

CASE NO.:
Appeal (civil) 7690 of 1995

PETITIONER:
IQBAL & ORS.

RESPONDENT:
HAKUMUDDIN & ORS.

DATE OF JUDGMENT: 22/11/2005

BENCH:
B.P.SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T
WITH C.A.NO.7691/1995, C.A.NO.7692/1995 & C.A.NO.7693/1995

B.P.SINGH, J.

I.A.Nos.1 and 2 for deleting the names of some of the appellants are allowed.

In these appeals, a common order of the High Court has been challenged. The High Court, by its impugned order, upheld the order of the Trial Court striking out certain paragraphs in the pleadings. The Trial Court had struck out portions of the written statement, as also paragraph 5 of the plaint.

The suits in question has been filed by Shri Gulam Abbas and others, who claim to be Dawoodi Bohras and who accept the Dai-ul-Mutlaq as their spiritual leader. They claim to be residents of Udaipur where there is a settlement of Dawoodi Bohras, who owe allegiance to their spiritual leader and religious head. The suits have been filed in a representative capacity on behalf of Dawoodi Bohras owing allegiance to their spiritual leader. The case of the plaintiffs is that the defendants and others who style themselves as Bohra youth Association and who have formed a separate organisation named as Dawoodi Bohra Jammāt of Udaipur, have challenged the spiritual and religious authority of the Dai-ul-Mutlaq, and have wrongfully interfered with the rights of the plaintiffs and other Dawoodi Bohras who offer their congregational prayers led by Pesh Imams, appointed or nominated by or under the authority of Dai-ul-Mutlaq in masjids/mosques at Udaipur. The plaint refers to the various properties of the community, including four mosques/masjids at Udaipur. Their grievance is that the defendants have been interfering with their right to offer namaz led by Pesh-Imams in the four masjids/mosques and have been wrongfully disturbing the other prayers being said in the four masjids/mosques. They have been interfering with and disturbed other religious gatherings, functions, and ceremonies being conducted in the said masjids/mosques with the permission and under the authority of Dai-ul-Mutlaq. They have at times resorted to violence which necessitated the religious functions and ceremonies being held at some private residences. In this manner, the defendants have interfered with the beneficial use of the said masjids/mosques by the members of the Dawoodi Bohra community, who owe allegiance to their spiritual leader and religious head, namely, Dai-ul-Mutlaq. The defendants have no right to object to the plaintiffs' aforesaid rights in the masjids/mosques.

The plaintiffs have sought the following reliefs namely, that the defendants be restrained by permanent order of injunction from preventing the plaintiffs and other Dawoodi Bohras owing allegiance to their spiritual leader and religious head, from entering the said masjids/mosques and/or from offering or participating in the Imamāt/Jamaat Namaaz/prayers led by Pesh Imams and/or attending or participating in any Vaiz, Majils or other religious functions, gatherings or ceremonies etc.etc. A relief has also been asked for, that the defendants may be restrained by an order of injunction from holding their separate Imamāt/Jamaat Namaaz and/or from holding Vaiz Majlis etc. in the aforesaid four masjids/mosques, as stated above.

It would thus be seen that the suit essentially is for permanent injunction restraining the defendants from interfering with the rights of the plaintiffs who offer namaaz etc. and who take part in ceremonies held in the aforesaid four masjids/mosques. The allegation against the defendants is that they have set up their own organisations who have challenged the authority of the Dai-ul-Mutlaq in these matters, and who have prevented the plaintiffs from exercising their rights, sometimes with the use of violence. Under these circumstances, to vindicate their rights, the plaintiffs have sought appropriate orders from the Court.

As we have noticed earlier, paragraph 5 of the plaint has been struck out by the Trial Court, which order has been affirmed by the High Court and no appeal has been preferred against that order. We are only concerned with the striking out of portions of written statement by the Trial Court, which has been affirmed by the High Court.

In paragraph 1.2 of the written statement filed by the defendants, certain allegations are made with regard to the priestly class having started certain practices in the name of religion which amounted to commercialisation of religion. In this regard, a reference has been made to "Mishaq", which according to the plaintiffs, is a religious doctrine or a tenet. According to the defendants, even though "Mishaq" has remained a major ritual, bearing no particular significance in places like India, yet it is implemented requiring declarations to be made on oath. The defendants have described the nature of oath subscribed to by the members of the community. They have also referred to two other rituals, namely "Raza" and "Barrat" and have alleged that these rituals have become deadly weapons in the hands of the priestly class. They have offered their views on these rituals, which, according to them, is wholly unnecessary as they are never a part of the religious tenet and in any event they are being misused. The aforesaid practices gave rise and impetus to a reformist movement in the community against commercialisation of religion which became a world movement. It is contended that the Bohra Youth Association accept the Dai-ul-Mutlaq as the head of the community, but insist on reforms in regard to Razzaq, Misaq and Barrat etc. They have also referred to other achievements of the Youth Association like contesting the elections etc.

