
(2013) 02 KAR CK 0109
In the Karnataka High Court
Case No : W.P. No. 5039/2013 (GM-CPC)

Sri. L. Shivalingaiah

APPELLANT

Vs

Anand Social and Educational Trust Regd., Dr. Divakar S.V.
and Dr. S. Jagadish

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 02 KAR CK 0109

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Judgement

N. Ananda, J.—The petitioner is aggrieved by the order of learned Principal City Civil & Sessions Judge, granting an ad interim temporary injunction in Miscellaneous Petition No. 36/2013. In terms of the impugned order, petitioner has been restrained from functioning as Managing Trustee of I-respondent trust. I have heard Sri. Jayakumar S. Patil, learned senior counsel for petitioner, Sri. N. Devhadas, learned senior counsel for I-respondent and Sri. Umashankar M.N., learned counsel for respondents 2 & 3.

2. The main objection raised by Sri. Jayakumar S. Patil, learned senior counsel for petitioner is that the trial court did not have jurisdiction to grant an ex-parte order of temporary injunction, without deciding the petition filed u/s 92 CPC. Therefore, the order of trial court is without jurisdiction and liable to be set aside.

3. Sri. N. Devhadass, learned senior counsel for I-respondent would submit that remedy available to petitioner is to approach the very court to seek variation of order passed on the application filed under Order XXXIX Rules 1 & 2 CPC; petitioner should not have invoked the jurisdiction of this court under articles 226 & 227 of the Constitution of India.

4. The learned counsel for respondents 2 & 3 would justify the impugned order by contending that learned Principal City Civil & Sessions Judge taking into consideration various proceedings and the orders made by this court in several

writ petitions and conduct of petitioner herein, has granted an ex-parte order of temporary injunction, which can be varied at the instance of defendants after their appearance and on contest.

5. As could be seen from records, the application filed for grant of leave u/s 92 CPC is not in conformity with Rule 16-A of the Karnataka Civil Rules of Practice, 1967. The application filed u/s 92 CPC is not signed by the applicants. The trial court has not noticed this lacuna. In my considered opinion, this lacuna can be removed by the trial court by permitting petitioners 1 & 2 before court below to sign the application.

6. The Miscellaneous Petition is filed u/s 92 CPC. Therefore, the question that arises for consideration is:-

Whether the trial court had jurisdiction to grant an ex-parte order of temporary injunction, in terms of Order XXXIX Rules 1 & 2 CPC before passing an order on the petition filed u/s 92 CPC?

7. In a decision reported in Govindan Vs. Koovalasser S.M.K. Trust, , the Kerala High Court after referring to various judgments of the Supreme Court and Kerala High Court has held:-

21. It is clear from the above rulings of this Court as well as the Supreme Court that even though leave to sue u/s 92 of the C.P.C. can be granted by the Court on the prima facie satisfaction regarding the allegations made against the respondents either without giving notice to the respondents or after giving notice to the respondents and hearing them, there will be no properly instituted suit under law before formal leave is granted by the Court u/s 92 of the C.P.C. and no interlocutory order in the proceedings can be passed by the Court before granting permission to institute the suit u/s 92(1) of the C.P.C.

8. On careful consideration of the provisions of section 92 CPC and Order XXXIX Rules 1 & 2 CPC, I am of the considered opinion that an ex-parte order of temporary injunction can be granted in a pending suit. A suit filed u/s 92 CPC would be a validly instituted suit only after leave is granted u/s 92 CPC. The learned trial Judge has not considered this aspect of the matter. Therefore, the impugned order cannot be sustained.

9. The I-defendant trust is running several institutions. In day-to-day business, several administrative policy decisions will have to be taken and many of such decisions would involve financial implications. In the present situation, there is serious contest between contesting parties as to the credentials of petitioner to manage the trust. In the circumstances, it would be necessary for this court to impose certain conditions. Therefore, trustees of I-defendant trust, including petitioner herein shall not take any policy decisions involving financial implications, pending consideration of the applications before trial court. In the result, I pass the following:-

ORDER

The petition is accepted. The impugned order is set aside. The learned trial Judge shall consider the application filed u/s 92 CPC so also application filed under Order XXXIX Rules 1 & 2 CPC, within a period of one month from today, for which both parties shall extend their cooperation. The trustees of I-defendant trust shall not take any policy decisions involving financial implications, other than decisions relating to day-to-day affairs of I-defendant trust and institutions run by I-defendant trust, till aforestated applications are decided by the trial court.