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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Order delivered on: July 29, 2013*

+ CM(M) No.466/2013 & C.M. No.6934/2013

PROF. K.L. SHARMA CHARITABLE TRUST Petitioner
Through Mr.Seeraj Bagga, Adv.

versus

OM PRAKASH (NOW DECEASED) THR. LRS. & ORS
..... Respondents
Through Mr.Girish Kumar Sharma, Adv. for
LRs of R-1.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. By way of the present petition, the petitioner assails the order dated 22nd January, 2013 passed in the application filed by the petitioner under Order XIV, Rule 5 read with Section 151 CPC for framing of additional issues. The said order has been challenged by the petitioner under Article 227 of the Constitution of India.

2. The petitioner is the defendant No.1 in the suit which was filed by the respondents/plaintiffs for specific performance of the contract or in the alternative, claiming compensation of ₹4.6 lacs along with pendente lite and future interest. The suit was filed against Prof. K.L. Sharma who had filed the written statement in 1996 denying the contentions of the plaint. Issues were framed on 13th May, 1998 and the matter was fixed for plaintiffs'

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evidence on 23rd October, 1998 but before the said date, Prof. K.L. Sharma died on 6th August, 1998. The respondents thereafter filed an application under Order XXII Rule 3 read with Section 151 CPC for bringing on record his legal representatives and also sought to implead the Charitable Trust of Prof. K.L. Sharma under Order XXII, Rule 10 CPC. The said application was allowed vide order dated 6th December, 1999. The Trust was substituted and became defendant No.1 in the suit. The widow and the daughter of deceased Prof. K.L. Sharma became defendants No.2 & 3. They did not appear in the trial Court and proceeded *ex parte*.

3. The contentions of the petitioner/defendant No.1 at the time of filing of the application were that as certain important issues have been raised in the preliminary objections and also on merits in the written statement filed by the Trust, therefore, the additional issues be framed taking into consideration the fresh written statement of the Trust. The respondents argued that the actual defendant never pressed for impleadment of the Trust as necessary party when he was alive. The trust deed is fraudulent veil put by the defendants No.2 & 3 in order to gain sympathy of the Court. Even, on the basis of the preliminary objections raised by the Trust, no additional issue could arise after filing of the written statement by the petitioner.

4. The reasons for rejecting the application of the petitioner by the learned trial Court are given as under:-

“.....The present suit has been filed by the plaintiff for specific performance of the contract or in alternative claiming compensation of Rs. 4.6 lacs alongwith pendentlite and future interest. The issues in the present case have already been framed on 13.05.98. No additional issue arises after the filing of the written

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statement on behalf of Prof. K.L. Sharma Charitable Trust, as stated in the present application. The said proposed issues which have been mentioned in the present application would only be relevant at the stage of execution i.e. whether the charitable trust was liable for any alleged claim raised by the plaintiff and so on. Since the fact in issue in the present case is whether the plaintiff is entitled for specific performance of contract and for the recovery of money which is the crux of dispute between the parties and the issues in this regard have already been settled on 13.05.98. This fact whether the said Prof. K.L. Sharma Charitable Trust was validly created or was liable for the alleged claim raised by the plaintiff against the original defendant Prof. K.L. Sharma can only be seen at the time of execution, if the plaintiff ultimately succeeds in proving his case..."

5. After having considered the material placed on the record, I am of the view that there is no infirmity in the impugned order passed by the learned trial Court. The application has been rightly rejected. The present petition is accordingly dismissed. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 29, 2013