

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

+

CM(M) No.521/2009

%

Date of decision: 21st October, 2009

KANTA KOCHHAR & ANR.

....Petitioners

Through: Mr. Munish Kochhar & Ms. Bharti Kochhar,
Advocates for the Petitioners.

Versus

SIR GANGA RAM TRUST SOCIETY

... Respondent

Through: Mr. R.D. Sharma & Ms. Vaneeta, Advocates
for the Respondents.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioners herein in this petition under Article 227 of Constitution of India are the tenants/respondents in a proceeding before the Additional Rent Controller from which this petition arises. The petition for eviction was filed by "Sir Ganga Ram Trust Society through Medical Supdt. Sir Ganga Ram Hospital, Rajinder Nagar, New Delhi". The petitioner herein filed an application under Sections 47 & 18 of the Trust Act r/w Section 14(1) of the Rent Act stating that "to the best of the knowledge" of the petitioner herein, there were as many as 13 trustees of Sir Ganga Ram Hospital; that the petition for eviction had not been filed by them and the petition for eviction filed by the Medical Supdt. of the hospital was not maintainable and was liable to be dismissed. The respondent hospital filed a reply to the said application generally denying the contents

thereof. It was merely reiterated that the Medical Suptd. was authorized by resolution of the respondent hospital to institute the petition for eviction. It was further stated that the said Medical Suptd. was also the Asstt. Secretary and who enjoyed the power to institute suits and eviction proceedings.

2. The aforesaid application was disposed of vide order dated 6th July, 2007 of the Rent Controller. The rent Controller proceeding on the premise that the respondent is a trust and relying upon the judgment of Division Bench of this court in ***Duli Chand Vs. M/s Mahabir Pershad Trilok Chand Charitable Trust, Delhi*** AIR 1984 Delhi 145, held that a trust being not a legal entity could not sue and could sue only through all the trustees. An opportunity was given to the respondent hospital to amend the petition for eviction. A perusal of the said order also shows that on the date on which the matter was reserved for orders on the said application, the respondent hospital filed documents before the Rent Controller to show that the respondent hospital was in fact a society, registered under the Societies Registration Act. The Controller held that the said documents having been filed after the orders had been reserved could not be considered and should be kept in abeyance. He also held that even if the said documents were taken into consideration, under Section 6 of the Societies Registration Act also the suit had to be instituted by all the trustees.

3. The respondent hospital however, instead of applying for amendment of the petition for eviction to have the petition for eviction instituted by all the trustees, applied for amendment of the petition for eviction to incorporate in column 19 thereof, sub para (ii), to state that the respondent hospital is a society registered under the Societies Registration Act and can sue and can be sued and had vide resolution dated 19th November, 2001 authorized its Asstt. Secretary to institute the legal proceedings.

4. The aforesaid application for amendment of the petition for eviction came to be allowed on 19th November, 2007 when the petitioners herein were *ex parte*. There is no reference in the said order to the earlier order dated 6th July, 2007.

5. The petitioners thereafter joined the proceedings and moved an application under Section 151 of the CPC. It was the case of the petitioners in the said application that the petition for eviction, vide order dated 6th July, 2007 having been held to be not maintainable as instituted; that the respondent hospital had failed to carry out the

amendments for which liberty was given in the said order dated 6th July, 2007; that in the circumstances, there was no petition before the court and the order of amendment could not have been made in a non-existent petition. The petitioners, therefore, sought dismissal of the petition for eviction.

6. The said application was disposed of by the Controller vide order dated 5th March, 2009 impugned in this petition. The Controller has held that the question whether the petitioner is a trust or a society and as to whether the petition for eviction had been instituted validly or not shall be decided after evidence at the stage of final decision of the petition for eviction.

