(2009) 10 DEL CK 0304

In the Delhi High Court

Case No : C.S. (OS) 1037 of 2001 and I.A. No. 6327 of 2006

S.R. Bahuguna and Another	APPELLANT
Vs	
All India Women''s Conference (AIWC) and Others	RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 92, 92(1)
Societies Registration Act, 1860 — Section 5

Citation : (2009) 7 ILR Delhi 614

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : A.K. Panigrahi, for the Appellant; Atul Y. Chitale and Shweta Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This order proposes to dispose of the request of the plaintiffs to sue the defendants under Section-92 of the CPC (CPC).

2. The suit avers that the defendant is a public charity, being a society registered under the Societies Registration Act, 1860 and federated body having about 500 branches all over India and in every state. The plaintiffs have disclosed the administrative structure of the Defendant No. 1 (hereafter referred to as AIWC), as mentioned in Article-14 of its Constitution. It is alleged that in order to construct a building on a plot of land belonging to AIWC and develop it, a Board of five Trustees was set up by the standing committee of AIWC through a registered Trust Deed dated 01.09.1975. The President of the AIWC was constituted as a Managing Trustee. The plaint further avers that the Trustees got the building constructed after spending about Rs. One Crore. The plaintiffs contend that Mr. Ashok Gupta was made the President between 1985 and 1990, during which time, the previous President Dr. Lakshmi Raghuramaiah continued as managing trustee till she was marginalized and ousted by the next batch of office bearers. The plaintiffs say that the construction of a multistoried building

was for the purpose of women?s welfare and in order to generate income so as to enable AIWC to carry out its projects and achieve its objectives. The plaintiffs allege irregularities and malfunctioning in AIWC after 1991 when new office bearers took over the society. The suit discusses in detail about the activities of the society and how money was given or advanced for various schemes. It is also mentioned that the first plaintiff/petitioner (hereafter referred to as Bahuguna) was targeted and relentlessly victimized by the new President and took over charge in January, 1991. Various acts of alleged victimization such as deduction of his salary - (since he was working as Administrative Officer in the Society) - have been mentioned. It is claimed that the various acts of victimization and harassment as well as decisions taken were completely arbitrary; Bahaguna submits being adversely affected by them and also that the Society?s financial position was weakened. The plaintiffs also rely upon certain observations allegedly made by the Chartered Accountants of the Society, recorded in the Auditor?s advice as well as the Annual Report and point that necessary amounts for disbursement utilized as grant to the extent of Rs. 1.82 Crores had not been made. The second plaintiff alleges to having been appointed as an Accountant in July, 1991 and discovered that the Treasurer, Beena Jain, had misappropriated Rs. 62,200/-, since 1998 after which he/she was removed. He relies upon a letter dated 16.08.2000 for this purpose. The second plaintiff (hereafter referred to as ''Kapur'') mentioned how these facts were brought to the notice of the Society?s President through a letter dated 18.03.2001. The details of excess or false claims made by the Treasurer have been set out in paragraph-22.3.

3. The plaintiff submits that the Standing Committee and Executive Committee of the Society as existing are incompetent to govern its affairs and that there is an urgent need to frame Financial Rules to ensure that the Society functions properly to achieve its objectives.

4. Originally, the plaintiffs had alleged that Section-92 of the Act is Un-Constitutional as it impedes free access to justice. They even sought a declaration for that purpose. However, the Court recorded their concession that such relief was not being urged, by permitting the amendment to that end, on 17.12.2002 (by allowing I.A.-7729/2002). The plaintiffs rely upon the constitution of the AIWC, particularly paragraph-7 to say that the property or properties of the Society, for which a Board of Trustees is created, and the purpose concerning those departments would be vested in the Trust and managed with the approval of the Standing Committee. It is alleged that this and the plaintiffs? having been in employment of the AIWC satisfies the requirement of Section-92 requiring the Court to permit the filing of the present Suit.

