

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION No. 2789 OF 2022

Between :

Rt Rev Dr Prof K Reuben Mark
S/o Late K Shadrach aged about 61 years Occ Dy Moderator
Church of south India SYNOD having office at at No 5 Whites
road Royapettah Chennai

.... petitioner

Vs.

E Prabhu Kumar and 2 others
s/o Late Kanakaraj aged about 42 years occ employee r/o
4386/3 Wesley Bagh Nampally Hyderabad & others

....Respondents

DATE OF JUDGMENT PRONOUNCED : 10.2.2023

HONOURABLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : Yes
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+ CIVIL REVISION PETITION No. 2789 OF 2022

%10.02.2023

Rt Rev Dr Prof K Reuben Mark
S/o Late K Shadrach aged about 61 years Occ Dy Moderator
Church of south India SYNOD having office at at No 5 Whites
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.... **Petitioner**

Vs.

\$ E Prabhu Kumar and 2 others
s/o Late Kanakaraj aged about 42 years occ employee r/o
4386/3 Wesley Bagh Nampally Hyderabad & others

....Respondents/

!Counsel for the petitioner : Sri J Prabhakar, Senior Counsel
for Ms.K Kalyani

Counsel for the Respondents: Sri V.Raghunath

<Gist :

>Head Note:

? Cases referred:

2005 (2) ALT 4 (SC)
(2007) 6 SCC 120
(2010) 2 SCC 114
(1917) 1 K.B. 486

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION No. 2789 OF 2022

ORAL ORDER :

Heard learned senior counsel Sri J.Prabhakar for revision petitioner and learned counsel Sri V.Raghunath for respondents.

2. This revision is preferred challenging the injunction order dated 24.11.2022 passed by the XX Junior Civil Judge, City Civil Court, Hyderabad, in IA.No.1065 of 2022 in OS.No.4938 of 2022.

3. Before going into the merits of the case, the facts which are shocking, are required to be noted.

4. On 22.11.2022 plaintiff filed OS.No.4932 of 2022. OS.No.4932 of 2022 was filed praying to grant the following relief:

“declare the action/interference of the defendants in the internal matter of the CSI Medak Diocese under the guise of Extract of the CSITA Committee of Management Resolution; Dated 13-05-2022 and Reference-vide Resolution No.F-23 dated 22-09-2020 followed by letter No.TA/19/115/2022 dated 13.6.2022 and letter dated 22.7.2022 appointing enquiry commission pertaining to the alleged property, institutional and financial matters in Medak Diocese as illegal, null and void and violation of Constitution of CSI and principles of natural justice;

Consequently relief grant the permanent injunction restraining the defendants, nominees, appointees, agents, executors, administrators or any one acting on their behalf from interfering with the internal affairs of

Medak Diocese and functioning of the Bishop in Medak”.

5. The said suit was registered on 23.11.2022, recorded filing of caveat and the trial Court assigned the date of hearing as 27.01.2023.

6. While so, on 24.11.2022 plaintiff filed another suit, praying to grant the following relief:

“declare the action/interference of the defendants in the internal matter of the CSI Medak Diocese under the guise of Extract of the CSITA Committee of Management Resolution; letter dated 22.7.2022 appointing enquiry commission pertaining to the alleged property, institutional and financial matters in Medak Diocese as illegal, null and void and violation of Constitution of CSI and principles of natural justice;

Consequently relief grant the permanent injunction restraining the defendants, nominees, appointees, agents, executors, administrators or any one acting on their behalf from interfering with the internal affairs of Medak Diocese and functioning of the Bishop in Medak”.

7. In the said suit, an Out of Order hearing was requested. Request was accepted. The suit was numbered as O.S. No. 4938 of 2022. This time caveat was not noted.

8. In the second suit, plaintiff filed IA.No.1065 of 2022 praying to grant interim injunction against interference in internal matters including function of Bishop. On the very same day a memo was also filed in OS.No.4932 of 2022 to advance the date of hearing of the suit by stating that plaintiff does not intend to prosecute the suit. Based on the said memo, the date

of hearing of OS.No.4932 of 2022 was advanced and the suit was dismissed as withdrawn.