7. The counsel for the petitioner has contended that the controller had already decided the issue that the petitioner is a trust at the time of order dated 6th July, 2007 and the same question cannot be agitated again. The petitioner has however in this petition impugned the order dated 6th July, 2007 also, besides the order dated 19th November, 2007 and 5th March, 2009. It is his contention that in fact the Controller on 6th July, 2007 after holding the petition for eviction as filed to be not maintainable ought to have dismissed the petition for eviction instead of giving an opportunity to the respondent hospital to amend the petition. It may also be mentioned that the petitioners herein had also preferred an appeal to the Additional Rent Control Tribunal against the order dated 6th July, 2007 for the same relief i.e. that the petition for eviction ought to have been dismissed instead of an opportunity being given to the respondent hospital to amend the petition for eviction. The said appeal was dismissed vide order dated 12th October, 2007.

8. The counsel for the respondent hospital has urged that owing to the tactics adopted by the petitioners, the petition for eviction filed as far back as in 2005 has not proceeded as yet.

9. Though neither of the parties have placed on record the documents of registration of the respondent hospital as a society and the memorandum and rules of the said society but from the order dated 6th July, 2007 it appears that the said documents have been filed before the trial court.

10. The present is a case where owing to proper representation having not been made before the courts, the courts have been led into passing orders which ought not to have been made. The respondent hospital failed to state in its reply to the application of the

petitioners under Section 47 & 18 of the Trust Act that the respondent hospital was a society and thus the application was misconceived. It appears that the said submission was not made at the time of hearing of the application also. Only on 6th July, 2007 i.e. the date fixed for orders on the said application, the documents showing the respondent hospital to be a society were filed before the Controller.

11. The next question which arises is, if the respondent hospital is, a society as contended by it and not a trust, whether it can be compelled to file the petition for eviction as a trust, as has been directed in the order dated 6th July, 2007. The answer has to be in the negative. The Controller has rightly held that since the stand of the respondent hospital of being a society has been taken by way of amendment and is disputed by the petitioners, it has to be adjudicated along with the other controversies if any arising between the parties in the petition for eviction. The law and especially the summary procedure which the Controller is to follow, does not envisage of a piecemeal trial. The Controller has further rightly held that if, at all, the respondent hospital fails to establish that it is a society and is proved to be a trust, the petition for eviction shall axiomatically fail, especially in the light of the order dated 6th July, 2007.

12. I am unable to agree with the contention of the counsel for the petitioner that there could be an issue estoppel with respect to the nature/constitution of the respondent hospital. Merely because the factum of the respondent hospital being a society was not brought to the attention of the Controller on 6th July, 2007 it will not change the constitution of the respondent hospital and it cannot compel the petition for eviction to be proceeded with treating it as a trust.

13. At this stage, the part of the order dated 6th July, 2007 where the controller has dealt with the contention of the respondent hospital being a society may also be dealt with. The Controller has referred to para 19 of the judgment in *Duli Chand* (Supra). However, the same does not lay down that a society registered under the Societies Registration Act is also to sue as a trust. In para 21 of the judgment it has been clarified that if a trust has been registered under the provisions of the Societies Registration Act, then the institution of legal proceedings would be governed by the provisions of the Societies Registration Act and not by the rules applicable to the trust.

14. As far back as in *Satyavart Sidhantalakar Vs. the Arya Samaj* AIR 1946 Bom 416 it was held that a registered society is a legal entity apart from the members constituting it and it can sue and be sued in its own name. The same view was followed in *Sonar Bangla Bank Ltd. Vs. Calcutta Engineering College* AIR 1960 Cal. 409. It was held that Section 6 of the Societies Registration Act, 1860 is permissive and an enabling provision; it does not mean that if the registered society sues as such than it shall not be competent. The same view has been taken by both the Andhra Pradesh High Court in *Potti Swami and Brothers Vs. Rao Saheb D. Govindarajulu* AIR 1960 AP 605 and the Allahabad High Court in *Ganga Sahai Vs. Bharat Bhan* AIR 1950 All 480. The Supreme Court also held so in *The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi* AIR 1962 SC 458. The passage from Dennis Lloyd's "Law relating to Unincorporated Associations" 1938 Edition, stating that the society though being unincorporated and unable to sue in its own name is granted the statutory privilege of suing and being sued in the name of its trustees was quoted with approval. It was held that Section 6 gives a privilege to a society analogous to the privilege enjoyed by a corporation.