5. Mr. A.K. Panigrahi, learned Counsel appearing on behalf of the plaintiffs reiterated the contents of the averments and further urged that under Section-92, the plaintiffs are interested persons being ex-employees and thus possessing the requisite locus standi to file the Suit to ensure proper management of the Trust. It is also pointed out that a Trust suit is pending on

the file of the Court being Suit No. 314/1993 where leave was granted by a Single Judge, and where Division Bench of the Court on 20.07.1996 in the course of its judgment clearly observed that the allegations and materials placed on the record prima facie established that a Trust has been created for public charitable nature and that allegations concerning breach of trust had been made. It is submitted that the said judgment was carried in appeal to the Supreme Court by special leave (C.A.-1548/1997), which dismissed it by its order dated 22.09.2004. It is submitted that the said Suit was, however, later withdrawn and as a consequence, the acts requiring close scrutiny by the Court have assumed great criticality.

6. Relying upon decisions of Allahabad High Court in Shri Thakur Jee Maharaj v. Smt. Dankiya AIR 1996 All 247 and of the Madras High Court in Gopala Krishniar v. Ganapathiar AIR 1929 MAD 238, it is contended that anyone who has devoted some time, effort and energy in relation to an activity that is public or charitable would be entitled to maintain a Suit in relation to its management and affairs. In Shri ThakurJi Maharaj, the plaintiff claiming to be Shebait sought for creation of a scheme for management of a property of a temple to ensure its proper functioning; he was held to be competent to file the Suit, as the previous Shebait had died. In Gopala Krishnair, the founder of a public charity for the purpose of a Hindu temple, had died and his successor was dismissed for misconduct. The plaintiff was a member of the founder?s family; he approached the Court claiming to have interest in maintaining the Suit for the proper management of the Charity. The Court endorsed an earlier view in Jaan Ali v. Ram Nath Mundal 1882 (8) CAL 32 that an interest is deemed sufficient if it is substantial and not sentimental or remote for the purpose of granting the leave under Section-92.

7. The defendants contest the proceedings and say that the Suit is not maintainable under Section-92 as AIWC is a Society and reliance placed upon a Trust formed in 1975 by the plaintiffs is inapt. It is contended that leave is sought by two disgruntled ex-employees; Bahuguna?s services had been terminated on 24.04.1995 and Kapur?s had been terminated from employment on 30.09.2000. It is submitted that the AIWC acquired 3.1 Acres of land at Bhagwan Dass Road through a perpetual deed at a nominal price having regard to its welfare and public oriented purpose, in order to construct upon the said land, the Trust was resolved to be and was created on 1.9.1975. It is alleged that the Trust was revoked on 27.6.1997 since the construction had been completed and the purposes for which it was set up, fulfilled.

8. The AIWC states that after the construction of the building, its different portions were let out to various Banks and other tenants like the Aga Khan Foundation and certain Architects etc. It is alleged that AIWC is a Society and defendant Nos. 2 -4 are the office bearers. It also avers that the present action appears to have been motivated and filed at the behest of fifth defendant, an erstwhile office bearer.

9. Mr. Atul Chitale, learned Sr. counsel appearing on behalf of the defendants

urged in addition to the response indicated in the reply that Section-92 CPC has no application unless three conditions set out are fulfilled, i.e., a Trust must exist as on the date of filing the Suit; the Suit can be filed by two or more persons having interest in it and that leave should be obtained from the Court for instituting it. He relied upon the decision in Sugra Dibi v. Hazi Kummu Mia 1969 (3) SCR 3. It is urged that with the extinguishment and dissolution of the Trust (originally created on 1.9.1975) on 27.6.1997, there was no Trust in existence as on the date of filing of the Suit i.e. 31.03.2001. Therefore, the essential pre-requisite of existence of a Trust is not fulfilled and the Suit is liable to be rejected. It is contended that even otherwise under Section-5 of the Societies Registration Act, 1860, the property and assets of a Society (as the AIWC undoubtedly is) vest either in a Trust or in the absence of a Trust in the governing body of such Society. In the present case, AIWC?s governing body is the Standing Committee. It is pointed out that so far as the second requirement is concerned, Bahuguna does not possess the locus standi since his services were terminated on 24.04.1995 and the present Suit was filed more than six years later. It is contended that Bahuguna in fact is an interested party, as is evident from the order dated 24.03.2007 in the previous Suit No. 974/1994. That Suit had been filed by three persons but could not proceed as two of them withdrew their consent and the third plaintiff expressed his inability to continue with the Suit. In those circumstances, Bahuguna filed an application - I.A.-4088/2006 seeking to implead himself but was not permitted to do so. AIWC relies upon the order of this Court, which states that he was not interested but wants to pursue the litigation for his personal means.