9. On 24.11.2022 the trial Court passed injunction order in IA.No.1065 of 2022 in OS.No.4938 of 2022, which reads as under:

“Accordingly, issue Ad-interim injunction in favour of petitioner and against the respondents, restraining the respondent and their nominees including their appointees, representative, executors, assignees, agents, successors, etc and all those who claim under them from interfering with the internal matters and administration including functioning of the Bishop in conducting 37th diocesan Council and administration of Medak Diocesan, in any manner contrary to the law and the provisions of the constitution of CSI of Synod as well as the constitution of CSI of Medak Diocese, and enjoyment of the elected representatives from performing their duties until 09-12-2022. The petitioner shall comply the Order-39, Rule-3 C.P.C. Proviso before injunction is issued.”

10. It is appropriate to note that with the same prayer between the same parties, two days after filing of first suit, another suit was filed between the same parties seeking same relief with minor changes, which are insignificant. In the first suit caveat was registered and no injunction was granted. To secure ex-parte injunction, ingenious method was adopted. First a memo was filed to advance the date of hearing of O.S. No. 4932 of 2022 with prayer to withdraw the suit. Simultaneously, another suit was filed. Without raising objection, Office registered the suit by assigning number and this time caveat was not put up. The caveator was not put on notice on decision to withdraw the first suit. On 24.11.2022

Court permitted to withdraw the first suit. The plaintiff has not disclosed filing of first suit and decision to withdraw while filing the second suit. In the second suit, on same day, injunction order was obtained behind the back of the petitioner. The events narrated above clearly point out the ingenious method invented by the plaintiff to secure an ex-parte interim order.

11. The extracted portions of the prayers, the pleadings in both the suits and the conduct of the plaintiff leaves no doubt that with eyes wide open plaintiff simultaneously intended to prosecute two suits on the same cause of action and to go to any extent to secure ex-parte injunction behind the back of the caveator.

12. Leaving aside the merits of the case, the trial Court ought not to have permitted the plaintiff to institute another suit on the same subject matter when earlier suit was pending, permit the plaintiff to withdraw the earlier suit and to grant injunction without notice to the caveator. It appears from the plaint averments, there was no tearing hurry for the Court to rush with such speed and grant ex-parte injunction; more so, when on earlier occasion, Court did not grant injunction and assigned a date for hearing. In addition to conduct of plaintiff in perusing the litigation in this manner, the whole episode points out serious lapses by the Civil Court. Further, it is also noticed

that the issue does not concern any property but concerns functioning of affairs of CSI Medak Diocese.

13. The course adopted by the plaintiff amounts to misleading the Court and abusing the process of the Court. To say the least, such course cannot be countenanced.

14. In **S.J.S. Business Enterprises (P) Ltd Vs. State of Bihar and others**¹ Supreme Court observed that “***as a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief***”. (paragraph 13). In that case initially suit was filed in Civil Court, as Civil Court declined to grant interim relief, a writ petition was filed and obtained interim order.

14.1 In **Arunima Baruah Vs Union of India and others**² it is pertinent to note following observations of Hon’ble Supreme Court:

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. ***What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case.*** Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. ***It is also trite that a person invoking the***

¹ 2005 (2) ALT 4 (SC)

² (2007) 6 SCC 120

discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

(emphasis supplied)

14.2. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of ***R. v. Kensington Income Tax Commrs.*** (1917) 1 KB 486 in the following words: (KB p. 514)

“... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—*the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.*”

(emphasis supplied)

14.3 In ***Dalip Singh Vs State of Uttar Pradesh and others***³, Supreme Court observed,

“1. For many centuries Indian society cherished two basic values of life i.e. ‘satya’ (truth_ and ‘ahimsa’ (non-violence), Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the Courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood,

³ (2010) 2 SCC 114

misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and **it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”**

(emphasis supplied)

15. It is apt to consider the observations made in the decision of the King's Bench Division in **THE KING v. THE GENERAL COMMISSIONERS FOR THE PURPOSES OF THE INCOME TAX ACTS FOR THE DISTRICT OF KENSINGTON. *Ex parte* PRINCESS EDMOND DE POLIGNAC,**⁴ WARRINGTON L.J., observed:

“55.2 It is perfectly well settled that a person who makes an *ex parte* application to the Court — that is to say, in the absence of the person who will be affected by that which the Court is asked to do — **is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him.”**

(emphasis supplied)

⁴ (1917) 1 K.B. 486

16. Having regard to the facts of this case, I am of the considered opinion that the order under challenge is not sustainable and the same is set aside.

17. Accordingly, the revision petition is allowed. Pending miscellaneous petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date: 10.02.2023
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Note: L R copy to be marked YES/No.

HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No. 2789 OF 2022

Date:10.02.2023

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