15. Mention at this stage must be made of the judgment in *Illachi Devi Vs. Jain Society for protection of Orphans of India* AIR 2003 SC 3397. The judgment of the Division Bench of this Court in *Jain Society for Protection of Orphans of India Vs. The State* AIR 2001 Delhi 484 was under challenge therein. The Division Bench of this Court had held that the bar of Section 236 of the India Succession Act prohibiting an association of individuals from obtaining letters of administration does not apply to a society for the reason that a society is not a mere association of individuals but has a existence distinct from its members. The Supreme Court over-ruled the Division Bench of the Delhi High Court; while holding so, in para 32 of the judgment it was held that a society cannot sue in its own name and is to sue in the name of the President, Chairman, Principal Secretary or its trustees as shall be determined by the rules & regulations of the society or in the name of such person as shall be appointed by the governing body for the occasion in default of such determination. Reference therein was also made to the *The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi* (Supra). It is thus not essential for the society to sue through the Board of Trustees as the petitioner is

contending. It is enough if the society sues through any of the persons mentioned in Section 6. To my mind, it is immaterial whether the nomenclature is ‘Sir Ganga Ram Trust Society through its Asstt. Secretary’ or ‘Asstt. Secretary, Sir Ganga Ram Trust Society’. It was so held with respect to sole proprietorship firms in ***Chunni Lal Vs. RPG Home Finance Pvt. Ltd.*** 134 (2006) DLT 212

16. I also find that to read Section 6 of the Societies Registration Act, 1860 as requiring the suit to be instituted by all the members/trustees thereof would also defeat the very purpose of Section 6. The court below in the order dated 6th July, 2007 also did not consider the proviso to Section 6. Suing through the trustees is just one of the modes provided in Section 6. The same also sanctions suing through a person appointed by the governing body of the society. If the respondent hospital by way of evidence is able to establish that it is a society and the petition for eviction has been filed in accordance with the rules and regulations of such society or by a person appointed by the governing body of the society, the petition would be held to be validly instituted. The order dated 6th July, 2007 cannot create issue estoppel also for the reason that thereafter, the petition for eviction has been amended to plead that the respondent hospital is a society; the order made on the premise that the respondent hospital is a trust, cannot bind the respondent hospital after the amendment.

17. At this stage, I may also notice that this court in ***Delhi Lotteries Vs. Rajesh Aggarwal*** 69 (1997) DLT 543, ***Grafitek International Vs. K.K. Kaura*** 96 (2002) DLT 385 and ***Rajeshwarha Vs. Sushma Govil*** AIR 1989 Delhi 144 has held that irregularity in institution of proceedings is capable of being ratified.

18. The part of the order dated 6th July, 2007 holding that even if the respondent hospital is a society, the petition for eviction would still have to be instituted by all the trustees is thus found to be erroneous. However, the said error having been corrected in the subsequent orders, by allowing the petition for eviction as amended to proceed, no error can be found in the said order. It is significant that the petitioner has challenged the order dated 6th July, 2007 also, in the supervisory jurisdiction of this Court. The Court for this reason also is entitled to correct error if any remaining therein.

19. In the circumstances aforesaid, no interference is called for in the orders impugned in this petition save the observations herein above.

The petition is dismissed.

CM A. No. 8041/2009 (u/S 151 CPC for stay).

With the disposal of the main petition, this application has become infructuous and is disposed of.

RAJIV SAHAI ENDLAW, J

October 21, 2009

PP

(corrected and released on 14th December, 2009)