

A SAIYAD MOHAMMAD BAKER EL-EDROOS (DEAD) BY LRS.

v.

ABDULHABIB HASAN ARAB AND ORS.

APRIL 2, 1998

B [K.VENKATASWAMI AND A.P. MISRA, JJ.]

C *Trusts and Trustees : Bombay Public Trusts Act, 1950—Section 50A—Application under, moved in the prescribed form by two persons, for initiating proceeding for settlement of scheme of a public trust—Demise of one of the applicants—Belated application for substitution by the son of the deceased applicant and similar application by another set of two persons for being joined also as applicants in the said scheme—Applications allowed by the Charity Commissioner—Challenge to on the grounds that the heirs of the deceased applicant not being brought on record within the prescribed time, the proceedings would abate by virtue of provisions under the C.P.C—Held, the proceedings under Section 50A of the Bombay Public Trust Act, 1950 would not abate and the Charity Commissioner has powers to grant substitution even if belated or add parties in the said proceedings—Sections 3, 35, 36, 36B, 37, 39, 40, 41, 41A, 41B, 47A, 69.*

E *Bombay Public Trust Rules, 1951/Presidency Small Causes Courts Act, 1882—Rule 7/ Sections 6, 9—Proceedings before the Charity Commissioner—Governance of—Held, Civil Procedure Code not applicable to such proceedings—It is the High Court by rule to prescribe the procedure which is to be followed by the Small Causes Court and not what is provided under Civil Procedure Code—Contention that proceedings before the Charity Commissioner to be what is provided in Civil Procedure Code, rejected—Code of Civil Procedure, 1908.*

G *Procedural law—Held, is always subservient to the substantive law, is always in aid of justice and not in contradiction or to defeat the very object which is sought to be achieved.*

H **An application under Section 50A of the Bombay Public Trusts Act, 1950 was filed by two persons before the Charity Commissioner for settling a scheme of a public trust. One of the applicants died and his son moved an application for substitution after lapse of long time. Similar application was made by another set of two persons claiming interest in the said trust. The**

Charity Commissioner allowed both the substitution applications. The said order of the Charity Commissioner was challenged unsuccessfully by the appellant before the City Civil Court, Single Judge of the High Court and finally before the Division Bench of the High Court. Hence, the present appeal.

On behalf of the appellant it was contended that in view of Rule 7 of the Bombay Public Trust Rules, 1951 and section 6 of the Presidency Small Causes Courts Act, 1882 the Charity Commissioner was bound to follow the procedure as prescribed by the Civil Procedure Code; and that when one of the applicants died and his heirs were not brought on record within the prescribed time, the proceedings would abate by virtue of provisions under the Civil Procedure Code.

Dismissing the appeal, this Court

HELD : 1.1. The proceeding under Section 50A of the Bombay Public Trust Act, 1950 would not abate and the Charity Commissioner has powers to grant substitution even if belated or add parties in the said proceedings. [657-D]

1.2. In view of various provisions, object of the Act, and the Charity Commissioner being clothed with sufficient power to deal with all exigencies where public trust or its trustees stay away from its legitimate path and where the materials are before him or before him by the said two persons, to hold abatement of proceedings on application of any procedural laws not only would amount to the curtailment of his power but make him spineless and helpless to do anything in the matter of public trust eroding the very object of the Act. [654-H; 655-A]

1.3. The concept of abatement under Section 50A would never arise, specially in such a situation where for achieving such an objective the Charity Commissioner in addition is capped with power to initiate suo motu. In this case when initiation of proceedings is in accordance with law which requires consideration for settling a scheme for better management, the proceedings cannot culminate or be defeated on the principle of abatement as provided in Civil Procedure Code. Once the material is brought before him, he may on the materials or after inquiry or after giving opportunity to the person concerned or trustees may or may not exercise of power depending on facts and circumstances of each case, but his exercise of power cannot be ousted either on the death of withdrawal of any one of the applicants. Non-substitution or delayed substitution of such deceased person would make no difference. [655-D-F]

A 1.4. Even if the son of the deceased applicant would not have been substituted, the proceedings could have continued and concluded in accordance with law. Rule 7 of the Bombay Public Trust Rules, 1951 merely deals with the manner of inquiries. Manner of inquiry was nothing to do with either initiation of proceedings under Section 50A or power to be exercised by the Charity Commissioner for framing the scheme. [655-G; 656-A]

