

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No. 909/2008**

% **Date of Decision: March 26, 2009**

Karuna Khaitan & Ors.

..... Plaintiffs

! Through: Mr. Salim Ambar Inamdar,
Advocate

Versus

\$ Fashion Design Council of India & Anr.

.....Defendants

^ Through: Mr. Anurag Sharma, Advocate
for defendant No. 1.
Mr. Jeevesh Nagrath, Advocate
for defendant No. 2.

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N.AGGARWAL, J (ORAL)

This suit has been taken up for final disposal because defendant No. 2 whose appointment is impugned in this suit has resigned from defendant No. 1 society on 10.06.2008.

2 The plaintiffs have filed this suit against the defendants for

declaration, permanent and mandatory injunction. Following prayers have been made by them in this suit:-

- (a) Pass a decree of declaration thereby declaring the appointment of defendant No. 2 as ED of defendant No. 1 as null and void ab-initio;*
- (b) Pass a decree of mandatory injunction directing the defendant No. 2 to refund the amount of Rs.24,00,000/- received by him as remuneration to defendant No. 1;*
- (c) Pass a decree of permanent injunction thereby restraining defendant No. 2 from working as ED/EG of defendant No. 1;*
- (d) Further defendants No. 1 & 2 be directed not to enforce the proposed amended MOA;*

3 Defendant No. 2 is a society registered under the Societies Registration Act, 1860 with the aim and objective of promoting the fashion design industry in India and abroad. It is stated that defendant No. 1 society also receive grant and aid from the Ministry of Commerce and Industries, Government of India. Defendant No. 2 was appointed by the Governing Body of defendant No. 1 society as Executive Director vide Consultancy Agreement dated 06.07.2007. The said Consultancy Agreement is at page 69 in Part III file. Clause 1 of the Consultancy Agreement at page 70 in part III file is relevant and reads as under:-

"1 In consideration of payment of a retaining fee of Rs.3,00,000/- (Rupees Three lakhs) per month to SN by FDCl (the "Retaining Fee"). SN agrees and accepts the engagement to provide

Consultancy Services to FDCI subject to and on the terms and conditions set out herein, with initially the designation "Executive Director" for the period from the Effective Date till 31st July, 2008 and thereafter with the designation "Director General" from 1st August, 2008 to 31st July, 2011. The said designation shall not be changed save and except with the prior written consent of SN during the subsistence of this Agreement."

4 A perusal of the Consultancy Agreement dated 06.07.2007 particularly Clause 1 referred above reveals that defendant No. 2 was appointed as Consultant at a monthly remuneration of Rs.3 lacs per month and was designated as Executive Director of defendant No. 1 society. His appointment in terms of Consultancy Agreement appears to be a contractual appointment and was valid till 31.07.2008. However, defendant No. 2 before expiry of his term for which he was appointed voluntarily resigned from defendant No. 1 society on 10.06.2008.

5 The plaintiffs in this suit seek a declaration that the appointment of defendant No. 2 as Executive Director in defendant No. 1 society be declared null and void. The plaintiffs have not shown as to how and why the appointment of defendant No. 2 be declared null and void. The appointment of defendant No. 2 in defendant No. 1 society was made by the Governing Body. It is not the case of the plaintiffs that the Governing Body of defendant No.

1 society was not competent to appoint defendant No. 2 as Consultant/Executive Director. However, the plaintiffs have stated in para 7 of their plaint that the appointment of defendant No. 2 as Executive Director at a monthly remuneration of Rs.3 lacs per month was violative of provisions of Article 27 of Memorandum of Association of defendant No. 1 society. According to the plaintiffs, as per provisions contained in Article 27 of the Memorandum of Association of defendant No. 1 society, no member of the Board can work as permanent Executive Director. To appreciate this contention of the plaintiffs, it will be necessary to refer to the provisions contained in Article 27 of the Memorandum of Association of defendant No. 1 society which read as under:-

"27. INVESTMENT OF FUNDS AND THEIR CONTROL

- a. The entire income of the Council shall be applied solely for the fulfillment of the objects of the Council and no part of it shall be paid directly or indirectly to any member of the Council. Allowances of remuneration shall not be paid to any member or office bearer of the Council except for the Executive Director for any service rendered by him.*
- b. All surplus funds of the Council shall be deposited in such scheduled bank/banks or may be invested in such manner by the Board as it may deem expedient from time to time in the interest of the Council.*
- c. The Board may open an account in the name of the Council for an on behalf of the Council with any scheduled bank or banks. Unless otherwise decided by the Board, the Executive Director and any other office bearer or officer of the company, as designated by*

the Board shall sign jointly all the cheques and documents with regard to funds and finances.

d. All funds shall be deposited or invested strictly in the name of the Council.

e. The entire movable or immovable property of the Council shall be deemed to be vested, for the time being, in the Board of Governors of the Council.

f. The Board by 3/4th Votes, may decide to sell, lease out, endorse or transfer or assign or renew or otherwise dispose of any immovable property, Government Securities and/or any other property for furthering the objects of the Council.”