It would be noticed that so far as paragraph 1.2 of the plaint is concerned, there is hardly any reference to "Mishaq", "Barrat" and "Raza". In paragraph 1 of the plaint the plaintiffs have only averred that the Bohra community as its spiritual leader the Dai-ul-Mutlaq and the plaintiffs owe allegiance to him. That the suit has been filed on behalf of those who recognise him as their spiritual leader and religious head. In paragraph 2 of the plaint it is stated that the defendants styled themselves as Bohra Youth association. They formed an organisation. The plaintiffs have challenged the defendants' right to challenge the authority of the spiritual and religious head, the Dai-ul-Mutlaq and to interfere with the rights of the plaintiffs and other Dawoodi Bohras to offer congregational prayers led by Pesh Imams appointed or nominated by the Dai-ul-Mutlaq in Masjids/mosques at Udaipur.

The High Court has considered the question as to whether the averments in paragraph 1.2 of the written statement are at all necessary having regard to the averments in the plaint and the nature of the suit. The High Court has taken the view that the plaintiffs have claimed the reliefs/injunction on the basis of allegations that Dai-ul-Mutlaq and persons appointed by him or his Amil, have the authority to lead the namaaz and conduct the religious rituals in the masjids/mosques and that right has been denied by the defendants. Thus, the object of the suit is to obtain an injunction restraining the defendants from preventing the plaintiffs and other Dawoodi Bohras who owe allegiance to their spiritual leader and religious head from entering the four masjids/mosques and from performing the religious ceremonies etc. The High Court has also noticed that there are no allegations in the plaint, nor is any relief claimed, regarding the manner and the authority under which the Dai-ul-Mutlaq has a right to exercise the power as regards "Mishaq", "Barrat" and "Raza", nor is there any prayer made for restraining the defendants from interfering in exercise of those rights in any particular manner. The High Court, therefore, concluded that in the absence of any relief sought in respect of "Mishaq", "Barrat" and "Raza" and having regard to the frame of the suit, the case set up by the defendants regarding "Mishaq" "Barrat" and "Raza" is not at all relevant. The reading of the plaint and the reliefs claimed do not show that any relief has been claimed based on allegations

made with regard to "Mishaq", "Barrat" or "Raza". The reference to "Mishaq", "Barrat" and "Raza" is not relevant for making out the case set up by the defendants. In these circumstances, it is found that the averments made in paragraph 1.2 of the written statement are not relevant, and it is merely an attempt to enlarge the scope of the suit filed by the plaintiffs. It is, therefore, concluded that the averments in paragraph 1.2 of the written statement are unnecessary, and shall embarrass and delay the fair trial of the suit if permitted to stand as they are.

We find ourselves in complete agreement with the view expressed by the learned Judge. It must be noticed that so far as the Dai-ul-Mutlaq is concerned, there is not even a party in the suits. Therefore, the question as to whether "Mishaq", "Barrat" and "Raza" are rituals which are wholly unnecessary, or in regard to which the Dai-ul-Mutlaq has been acting in an arbitrary manner by abusing his authority as spiritual head, is not at all relevant. In the connected suit, if such questions are raised which are found to be relevant, they will be gone into, since that suit has been filed by the Dai-ul-Mutlaq himself. So far as the instant suit is concerned, to us it appears that the pleadings contained in paragraph 1.2 of the written statement to the extent that they have been struck out by the High Court, are wholly unnecessary and is bound to delay the disposal of the suit, if parties are permitted to lead evidence on such unnecessary issues. We do not find that the aforesaid pleading has any connection with the averments in the plaint or with the reliefs claimed in the suit. Similarly a portion of paragraph 5 of the written statement has been struck out because it contains unnecessary averments regarding exploitation in the garb of "Mishaq". Only a portion of paragraph 5 of the written statement has been struck out, though paragraph 5 of the plaint has been struck out in its entirety. However, we do not wish to make any directions in this regard. In paragraph 27 of the written statement certain irrelevant averments have been made with regard to defendants not being permitted to enter into any of the community's masjids/mosques etc. outside Udaipur and other places. The High Court, in our view, has rightly struck out the portion of paragraph 27 of the written statement, as the same will only unnecessarily delay the disposal of the suit if evidence is to be brought on record which is wholly unnecessary. Similarly, paragraph 33 of the written statement has been deleted by the High Court. Paragraph 33 contains averments with regard to "Mishaqs" and "Barrats". We are of the view that the averments are wholly unnecessary, having regard to the frame of the suit and the nature of the reliefs prayed for.

Counsel for the appellant relied upon three decisions reported in Anderson Kirkwood Tennent Vs. Walter Michel reported in AIR 1925 Calcutta 860, All India Reporter Ltd. Vs. D.D.Datar reported in AIR 1951 Nagpur 412 and Anant Balkrishna Naik Vs. Govind Datta Gaunderkar reported in AIR 1976 Goa 74. We have carefully perused these judgments and we are of the view that the law laid down in those cases is not applicable to the present case. However, having regard to the findings recorded by the Trial Court as well as the High Court as also the finding recorded by us, portions of the written statement which have been struck out are wholly unnecessary and therefore, have been rightly struck out. The High Court has rightly not gone into the question as to whether the averments in the written statement are scandalous, frivolous or vexatious. It is not necessary for us also to express any opinion on this aspect of the matter.

In the result, we find no merit in these appeals and the same are accordingly dismissed. No order as to costs.