B 2.1. It cannot be said that in dealing with an application under Section 50A of the Bombay Public Trust Act, 1950, Charity Commissioner should follow the procedure as prescribed by CPC. In view of Section 9 of Presidency Small Causes Court Act, 1882, the procedure to be followed by the Small Causes Court is as prescribed by the High Court. The procedure is not what is under Civil Procedure Code. Hence, the argument that proceeding before the Charity Commissioner to be what is provided in Civil Procedure Code is without any foundation. [657-C]

C 2.2. Reference to Civil Procedure Code in Section 6 of the 1882 Act is for a limited purpose. It is only to indicate that Small Causes Court to be a court within the meaning of the Code of Civil Procedure and to be a court subordinate to the High Court. Neither Rule 7 nor Section 6 gives what procedure is to be followed in a suit by the Small Causes Court. [656-D]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4116 of 1986.

E From the Judgment and Order dated 12.8.85 of the Gujarat High Court in L.P.A. No. 275 of 1985.

F Sunil Dogra, (Ms. Monica Sharma) and M/s. Suresh A. Shroff & Co., for the Appellant.

R.P. Bhat and M.N. Shroff for the Respondents.

The Judgment of the Court was delivered by

G **MISRA, J.** The short question for consideration is, whether the proceedings under Section 50A of the Bombay Public Trusts Act, 1950 would abate for the non-substitution of one of the applicants since deceased, and whether the Charity Commissioner has power under the Act to grant the belated substitution application made after long delay.

H This appeal is directed against the order of the High Court in appeal

against the judgment of the learned Single Judge, who summarily dismissed the appellant's appeal. Earlier, through an application before the Charity Commissioner, a proceeding was initiated for settling a scheme of a public trust in a Proceeding No. 5 of 1973 under Section 50A as aforesaid. Admittedly, the said application was moved in the prescribed form by two persons as per requirement of the said Section. On 23rd January, 1979 one of the original applicants, namely, applicant No. 2 Hasan Bin Abubakar, died. It is true that after a lapse of long time, the son of the deceased applicant moved an application, Ex. 44, on 11th October, 1983 for permitting him to join as a party to the said proceedings as he has interest in the said Trust. Significantly, another set of two persons viz. Hussain Bin Avadhahbai, claiming to be one of the trustees of Hazarat Chhota Edroos Masjid and Durgah Trust and another person made similar application under the same section for being joined also as applicant in the said scheme. The Charity Commissioner allowed both, the substitution of the son of the aforesaid deceased applicant and impleadment of the aforesaid second set of two persons as a party to the said proceedings. The appellant filed a C.M.A against the said order under Section 72(1) of the said Act before the City Civil Court. The City Civil Court (appellate authority) confirmed the order of the Charity Commissioner. Against that, an appeal was preferred before the learned Single Judge in the High Court who also confirmed the order passed by the City Civil Court. The learned Single Judge recorded that it is not in dispute that the proposed persons are interested in the Trust. Thereafter, a Letters Patent Appeal was filed which was also dismissed. It is against this, the present appeal arises.

Learned counsel for the appellant submits with vehemence that in all the aforesaid orders, if Rule 7 of the Bombay Public Trust Rules, 1951 was taken into consideration, the conclusion would have been otherwise. Submission is this, Rule 7 read with Section 6 of the Presidency Small Causes Courts Act, 1882 (hereinafter referred as '1882 Act') makes it obligatory on the Charity Commissioner to follow the procedure as prescribed by the Civil Procedure Code, so when one of the applicants died and his heirs not being brought on the record within the prescribed time, the proceedings would abate by virtue of provisions under the Civil Procedure Code. The relevant portion of Rule 7, as relied by the appellant is quoted hereunder:-

"7. *Manner of inquiries* - Except as otherwise provided in that Act and these rules, inquiries under or any other inquiry which the Charity Commissioner may direct to be held for the purposes of the Act, shall be held, as far as possible, in the Greater Bombay Region

A in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Courts Act, 1882 and elsewhere under the Provincial Small Cause Courts Act, 1887. In any inquiry a party may appear in person or by him recognised agent or by a pleader duly appointed to act on his behalf.”