6 On a plain reading of the above Article in the Memorandum of Association relied upon by the plaintiffs, it may be seen that the said Article does not put any ceiling on the remuneration to be paid to an Executive Director.

7 Clause 20 of the Memorandum of Association of defendant No. 1 society deals with the powers and duties of the Board of Governors. Clause (I) of Article 20 specifically empowers the Board of Governors that they can retain or employ skilled professionals or technical advisers, consultants, workers or craftsmen in connection with the objects of the Council and pay such honorarium, fees or other remuneration as may be thought expedient. The appointment of defendant No. 2 as Consultant/Executive Director was therefore within the powers of the Governing Body. His appointment was

therefore not bad or contrary to the provisions contained in the Memorandum of Association of defendant No. 1 society.

8 The fact of the matter is that defendant No. 2 has voluntarily resigned from defendant No. 1 society on 10.06.2008. There is no dispute regarding this factual position. I asked the learned counsel appearing on behalf of the plaintiffs that if defendant No. 2 has already resigned from defendant No. 1 society, what will be the effect of declaring his appointment to be illegal as prayed for in the suit. Counsel for the plaintiffs has no plausible answer to this question. I am of the view that the courts are not meant for academic exercise. In case the prayer made in the plaint is rendered infructuous, then it will be futile to ask the parties to go for trial with regard to a dispute which no longer subsists.

9 It may further be noted that plaintiff No. 1 herself was a member of the Governing Body at the time the present suit was filed. Mr. Nagrath learned counsel appearing on behalf of defendant No. 2 says that even plaintiff No. 2 was a Member of the Governing Body of defendant No. 1 society at the time defendant No. 2 was appointed as Consultant/Executive Director vide Consultancy Agreement dated 06.07.2007. Both the plaintiffs besides being in the Governing Body are admittedly members of defendant No. 1

society. Defendant No. 1 society is stated to has about 200 members. The decision affecting the affairs of defendant No. 1 society has to be taken by the General Body in its Annual General Meeting. In case, the plaintiffs including any other member of defendant No. 1 society has any grievance to the appointment of defendant No. 2 or about his alleged activities then they should have raised a point of order in that regard in the General Body instead of rushing to the Court.

10 There is yet another aspect of the matter which need to be looked into. In case any member of defendant No. 1 society or for that matter even an outsider is aggrieved by the mismanagement of the affairs of the society, then appropriate remedy lies by filing a representative suit and not a suit in individual capacity. According to the counsel for the plaintiffs, external audit usually is conducted in defendant No. 1 society. This fact is not denied by the counsel appearing on behalf of defendant No. 1 society. In case the external auditors find any lapse on the part of defendant No. 2 in the course of external audit then defendant No. 1 society can take appropriate action against defendant No. 2 as per law, though he has resigned.

11 In view of the above, I am of the considered view that none of the prayers made by the plaintiffs in this suit survive for any inquiry

which require a trial. The prayer made by the plaintiffs for directions to defendant No. 2 to return Rs.24 lacs received by him as remuneration appears to be highly misconceived. It is not disputed that defendant No. 2 has worked in organization of defendant No. 1 society from 06.07.2007 to 10.06.2008 and has been paid in terms of Consultancy Agreement dated 06.07.2007 for the said period. Since the appointment of defendant No. 2 was a contractual appointment and as he has been paid in terms of contract for appointment, directions cannot be given for return of the money received by him towards his remuneration for the period he has actually worked.

12 The other prayer made by the plaintiffs in the suit is for directions to defendants No. 1 & 2 not to enforce the proposed amendment in the Memorandum of Association. The counsel appearing on behalf of defendant No. 1 society has submitted that the proposal for amendment in the Memorandum of Association has already been dropped and in view of this statement made by counsel for defendant No. 1 society even prayer made for directions to defendants No. 1 & 2 not to enforce the proposed amendment in the Memorandum of Association is rendered infructuous.

13 For the foregoing reasons, this suit does not require any trial

and is liable to be dismissed. This suit is accordingly dismissed with no order as to costs.

IA No. 5840/2008 in CS(OS) No. 909/2008

Since the main suit has been dismissed, this IA is rendered infructuous and stands disposed of accordingly.

March 26, 2009
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S.N.AGGARWAL
[JUDGE]