

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

+ **RSA No.188/2011**

% **24th November, 2011**

SANDEEP KUMAR SHARMA & ORS Appellants
Through: Mr. Dhruv Mehta, Sr. Adv. with
Mr. Mohinder Rupal & Ms. Shawana Bari, Adv.

versus

ATMA RAM TRUST & ORS Respondents
Through: Mr. Amit Sethi, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal impugns a part of the orders passed by the Original Court and the Appellate Court dated 26.9.2011 and 1.10.2011 respectively. I may note that the orders of the Original Court and the Appellate Court are not orders which have been passed in the nature of final judgment after evidence is led by both the parties and final arguments advanced. The orders proceeded on the consensus which was arrived at in terms of the statements made by counsel for both the parties to the extent that there is a consensus emerging from the statements of counsel for both the parties because, to the

extent of that consensus, the same will operate as an agreement in writing signed by the parties, binding the parties by virtue of Order 23 Rule 3 CPC, 1908.

2. The substantial question of law which arises in these proceedings is with regard to whether a Civil Court has powers to pass orders at the stage of the pleadings in the suit, i.e. not at the stage of final arguments after trial, although there is no consensus on the aspects on which orders/directions have been passed. Putting it differently, to the extent that there is no consensus, can an order be passed by a Court finally disposing of the suit with respect to issues which are disputed in the suit or issues which are not within the frame/cause of action mentioned in the suit.

3. Before proceeding further, it be noted that the disputes in this case are between the University of Delhi acting through an Officer on Special Duty (OSD) appointed by the Vice-Chancellor of the University of Delhi on the one hand and the plaintiff no.1/Trust which manages the Atma Ram Sanatan Dharam College on the other hand. The subject suit, in which the orders in question which are partly challenged have been passed, prayed for the following reliefs:

“a) Pass a Decree of Declaration in favour of the plaintiffs and against the defendants thereby holding that the act of defendant no.3 & 4 claiming themselves to be the Chairman & Treasurer of the Governing Body/Truncated Governing Body, is illegal, arbitrary and void ab initio;

b) Pass a Decree of permanent injunction in favour of the plaintiffs and against the defendants thereby restraining defendants no. 3 & 4 from claiming themselves to be the Chairman & Treasurer of the Governing Body of the ARSD College, Dhaula Kuan, New Delhi;

c) Pass a Decree of Permanent Injunction in favour of plaintiffs and against the defendants thereby restraining the defendants from creating hurdles in the smooth functioning of the Governing Body of the College under the Chairmanship of Shri Ashvin Chadha-plaintiff no.2 and holding any meeting on 28.09.2011 at anyplace and/or calling for any further meeting of the Governing Body in the alleged capacity of Chairman of the Governing Body, by defendant no.3.”

As already referred to above, a suit at the stage, which is not the stage of final arguments after evidence is led on disputed questions of fact, can only be disposed of to the extent of an agreement/consensus between the parties.

4. Learned senior counsel for the appellants states that there is no consensus with regard to the three aspects.

5. First Aspect

(i) The OSD appointed by Vice-Chancellor of the University of Delhi as per the statement of the counsel for the appellant no.4 in the Trial court was appointed by the Vice-Chancellor of the University of Delhi and his removal could also be, as per the statement of the counsel for the appellant no.4, by the Vice-Chancellor of the University of Delhi. The statement of the appellant no.4 specifically mentions that the governing body of the

college has no power to remove the OSD. It is argued that still the Trial Court on this aspect, in spite of there being no consensus passed the following direction/order:-

“4. OSD will remain one of the member of governing body and will participate in proceedings as Secretary/Member for the day when election is conducted. Thereafter, his position will remain as of OSD till the time constituted governing body takes fresh decision in regard to his requirement in college as per rules/ordinance XVIII.”

(ii) The effect of the direction in the aforesaid para 4 of the order passed by the Trial Court is that the OSD's appointment will be governed by a decision taken by the governing body. This part of the order is not in accordance with the consent, though, it was open to the respondent no.1/plaintiff no.1 to prove during the course of trial of the case that OSD can be removed by the governing body, however, this direction passed by the Trial Court in para 4 could not have been passed at the stage which was not the stage of the final judgment after final arguments in the suit and after evidence is led by both the parties on this issue/disputed questions of fact.

(iii) The Appellate Court has in its order referred to the fact that there is an agreement between the parties that this issue would be discussed in the meeting of the governing body and the decision would be taken subject to the Rules/Ordinance.

