
(2009) 07 AHC CK 0068
In the Allahabad High Court

Shahroz Khan

APPELLANT

Vs

U.P. Sunni Central Waqf Board and Others

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Waqf Act, 1995 — Section 83(2), 89

Citation : (2009) 4 AWC 4044

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard learned Counsel for the revisionist Mohd. Farooq Ansari and Mr. W. H, Khan and Sri M. A, Siddiqui for the contesting respondent.

2. The revision has been preferred against the order dated 23.4.2009 whereby the application moved by the revisionist for rejecting the reference has been rejected. The objection taken by the revisionist was that the application was not entertainable as there was non-compliance of the period of 2 months" notice as provided for u/s 89 of the Wakf Act, 1995. Learned Counsel relying on the decision of M.S. Abdul Hameed Vs. S.M. Sheik Mohammed, H. Ahmed Thambi, M.G.M. Abdul Rahaman, J.M. Sultan and S. Mohamed Basheer, urged that the claim of opposite party was in effect in the nature of a suit and, therefore, the procedure as prescribed u/s 89 ought to have been followed, This having not been done, the learned Civil Judge (Senior Division) has committed an error by rejecting the application of the applicant.

3. Sri W. H. Khan for the opposite party invited the attention of the Court to Sub-section (2) of Section 83 of the Wakf Act, 1995 to urge that as a matter of fact, the opposite parties have moved an application for reference under the aforesaid provision which does not require any such procedure for sending a notice in advance as provided for u/s 89. It is urged that the procedure prescribed u/s 89 is strictly for suits and not for any application to be made u/s 83. The application,

according to Sri Khan, has been moved in the Tribunal and is not in a proceeding of a suit as contemplated u/s 9 of the C.P.C.

4. Having heard learned Counsel for the parties and having perused the decision relied upon by the learned Counsel, it appears that the contention is that the procedure provided for u/s 89 should be impliedly read into Section 83, The aforesaid submission advanced is totally unwarranted inasmuch as the procedure provided u/s 83 does not indicate any such mandate for compliance.

5. It is settled law that the Court can interpret a provision in order to iron out the creases but it cannot weave a new texture. The Legislature clearly intended to provide for a notice u/s 89 but it did not consciously include any such provision in Section 83. The procedure, which has not been provided for in Section 83, cannot be introduced even applying Heydons' rule of interpretation. This Court will not read into the provision and virtually enact a procedure which has not been provided for. If the section does not contemplate a specific procedure then merely because some other section in the Act, which in the present context is for a suit and not for an application for reference, cannot be applied on the basis of an interpretation and an inference drawn on the strength of the judgment relied upon by the learned Counsel for the applicant. The Court is not to legislate or introduce any rule or procedure by judicial intervention.

6. Nonetheless, it is the choice of the opposite party to move an application u/s 83 of the Act. Whether the suit would lie or a reference would lie is an altogether different question but so far as moving of an application u/s 83 is concerned, the same does not require any compliance of the procedure prescribed u/s 89. The judgment relied upon by the learned Counsel for the applicant does not come to the aid of the applicant on the proposition advanced.

The revision is misconceived and is dismissed.