B Section 6 of the Presidency Small Cause Courts Act, 1882 is quoted hereunder : -

C “6. The Small Causes Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the 28th day of December, 1865, for such High Courts, and within the meaning of the Code of Civil Procedure and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879 and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.”

D On this submission, two questions arise. First, even if it could be said, Civil Procedure Code is applicable to the proceeding before the Charity Commissioner the proceedings under Section 50A abate on the facts of the present case, second, whether Civil Procedure Code would apply to a proceeding under Section 50A? To answer the first question, it has to be seen what is the proceeding before him? What is prerequisite before he could initiate proceedings under Section 50 of the Act ?

E Section 50A(1)(2) and (3) is quoted hereunder:-

F “(1) Notwithstanding anything contained in Section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

(2) Where the Charity Commissioner is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after -

(a) publishing a notice in the Official Gazette and also if necessary in any newspaper which in the opinion of the Charity Commissioner is best calculated to bring to the notice of persons likely to be interested in the trust with a wide circulation in the region in which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard.

frame a common scheme for the same.

(3) The Charity Commissioner may, at any time, after hearing the trustees, modify the scheme framed by him under sub-section (1) or sub-section (2)."

This empowers Charity Commissioner to frame, amalgamate or modify a scheme for the proper management of a Public Trust. Under sub-section (1) he could initiate proceedings for the proper management or administration of a Public Trust and to frame and settle a scheme. He has two options either to initiate proceedings sub motu or when two or more persons having interest in the Public Trust make an application before him, in writing, in the prescribed manner. We find, the object of the aforesaid Bombay Public Trust Act, 1950 as revealed through its preamble is to regulate and make better provisions of the administration of public religious and charitable Trust within the State of Maharashtra. The Charity Commissioner is appointed through a notification under Section 3 having very wide powers and duties conferred primarily under Section 69, Chapter VII and other provisions of the Act. It has been the concern of legislatures to provide with such laws and entrust officers with such power to regulate, supervise the management and functioning of a Public Trust and endowment in a manner so as to give optimum benefit to the public at large. It was primarily this lack of proper machinery the Bombay Trust Act, 1935 was replaced by the present aforesaid Act of 1950. It is for this reason, Charity Commissioner and other set of officers are created as watch dogs for effective control and supervision of Public Trusts of all kind. Section 35 confers power on the Charity Commissioner in a given circumstance to issue general or special order to permit the trustees of any public trust to invest money in any manner. Before alienating any immovable property of a

- A public trust, a previous sanction of the Charity Commissioner is required under Section 36, maintain a register of movable and immovable properties to be in a manner as prescribed by the Charity Commissioner under Section 36B, power of inspection and supervision under Section 37. Under Section 39 a report is to be submitted to him regarding findings on the question whether or not a Trust or the person connected with the Trust has been guilty of gross negligence, breach of trust, misappropriation or misconduct which resulted in loss to the Trust. He can issue orders on such reports under Section 40 and can direct the resultant loss to be charged from such defaulting person, payable to the public trust under Section 41. Section 41A empowers him to issue directions for proper administration of the Trust and institute inquiries on receipt of complaints under Section 41B. He can suspend, remove or dismiss any trustee of a Public Trust on receipt of report under Section 41B. Any person interested in a Public Trust may apply to the Charity Commissioner under Section 47A for the appointment of a new trustee etc. In cases of breach of public trust including negligence, misconduct etc., he can file suit against such Public Trust or trustee under Section 50 and notwithstanding this in cases he has reason to believe that for proper management or administration of a public trust he may frame and settle a scheme under Section 50A. Section 69 gives duties, functions and powers of the Charity Commissioner. It is in this background Section 50A, for the questions raised, has to be screened. Thus, we find that the Charity Commissioner is crowned with very wide powers to check and control the irregularities, malpractices and misconduct in the functioning of any Public Trust. Also to supervise, regulate, settle a scheme for the proper management or administration of a public trust, in fact involved in almost every step of the functioning of a Public Trust.
- F Section 50A infuses the Charity Commissioner with power in addition to Section 50 to frame, amalgamate or modify any scheme in the interest of proper management of a Public Trust. This is exercised either suo motu when he has reason to believe it is necessary to do so or when two or more persons having interest in a public trust make an application to him in writing in the prescribed manner. This merely enables the Charity Commissioner to initiate proceedings for settling a scheme for the proper management or administration of a public trust. In the background of the setting of various provisions, object of the Act, the Charity Commissioner being clothed with sufficient power to deal with all exigencies where Public Trust or its trustees strays away from its legitimate path and where the materials are before him or placed before him by the said two persons, then to hold abatement of proceedings
- H

on application of any procedural laws not only would amount to the curtailment of his power but make him spineless and helpless to do anything in the matter of public trust eroding the very object of the Act. This is too restrictive interpretation to be accepted.

