

IN THE HIGH COURT OF SINDH AT KARACHI

SECOND APPEAL NO.10/2017

Date

Order with signature of Judge

1. For hearing of CMA No.3391/2017.
2. For hearing of main case.

19.03.2018

Mr. M.A.K. Azmati advocate for appellant.

Mr. Amarnath advocate for respondents No.5 to 7.

ORDER

1. Precisely relevant facts are that appellants are members of Shree Surti Meyayat Rajput Panchayat, registered under the Societies Registration Act 1870, and were contesting panel of Surti Ekta group in election for office bears of this panchayat; term for elected body is three years but since 10 years elections are not conducted. Appellants/applicants filed plaint that was rejected under order VII rule 11 CPC and they preferred appeal that was also dismissed while holding that applicants have not availed the remedy available with Registrar of Joint Stock Companies as per Societies Registration Act 1860;

2. Learned appellants' counsel argued that impugned order (s) of both the courts below are not sustainable as the Act does not bar the *jurisdiction* of Civil Court; learned counsel for appellants further contents that this revision is against two orders whereby he has been debarred to adjudicate the status of panchayat before Civil Court with reference to section 16-A whereas in Societies Registration Act 1860 which *otherwise* does not bar the jurisdiction of civil court.

3. Learned counsel for respondents No.3 to 7 contends that applicants have no right to interfere the religious activities of

panchayat hence trial Court as well as appellate Court have rightly rejected the plaint.

4. Learned counsel for appellants when *confronted* to legal position that regarding scope of *second appeal* he was *fair enough* to say that *second appeal* is not maintainable but revision so requested for conversion of appeal into revision which is not disputed by other side. Since, it is by now a well settled principle of law that an appeal can be converted into a revision and a revision petition into an appeal, provided the same is within period of limitation. In instant matter, *lis* was timely filed hence following the said principle couple with no objection, instant appeal is converted into Revision petition, office shall assign number.

3. Heard the parties' counsels and perused the record carefully.

4. Needless to mention that it is settled proposition of law that matters *normally* shall be decided on merits and one shall not be knocked out on technicalities. Orders of both the courts *below* are based on Section 16-A of the Act which reads as:

“16-A. Supersession of governing body of a society.-

(1) Notwithstanding anything contained in the memorandum of association, rules or regulations of a society registered under this Act, if, after such inquiry as may be necessary, the Provincial Government is of the opinion that the governing body of the society-

(a) is unable to discharge or persistently fails in discharging its duties, or

(b) is unable to administer its affairs or meet its financial obligations, or

(c) generally acts in a manner contrary to public interest or the interests of the members of the society,

the Provincial Government may, by notification in the Official Gazette, declare the governing body to be superseded for such period, not exceeding one year, as may be specified in the notification.

Provided that the declaration shall not be made without giving to the society to be affected thereby an opportunity of being heard.

(2) On the publication of a notification under sub-section (1)-

(a) the office-bearers and other members of the governing body shall cease to hold office; and

(b) all functions of the governing body shall, during the period of supersession, be performed by a governing body constituted by the Provincial Government from among the members of the society.

(3) On the expiry of the period of supersession, the governing body of the society shall be reconstituted in accordance with its memorandum of association, rules and regulations.”

The plain reading of the above provision *vests* jurisdiction in the Provincial Government but *no where* debars the Civil Court from entertaining a suit. A sail through the Act bring not a single provision which *expressly* or *implied* bars the jurisdiction of Civil Court. If there is no such *clause* the Civil Court, being the Court of ultimate and plenary jurisdiction, would be competent to entertain a suit. The legal position, being so, would stand clear from a direct referral to Section 9 of the Code which reads as:-

“ The Courts shall (subject to the provisions herein contained) have jurisdiction to try *all suits of a civil nature* excepting suits of which their cognizance is either ***expressly or impliedly barred.***

Explanation.- A suit is which the *right to property* or to *an office is contested* is a **suit of a civil nature**, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

The explanation, provided by the *Code* itself defines a right to property or an *office* as **civil nature** even if same entirely depends upon religious rites or ceremonies. Therefore, one cannot challenge jurisdiction of the Civil Court merely by referring that such *lis* may involve religious rites or ceremonies. Be that as it may, even if there is an *ouster clause* in the statute, barring the jurisdiction of Civil Court, that must be construed in favour of the existence of jurisdiction of the Civil Court, as the Civil Court has got plenary and over all jurisdiction under section 9, C.P.C.

5. Furthermore, there is no barring clause that any member cannot go any civil Court for adjudication of his right to an office of *society* and even otherwise it is not a case of respondents that *memorandum* of association debars a *member* from making such challenge in civil court. In absence of an *express* or *least* implied barring clause in a *related* statute , including the one (*memorandum* as in case of such like nature), the party claims his right and status, the Civil Court would be competent to try all suits unless it is established that *dispute* is not of Civil nature which is not claim of the respondents / defendants. Thus, I am of the view that this is fit case falling within the term *stare decisis* hence impugned judgments are set aside. Case is remanded back for trial on merits. However respondents No.3 to 5 would be competent to move application with regard to their activities on religious dates and trial Court shall pass proper orders to regulate those activities enabling all the members to participate who are interested. Trial Court shall decide the matter preferably within six months.

6. In above terms instant second appeal, which stood converted in revision; impugned orders are set aside; case is remanded back.

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