

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

+ **RFA No.494/2005**

% **18<sup>th</sup> April, 2012**

S. GURCHARAN SINGH BHASIN ..... Appellant  
Through: Mr. K.P. Gupta, Advocate and Mr. Santosh  
Kumar, Advocate.

**VERSUS**

M/S. S.S. MOTA SINGH (NILA) & ORS. .... Respondents  
Through: Mr. Siddharth Yadav, Advocate with Mr.  
Wasim Ashraf, Advocate for respondent  
Nos.1 to 7.

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

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. The challenge by means of this Regular First Appeal filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 19.3.2005 rejecting the plaint under Order 7 Rule 11 CPC inasmuch as the trial Court held that the suit was in the nature of the suit under Section 92 CPC, and since the two persons were not made as plaintiffs, and, leave of the Court was not obtained, the suit was barred under Section 92 CPC.

2. A reading of the plaint in the present suit shows that cause of action and the basic substance of the allegations in the suit is with respect to alleged wrongful appointment of some of the respondents as trustees and the wrongfully appointing/calling of the respondent No.4/defendant No.4 as the Chairman of the Trust. There are stray averments which are made in the plaint with respect to violation of the rules and the consequent wrongful appointment of some of the trustees, besides the allegation of seeking to make the Trust into a family business. However, the averments in the plaint pertain basically to wrongful appointment of trustees and the chairman of the Trust, and this becomes clear from para 9 of the plaint which consolidates the cause of action of the suit. Para 9 reads as under:-

“9. That all the aforesaid glaring malfeasances, misdeeds and fraudulent acts clearly show and establish that:

(i) Ms. Kiranjeet Kaur Bhasin (defendant No.4) is not a duly appointed trustee of the Trust and she is also a usurper of the office of Chairman and she is liable to be declared and injuncted accordingly.

(ii) S. Jaswant Singh Jas (defendant No.2) is a usurper of the office of Hony. General Secretary and he is liable to be declared and injuncted accordingly.

(iii) Ms. Kanwaljeet Kaur Bhasin (defendant No.3) is a usurper of the office of Vice-Chairman and she is liable to be declared and injuncted accordingly.

(iv) Ms. Tarminder Kaur (defendant No.5) is not a duly appointed trustee and she is liable to be declared and injuncted accordingly.

(v) Ms. Jasmininder Kaur (defendant No.6) is not a duly appointed trustee and she is liable to be declared accordingly.

(vi) Mr. Rohit Sethi (defendant No.7) is not a duly appointed trustee and he is liable to be declared and injuncted accordingly.

(vii) S. Gaganpreet Singh Bhasin (defendant No.8) is not a duly appointed trustee and he is liable to be declared and injuncted accordingly.

(viii) That plaintiff S. Gurcharan Singh Bhasin is entitled to be declared as Chairman.

(ix) The plaintiff is further entitled to the relief of injunction for directing holding elections of the office bearers of the Trust after removal of the unauthorized and illegally appointed five additional trustees.”

The prayer clause also shows that the dispute is inter se the trustees and the prayer clause reads as under:

“It is, accordingly, prayed that the Hon’ble Court may be pleased to :