(iv) Therefore, the position which emerges is that there is an agreement limited to the extent that the issue of the appointment/continuation of the OSD will be discussed in the governing body's meeting and a decision would be taken. The agreement stops there. If there is a decision of the governing body either to continue or terminate the appointment of the OSD, whether the same is correct or incorrect, legal or illegal, the same will be the subject matter of a separate cause of action and an aggrieved person whether it be the appellants or the respondents, can take necessary action in accordance with law.

(v) It is clarified that the only agreement is, as recorded by the Appellate Court, with respect to a decision being taken in accordance with the Rules/Ordinance, and surely there cannot be a dispute as to a decision being taken by the governing body of the respondent no1/plaintiff no.1 to be in accordance with the Rules. Whether actually it is in accordance with the Rules or not will be the subject matter of a decision in appropriate substantive proceedings.

6. Second Aspect

(i) The second aspect urged on behalf of the appellants is with respect to their being no consensus, and consequently the disentitlement of the Trial

Court to pass the order thereupon, is qua the direction no.3 of the Trial Court. This direction reads as under:

“3. The Principal appointed in the meeting on 21.9.2011 shall be deemed as not appointed and Acting Principal will be appointed later on within one and half month as per ordinance/rules framed regarding appointment of Acting Principal.”

(ii) When we refer to the statement in this regard made on behalf of the appellants in the Trial Court, it is found that the agreement in this regard only pertains to Mr.G.K.Arora not representing himself as an officiating Principal. The statement made on behalf of the appellants in the Trial Court further clarifies that OSD will continue to function as he was before the purported meeting of the governing body held on 21.9.2011.

(iii) Before the Appellate Court which passed the order dated 1.10.2011, there is no agreement with respect to appointment of any acting Principal, and which is the subject matter of direction no. 3 by the Trial Court.

(iv) Once there was no consensus between the parties with regard to any direction for an acting Principal, it was not open to the Trial Court to pass any direction with respect to the same, more so inasmuch as the issue of an acting Principal was not even the subject matter of any of the prayer clauses in the suit. This part of the direction of the Trial Court contained in para 3

of the order dated 26.9.2011, and which direction has been upheld by the Appellate Court in its order dated 1.10.2011 is accordingly set aside, however, nothing contained in today's order is a reflection on the issue as to whether the respondent no.1 has correctly appointed the acting Principal or not correctly appointed. This issue once again will be tested in appropriate substantive proceedings, which either of the parties may choose to initiate.

7. Third Aspect

(i) The final dispute is with respect to direction no.9 contained in the order of the Trial Court which reads as under:-

“9. It has been stated that show cause notice has been issued to Professor Arora for being appointed as Acting Principal of College and same will be deemed to be waived off as he has been made scape goat and was under the catch 22 situation. If he dis-obey the orders of University, show cause notice is issued to him and if he dis-obey to college authorities, his position is rendered precarious. Hence, no action will be taken against Professor Arora by University.”

(ii) Once again when we refer to the statement made on behalf of the appellants in the Trial Court, it becomes clear that there is no consensus of any nature with respect to the show-cause notice having been issued to Professor Arora, and, the issue with respect to show-cause notice to Professor Arora was also not the subject matter of the reliefs claimed in the suit.

(iii) Once issue with respect to the show-cause notice to Professor Arora was not part of the suit relief clauses, and there was no consensus with respect to the aspect of show-cause notice issued to Professor Arora (and more so considering that Professor Arora was not even a party to the suit) there cannot be directions passed either by the Trial Court, or the said direction being affirmed by the Appellate Court

(iv) On the aspect of the show-cause to Professor Arora, once again, the validity or otherwise with respect to this issue of the show-cause notice to Professor Arora will be tested for its legality or otherwise, validity or otherwise, in proper substantive proceedings which may be initiated by any of the concerned persons.

8. In view of the above, the present RSA is disposed of with the aforesaid observations by deleting those portions being the directions 3, 4 and 9 of the Trial Court, and which have been affirmed by the Appellate Court, to the extent that such directions could not be passed as there was no consensus between the parties on these aspects. The substantial question of law is therefore answered accordingly and the appeal is disposed of as allowed in terms of the observations made above. It is however, again reiterated that nothing contained in today's order is a reflection on merits of the issues in question, for or against

any of the parties, and such issues on merits, i.e. validity or otherwise of the decisions, will be tested and answered by the competent Court before whom the substantive proceedings come up on these aspects.

VALMIKI J. MEHTA,J

NOVEMBER 24, 2011
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