10. It is, therefore, urged that this Court should not grant the leave sought by the plaintiffs and should reject the Suit.

11. Before proceeding with the discussion on the merits, it would be useful to extract the Section-92 of the CPC; it reads as follows:

92. Public charities.

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree,-

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property];

(d) directing accounts and inquires;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863) [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with provisions of that sub-section.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more the following circumstances, namely:

(a) where the original purposes of the trust, in whole or in part,

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust;

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]

12. The sum and substance of the suit averments is that the AIWC, a registered Society, constituted a trust on 01.09.1975 for the purpose of constructing upon a plot of land allotted to it in 1962. This was part of the avowed objectives that govern the Society. The AIWC had resolved that after construction, the building would be utilized to provide housing for as many working women as was feasible and also at the same time generate rental income to sustain its other welfare activities. The plaintiffs allege various acts of financial irregularities in relation to construction activity undertaken by the AIWC as well as alleged acts of embezzlement on part of the Treasurer. They also rely upon certain observations by the AIWC?s Chartered Accountants or Auditors. Their claim to be persons interested for the purpose of obtaining leave is that they were associated with the Society having worked there for some time and are, therefore, ''interested for its proper management and functioning''.

13. Sugra Bibi (supra) ruled that the conditions for applicability of Section 92, mentioned in the provision, are essential, by saying that:

5. It is evident that this section has no application unless three conditions are fulfilled: (1) the suit must relate to a public charitable or religious trust, (2) the suit must be founded on an allegation of breach of trust or the direction of the Court is required for administration of the trust, and (3) the reliefs claimed are those which are mentioned in the section....

As to what category of grievances can be legitimately be brought before the courts, u/s 92, was summed up, in the following manner, by the Supreme Court, in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, :

A suit u/s 92 is a suit of a special nature which presupposes the existence of a public Trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit u/s 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 (see N. Shanmukham Chetty v. V.M. Govinda Chetty, Tirumalai Devasthanams v. Udiavar Krishnayya Shanbhaga, Sugra Bibi v. Hazi Kummu Mia and Mulla: CPC (13th edn.) Vol. 1, p. 400). A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.

14. In this case, the Bahuguna, the first plaintiff, was terminated from service, in 1995. Although he alleges, that the Society is mismanaged, several allegations in the plaint are about his grievances. The Court cannot also be oblivious to his previous effort to proceed with another, older suit u/s 92, which was given up by the plaintiffs. He sought to implead himself, claiming to be a person interested; the request was declined by the Court. These clearly point to an effort by him, to vindicate, or agitate his personal grievances. Besides, there is no denial that the first defendant is a society, not a Trust; a Trust was set up for a limited period, for a special purpose, i.e. to construct a building. Apparently, after that objective was achieved, the Trust was dissolved or wound up. In these circumstances, the Court is of opinion that the suit is not maintainable.

15. The above reasoning would be dispositive of the suit, because any action u/s 92 has to be by the persons interested, in the affairs of the Trust. With the finding that the first plaintiff has no interest, the suit would not be maintainable. However, the Court is also of the opinion that the allegations in the plaint as far as the second plaintiff, are concerned are similar to those made by the first plaintiff. He too, is a disgruntled employee, terminated from the service, in year 2000, after he had worked for two years with the AIWC.

16. In view of the above discussion, the Court is of opinion that the suit is not maintainable, because two crucial ingredients, which are essential pre-requisites for action u/s 92 are lacking; the first, defendant is a society, and not a public charitable Trust. The Trust which had been set up earlier was dissolved in 1997; that has not been disputed. The suit was filed in 2001. Section 5 of the Societies Registration Act 1860, says that the property and assets of a registered society vest either in a trust, set up for that purpose, or the society?s governing council or body. This however, does not mean that the governing body members if no trust is created to manage the society?s assets, become trustees. No authority

was shown to advance such an argument. The second ingredient, i.e. the plaintiffs being ''persons interested'' is also lacking, in this case.

17. For the above reasons, the plaintiffs cannot be granted leave to file a suit, u/s 92 of the CPC. The suit and all pending applications are, therefore, dismissed without any order on costs.