- (i) pass a declaratory decree declaring that Ms.Kiranjeet Kaur Bhasin (defendant No.4) is not a trustee of the Board of Trustees of S.S. Mota Singh (Nila) Charitable Trust nor is she the Chairman of the Board of Trustees and also pass a decree of injunction against her restraining her from claiming herself to be a Trustee and/or Chairman of the Board of Trustees and further from participating in the meetings and other affairs of the Board of Trustees;
- (ii) pass a declaratory decree declaring that S.Jaswant Singh Jas (defendant No.2) is not a duly appointed Hony. General Secretary of S.S.Mota Singh (Nila) Charitable Trust and its Board of Trustees and also further pass a decree of injunction against him restraining him from claiming himself to be the Hony.General Secretary of the Society and also of its Board of Trustees and acting as such;
- (iii) pass a declaratory decree declaring that Mrs. Kanwaljeet Kaur Bhasin (defendant No.3) is not a duly appointed Vice-Chairman of S.S. Mota Singh (Nila) Charitable Trust and its Board of Trustees and also further pass a decree of injunction against her restraining her from claiming herself to be the Vice-Chairman of the Society and also of its Board of Trustees and acting as such;
- (iv) pass a declaratory decree declaring that Ms. Tarminder Kaur (defendant No.5) is not a duly appointed trustee of the Board of Trustees and further pass a decree of injunction restraining her from claiming herself to be a Trustee and from participating in the meetings and other affairs of the Board of Trustees;
- (v) pass a declaratory decree declaring that Ms. Jasminder Kaur (defendant No.6) is not a duly appointed trustee of the Board of Trustees and further pass a decree of injunction restraining her from claiming herself to be a Trustee and from participating in the meetings and other affairs of the Board of Trustees;
- (vi) pass a declaratory decree declaring that Mr. Rohit Sethi (defendant No.7) is not a duly appointed trustee of the Board of Trustees and further pass a decree of injunction restraining him from claiming himself to be a Trustee and from participating in the meetings and other affairs of the Board of Trustees;
- (vii) pass a declaratory decree declaring that S.Gaganpreet Singh Bhasin (defendant No.8) is not a duly appointed trustee of

the Board of Trustees and further pass a decree of injunction restraining him from claiming himself to be a Trustee and from participating in the meetings and other affairs of the Board of Trustees;

(viii) pass a declaratory decree declaring that the plaintiff S.Gurcharan Singh Bhasin is the Chairman of S.S.Mota Singh (Nila) Charitable Trust and also of its Board of Trustees and further restraining defendants Nos.2 to 8 from interfering in the exercise of powers, rights and duties by him as such in the management and affairs of the Society and also of its Board of Trustees;

(ix) pass a decree of injunction directing holding of elections of the office bearers of the Board of Trustees after passing decrees of declaration and injunction against defendants No.4 to 8 as mentioned in the foregoing, in accordance with the directions of the Hon'ble Court which may be made in this behalf;

(x) pass a decree, thereby appointing Administrator/Receiver to run the affairs and management of defendant no.1 and the entire property, i.e. movable and immovable of the defendant no.1 trust be committed to the possession and custody of the said Administrator/Receiver;

(x) pass such other relief or reliefs to which the plaintiff is considered entitled to in the circumstances of the case, may also kindly be allowed to him; and

(xi) Cost of the suit may also be awarded in favour of the plaintiff."

3. The nature of a suit under Section 92 CPC is no longer res integra and it has been held by the Supreme Court in a catena of judgments that where the suit is for vindication of a private right in a public Trust such a suit is not a suit which falls within the four corners of Section 92 CPC. A suit for the same to fall under Section 92 CPC is really a representative suit on behalf of the public and where there are allegations of mismanagement of the Trust, siphoning off of the property or moneys of the Trust, and, other issues of mismanagement of the Trust which require various reliefs including of removing of a trustee, appointment of a new trustee, framing

of a scheme and passing of such other necessary orders as specified under Section 92 CPC. These judgments of the Supreme Court in this regard are *Swami Parmatmanand Saraswati and Anr. Vs. Ramji Tripathi and Anr. AIR 1974 SC 2141*, *R. Venugopala Naidu and Ors. Vs. Venkatarayulu Naidu Charities and Ors. AIR 1990 SC 444* and *Harendra Nath Bhattacharya and Ors. Vs. Kaliram Da (dead) by his legal representatives and Ors. AIR 1972 SC 246* and thus the proposition of law is not in dispute and it is well-settled that a suit under Section 92 CPC is a representative suit for enforcing the rights of the beneficiaries of the public and charitable Trust for setting right the actions which amount to breach of trust. Whether or not a person is validly appointed as trustee and should be removed as a trustee or whether a person is or is not a Chairman, or other inter se disputes between trustees, thus, are not such that they can be the subject matter of a suit under Section 92 CPC.