A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.

If the interpretation sought by the learned counsel for the appellant is to be accepted, it would tie the hands of a Charity Commissioner not to proceed with settling a scheme inspite of material placed before him only because one of the applicants is dead. The concept of abatement under Section 50A would never arise, specially in such a situation where for achieving such an objective he in addition is capped with power to initiate suo motu. It is not in dispute that the said two persons have made an application in the prescribed form. The proceeding has been initiated in terms of and in accordance with Section 50A, this cannot be said to be improper or illegal. Once the material is brought before him, he may on the materials or after inquiry or after giving opportunity to the person concerned or trustees may or may not exercise his power depending on facts and circumstances of each case, but his exercise of power cannot be ousted either on the death or withdrawal of any one of the applicants.

Hence, non-substitution or delayed substitution of such deceased person would make no difference. In this case when initiation of proceedings is in accordance with law which requires consideration for settling a scheme for the better management, in our considered opinion, the proceeding cannot culminate or be defeated on the principle of abatement as provided in Civil Procedure Code.

In fact, as aforesaid, subsequently, another set of two persons also joined in the said proceedings which the Charity Commissioner also permitted. For a public cause, this discretion of the Charity Commissioner cannot be faulted or could be said to be illegal. In the present case, the second applicant died on 23rd January, 1979 and his son filed application for joining on the 11th October, 1983. This would make no difference, even if he would not have been substituted, the proceedings could have continued and concluded in

- A accordance with law. Thus, the submission of the learned counsel for the appellant based on Rule 7 is misconceived. Rule 7 merely deals with the manner of inquiries. Manner of inquiry has nothing to do with either initiation of proceedings under Section 50A or power to be exercised by the Charity Commissioner for framing the Scheme. It is not raised in this case that any illegality is committed by the Charity Commissioner in the manner of inquiries.
- B The reference of Rule 7 was made, only to bring in Section 6 of the Presidency Small Cause Courts Act, 1882 for contending the Civil Procedure Code would be applicable.

- C Now, let us examine the second question, whether Civil Procedure Code at all is applicable to a proceeding under this Section. Reliance is strongly placed by the learned counsel on the aforesaid Rule 7 of 1951 Rules and Section 6 of the aforesaid 1882 Act. We find Rule 7 prescribes inquiry within the field, it refers to be as far as possible in accordance with the procedure as prescribed for the trial of suits by the Small Causes Court under the said 1882 Act. Section 6 of this 1882 Act refers to Civil Procedure Code on which
- D strong reliance is placed. But reference to Civil Procedure Code herein is for a limited purpose. it is only to indicate that Small Causes Court to be a court within the meaning of the Code of Civil Procedure and to be court subordinate to the High Court. Neither Rule 7; nor Section 6 gives what procedure is to be followed in a suit by the Small Causes Court.

- E We find Section 9 of 1982 Act provides the procedure to be followed. Section 9 is quoted hereunder:-

“9(1) The High Court may, from time to time, by rules having the force of law:-

- F (a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in Supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December, 1894, in or under this Act or any other enactment
- G for the time being in force; and
- (a) empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters, and
- (b) cancel or vary any such rule or rules.

- H Rules made under this section may provide, among other matters, for

the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force. A

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December, 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section." B

So, it is the High Court by rule to prescribe the procedure to be followed by the Small Causes Court. The procedure is not what is under Civil Procedure Code. Hence, the argument that proceeding before the Charity Commissioner to be what is provided in Civil procedure Code is without any foundation. The same is accordingly rejected. C

So, we hold in view of the aforesaid finding that the proceeding under Section 50A of the Bombay Public Trust Act, 1950 would not abate and he has powers to grant substitution even if belated or add parties in the said proceedings. D

For all the aforesaid reasons, we do not find any merit in this appeal which is accordingly dismissed. Cost on the parties.

M.P.

Appeal dismissed. E