

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

% *Judgment reserved on :17.05.2012*
Judgment delivered on :21.05.2012

+ **CM(M) No.1282/2010 & CM No.18272/2010**

SHIV MANDIR TRUST Petitioner
Through: Mr.Alok Kumar, Adv.
versus

GOPI CHAND RATHI & ORS Respondents
Through: Mr.Chandan Kumar, Adv.
AND
C.R.P. 145/2011

GOPI CHAND RATHI & ORS Petitioner
Through: Mr.Chandan Kumar, Adv.
versus

SHIV MANDIR TRUST Respondent
Through: Mr.Alok Kumar, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Two orders have been impugned order before this Court. The first order is dated 21.8.2010 and the second is the order dated 16.8.2011. Vide order dated 21.8.2010 the first appellate court had dismissed the appeal against the order dated 24.5.2010 vide which the application filed by the plaintiff seeking relief under Order 39 Rule 1 &

2 of the Code of Civil Procedure (hereinafter referred to as the Code) had been declined. The impugned order had noted that this petition is primarily a petition under Section 92 of the Code and necessary permission not having been obtained the present suit in these circumstances is not maintainable. Impugned order had accordingly declined the relief sought for by the plaintiff under Order 39 Rule 1 & 2 of the Code. Second order dated 16.8.2011 had rejected the prayer made by the defendant under Order 7 Rule 11 of the Code whereby the defendant had prayed that since this suit is a representative suit and the mandatory provisions of Section 92 of the Code not having been complied with, the plaint is liable to be rejected, had been declined.

2 Record shows that the present suit has been filed by the sole plaintiff namely Shiv Mandir Trust through its manager Kishore Saini. Averments made in the plaint are contained in 28 paragraphs. This is a suit for perpetual injunction, declaration, mandatory injunction as also for rendition of accounts. Contention in the plaint is that the plaintiff is a registered society; object of the society is to manage the temple of Lord Shiv situated at Brahmpuri along with other connected temples; the society also has a charitable object to open and run schools, libraries; to

carry out its aims and objects a managing committee has been constituted; present suit has been filed through its manager. Further contention is that the plaintiff through its managing committee has been appointing the Pujari of the temple and currently it has appointed Pandit Chauth Mal Sharma as Pujari since January 2005. The affairs of the temple of Lord Shiva also known as the temple of “Mauni Baba” ; has a duly elected managing committee and one of the members thereof has been authorized to do all acts for and on behalf of the plaintiff society; no one else on behalf of the managing committee has been authorized to collect money on behalf of the managing committee. Accounts are maintained by the treasurer. Defendant no.1 is a retired police official; in January 2007 his membership was cancelled, however, to gain control over the society he started manipulating things with the active connivance of certain other persons i.e. his supporters and henchmen. He tried to transgress upon the property of the temple; kalandra proceedings were also initiated. Further contention being that between October, 2004 to middle 2009 defendant no.1 and his companions continued to make attempts to grab the properties of the plaintiff society.

Defendants no.2 to 13 have formed themselves into a registered society

with the name and style of defendant no.14 and claim themselves to be the office bearers whereas they are actually henchmen of defendant no.1. Prayers in the plaint have been detailed as follows:

“(a) Pass a decree for permanent injunction restraining the defendants by themselves or through their associates, servants, assignees or anybody whosoever may be claiming through or under anyone of the defendants from representing the Shree Shiv Mandir Trust :Mauni Baba” Temple Bhramपुरi, Ghaunda, Delhi in any manner whatsoever.

(b) Pass a decree restraining the defendants by themselves or through their associates, servants, assignees or anybody whosoever may be claiming through or under anyone of the defendants from interfering in the affairs of the plaintiff society and its management of the aforementioned temple and the properties owned by the said temple.

(c) Pass a decree restraining the defendants by themselves or through their associates, servants, assignees or anybody whosoever may be claiming through or under anyone of the defendants from collecting any amount in the form of membership fee or as charges for booking ground/vacant land belonging to the temple.

(d) Pass a decree of declaration against the defendants that the defendants are not authorised or otherwise entitled to collect any amount towards the fee of member or as charges for booking

ground/vacant land belonging to the temple and that the defendants have no right to manage the affairs of the temple to manage the affairs of the temple and its properties, nor they are entitled or authorized to interfere in the activities of the plaintiff society in relation to the Mauni Baba Temple and its properties.

(e) Pass a decree of declaration that the defendants are liable to render true accounts of all the amount realized by the defendants or anyone of them or by anybody else claiming through or under any of the defendants.

(f) Pass a decree of mandatory injunction directing the defendants to render the true account of all the amount collected by them as membership fee or charges of booking the ground/vacant land as stated above and thereafter to pass a decree in favour of the plaintiff and against the defendants.