4. Learned counsel for the respondent Nos.1 to 7 has drawn the attention of this Court to the prayer clause (x) of the plaint which talks of appointment of an Administrator/Receiver to run the affairs of the respondent No.1/defendant No.1-Trust. Reliance is also placed upon by the counsel to certain averments in the plaint with respect to clear attempt, and nefarious/malafide design to convert the Trust into a family business by

appointing Mrs. Kawaljeet Kaur, wife of Sh. Prithipal Singh Bhasin, as Vice-Chairman. Attention of this Court is also drawn to certain other averments qua mismanagement.

5. In my opinion, though a reading of certain paras of the plaint may seem to show that there are averments with respect to mismanagement of the Trust and an attempt to convert the Trust into a private family business, however, these averments are themselves not sufficient to make out the averments of the requisite cause of action under Section 92 CPC inasmuch as the real thrust in the entire plaint is with respect to wrongful appointment of some of the respondents as trustees and respondent No.4/defendant No.4 as the Chairman of the Trust. Since basic thrust of the plaint was really inter se disputes of appointment of trustees, though, certain averments have been made as pointed out by the learned counsel for the respondent Nos. 1 to 7, the plaint cannot be said to be said to be one under Section 92 CPC. I put it to the learned counsel for the appellant as to whether he is seeking the reliefs by taking the suit as being filed under Section 92 CPC or whether the averments on which reliance is placed by the counsel for the respondents no. 1 to 7 are really passing averments and the suit really is a suit for wrongful appointment of some of the respondents as trustees and respondent No.4 as the Chairman, the

counsel for the appellant/plaintiff states and clarifies that in order to remove any doubt that the suit is not a suit under Section 92 CPC, the prayer (x) of the suit is withdrawn as such except that the said prayer really be read as an interim prayer till appropriate trustees as alleged by the appellant/plaintiff are appointed and such a prayer is not to be treated as one under Section 92. Learned counsel for the appellant/plaintiff also further clarifies that the averments in the plaint which seem to possibly suggest issues under Section 92 CPC, should be read in a manner that really the same were made in furtherance of the cause of action of the alleged wrongful appointment of the trustees and the alleged wrongful appointment of respondent No.4 as the Chairman of the trust.

6. Considering the real thrust of the averments in the suit and as consolidated in para 9 read with the prayer clause, and , in view of the aforesaid further clarifications as given by the learned counsel for the appellant/plaintiff, that the suit is really a suit only with respect to inter se disputes between the trustees and there is no relief or cause of action in the plaint which is pressed or exists for the suit to fall within a frame of Section 92 CPC, the impugned judgment dated 19.3.2005 rejecting the plaint under Order 7 Rule 11 CPC is set aside with the clarification that the suit is not a suit in the frame of Section 92 CPC and the suit will only be treated as a

suit with respect to inter se disputes between the trustees of the respondent No.1/defendant No.1-Trust.

7. I may hasten to clarify that nothing contained in today's order is a reflection on merits of the case of either of the parties and the trial Court will hear and dispose of the suit in accordance with law. It will be open to the counsel for the respondent Nos.1 to 7 to move an appropriate application, if in his opinion the suit can be disposed of on any other preliminary issue including the issue of limitation.

8. Appeal is accepted. Impugned judgment dated 19.3.2005 is set aside. Trial Court will hear and dispose of the suit in accordance with law. Parties to appear before the District & Sessions Judge, Delhi on 22<sup>nd</sup> May, 2012, and on which date the District & Sessions Judge will mark the suit to a competent Court for disposal in accordance with law. Trial Court record be sent back so as to be available to the District & Sessions Judge, Delhi on the date fixed.

**VALMIKI J. MEHTA, J**

**APRIL 18, 2012**  
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