principle underlying Order 6, Rule 16 with its limitation is given expression to in *Knowles v. Roberts*, (1888) 38 Ch D 263, wherein it is said:--

'It seems to me that the rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law: and if a party introduce a pleading which is unnecessary and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right.'

19. In order to determine the relevancy one must see what is the nature of the suit, and if any relief is sought in respect to the allegations made in the defence. The charges of the most offensive character may be introduced into a written statement, if they are relevant to the issue or the matter in question between the parties, but it is not allowable to introduce offensive statements unless they are relevant to the relief sought.

20. The plaintiffs have claimed the relief of injunction on the basis of the allegations that Dai-U-Mutlaq or representatives appointed by him have the sole authority in conducting the religious matters in the masjid, whereas that right has been denied and interfered with by the defendants. The object of the suit is to obtain injunction restraining the defendants from preventing the plaintiffs and other

Dawoodi Bohra owing allegiance to their spiritual and religious head, the Dai-ul-Mutlaq from entering the four masjids/ mosques and performing the religious ceremonies therein under the auspices and authority of Dai-ul-Mutlaq or his nominee, and that their such right should not be interfered with by the defendants. There are no allegations in plaint or any relief is claimed regarding the manner and the authority under which Dai-UI-Mutlaq has a right to exercise the powers as regards the Misaq, Barat and Raza, nor there is any prayer made for restraining the defendants from interfering in exercise of those rights in a particular manner. In the absence of any relief sought in respect of Misaq, Barat, and Raza and the frame of the suit founded on the statement of Misaq, Barat and Raza, the reply to that respect would not be relevant. The entire reading of the plaint and the relief claimed, there is nothing to show that any relief has been claimed or the allegations: made with respect to Misaq, Barat and Raza: The introduction of the facts regarding Misaq, Barat and Raza are not for the purposes of meeting of the case set-up by the plaintiffs or any relief claimed there under. In the absence of the allegations or the prayer made or the relief claimed, the case set up by the defendants with respect to Misaq, Barat and Raza in answer to the plaint will not be relevant. In the absence of any allegations with respect to Misaq, Barat and Raza or the relief claimed, the introduction by way of defence regarding allegations of Misaq, Barat and Raza is nothing but enlarging the scope of the suit, which has not been pleaded by the plaintiffs. It is not necessary for the defendants to set up the allegations in respect of Misaq, Barat, and Raza to meet the allegations made in the plaint or the relief claimed.

21. I need not go into the questions whether the allegations made by the defendants are scandalous, frivolous or vexatious, as I am of the view that the allegations are unnecessary and shall embarrass and delay the fair trial of the suit, if permitted to stand as they are. The allegations in respect of Misaq, Barat and Raza has no relevance to the relief sought in the plaint and has been rightly struck out by the Court below. The order passed by the trial Court is in accordance with law and does not require any interference by this Court.

Consequently, this revision fails and is hereby dismissed.