(g) Grant such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(h) To award the costs of the suit. ”

3 In the course of these proceedings, the present application under Order 7 Rule 11 of the Code has been filed. Contention was that the present suit in terms of its averments clearly shows that this is a suit filed in a representative capacity i.e. a suit under Section 92 of the Code and the necessary mandate i.e. the permission and leave of the court not having been obtained to institute the suit which is mandatory the plaint

is liable to be rejected.

4 Needless to state that the petition was contested.

5 On behalf of the appellant reliance has been placed upon a judgment reported in 162(2009) DLT 520 Hamid Ahmed Vs. Asad Mueed as also another judgment reported in AIR 1971 Mysore 298 A.V.Ibrahim & Anr. Vs. Mandepanda Cariappa to support a submission that where the dominant purpose of the suit is regarding the functioning of a charitable body which has actually deviated from its object of charity because of a conspiracy by some defendants, being a mismanagement of the trust the suit is covered under Section 92 of the Code and leave of the court not having been sought and not having been granted the plaint is liable to be rejected under Order 7 Rule 11 of the Code.

6 To counter this argument, learned counsel for the respondent has, per contra, placed reliance upon the judgments reported in AIR 1974 SC 2141 Swami Parmatmanand Sarswarti Vs. Ramji Tripathi as also another judgment of the Apex Court reported in AIR 1952 SC 143 Pragdasji Guru Bhagwandasji Vs. Ishwarlalbhai Narsibhai .

7 A suit under Section 92 of the Code is a suit of special nature for

the protection of public rights in public trust and charities. Such a suit is fundamentally on behalf of the entire body of persons who are interested in the trust which is for the vindication of public rights. The beneficiaries of the trust which may consist of public at large may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 of the Code and such plaintiffs being representatives of the public at large which is interested in the trust; such interested persons would be parties to the suit. It is a representative suit. There is also no dispute to the proposition that Section 92 mandates that where any direction is sought from the court for the administration of a trust the leave of the court is required, however, if from the allegations in the plaint it is clear that the parties to the suit wish to vindicate their individual right; there is no reason to hold that the suit has been brought under Section 92 of the Code. The object and the purpose of the suit and not the reliefs are decisive. All these are relevant factors; if allegations of breach of trust have not been substantiated or the plaintiff has not made a case for direction of the court for proper administration of a trust the foundation of the suit under Section 92 of the Code would fail if the after other ingredients are made out. This has been held in the

judgment of *Parmatmanand Sarswati* (supra).

8 It is in this background that the averments and prayer made in the plaint have been perused. Perusal of the same show that the individual right of the plaintiff society have been bruised and affected by mis-trust qua the society which is a duly registered society under the Indian Societies Act. The dominant purpose of the suit appears to be to address the personal and individual rights of the society coupled with a declaration of the effect that the defendant and its newly formed society would not interfere in the affairs of the plaintiff society and its management; merely because a prayer has been made for rendition of accounts which is one of the purposes mandated under Section 92 of the Code for which a suit in a representative capacity can be filed, would not necessarily entail it to be a suit under Section 92 of the Code as has been vehemently urged by the learned counsel for the petitioner.

9 There is also no dispute to the proposition that to deal with an application under Order 7 Rule 11 of the Code it is only the averments made in the plaint which have to be adverted to and not the defence sought to be set up by the defendant.

10 Even presuming that the suit property relates to a public

charitable and religious trust wherein rendition of accounts has also been claimed as one of the various reliefs (noted supra) yet it is clearly not a suit which has been filed in a representative capacity; it is a suit which has been filed by the individual society to address its personal grievance; the grievances being that defendant no.14 who is acting at the behest of defendant no.1 is unwarrantedly interfering with the affairs of the plaintiff society. The plaintiff society has also sought a declaration that the defendants are not authorized to collect any fee or any money on behalf of the plaintiff society; this is not a relief which is encompassed under Section 92 of the Code. This suit clearly falls outside the scope of Section 92 of the Code. In this background the prayer made under Order 7 Rule 11 of the Code seeking rejection of the plaint was rightly declined. Impugned order dated 16.8.2011 thus suffers from no infirmity.

11 The other impugned order dated 21.8.2010 was passed by the first appellate court on the premise that since the suit is a suit under Section 92 of the Code and the suit itself being not maintainable relief under Order 39 Rule 1 and 2 of the Code was declined. It had proceeded on the premise that the present suit is a suit under Section 92 of the Code

which by itself not being maintainable the relief declined by the trial court under Order 39 Rule 1 and 2 of the Code does not call for any interference. This Court is of the view that the present suit is not a suit under Section 92 of the Code; the first appellate court thus rejecting the appeal only for this reason has committed an illegality; impugned order dated 21.8.2010 is accordingly set aside. Matter is now remanded back to the first appellate court to decide the application under Order 39 Rule 1 & 2 of the Code on merits on the finding returned in mind that the present suit is not a suit under Section 92 of the Code.

12 Parties are directed to appear before the first appellate court on 28.5.2012 at 10.00 AM.

13 With these directions, both the petitions are disposed of.

INDERMEET KAUR, J

MAY 21, 2012
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