IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1227 OF 2012

Hindi Vidya Bhavan & Ors. ….. Plaintiffs
V/s
Kishan Gopal Agarwal ….. Defendant

Mr. Mayur Khandeparkar a/w Mr. Vishsesh Malviya i/b M/s. Federal and Rashmikant for the Plaintiffs.
None for the Defendant.

CORAM : A.A. SAYED, J.

DATED : 7 JULY 2015

P.C.

1 The suit is filed by the Plaintiffs for recovery of sum of Rs.1.74 Crores alongwith interest at the rate of 18% per annum from the Defendant from the date of the filing of the suit till the payment and/or realization of the entire amount.

2 The Plaintiff No.1 is a Public Charitable Trust registered under the provisions of Bombay Public Trust Act, 1950 and runs a school by the name Hindi Vidya Bhavan. Plaintiff Nos.2 to 7 are Trustees of the Plaintiff No.1. The Defendant Kishan Agarwal was in the employment of the Hindi Vidya Bhavan School and was appointed on 1 December 2002. The Defendant was entrusted with the work of maintaining accounts of the Plaintiff No.1. According to the Plaintiffs, the Defendant misused his position as a cashier and siphoned off huge amounts of monies

belonging to the Plaintiff No.1. The Defendant was entrusted and was solely responsible for handling the fees received from the parents of the students, for making vouchers, for depositing fees in the bank and making entries in the accounts.

3 In September 2010, during the course of the Audit of the accounts of the Plaintiff No.1, their Chartered Accountant M/s. M.L. Bhuwania & Co. noticed certain irregularities regarding the fees received in cash and the entries in the accounts. By a letter dated 28 September 2010, the Plaintiffs' Chartered Accountants, interalia, recorded that during the audit for the year ended 31 March 2010, they had observed substantial increase in the cash in hand. Despite such large amounts being available as cash in hand, further amounts in cash appear to have been withdrawn from the Bank. The Plaintiff No.2 on behalf of the Plaintiff No.1 addressed a letter to the Defendant on 22 October 2010, enclosing the said letter received from the Chartered Accountant and raised various queries about the manner in which the monies of the Plaintiff No.1 were being handled by the Defendant. On 25 October 2010, Defendant was summoned by the Plaintiff No.2 to his office and enquired about the discrepancies noticed in the accounts including the fact that cash of Rs.92 lacs had been kept with himself by the Defendant during December 2009. On 29 October 2010 the Defendant addressed the Reply to the letter of the Plaintiff No.2 and claimed that there had been

some 'mistakes' in the manner in which the accounts were maintained and sought time to check all the vouchers. The Defendant thereafter stopped attending the said school from 13 November 2010. In the meanwhile, the Plaintiff No.1 also appointed Chartered Accountants, M/s. Vaishampayan & Associates on 11 November 2010 to audit the books of the accounts of the Plaintiff No.1 and of the said school for the accounting year 2010-11. This included an audit of the student fees received in advance in the year 2010. On 12 September 2011, the said M/s. Vaishampayan & Associates, Chartered Accountants forwarded to the Plaintiffs a report setting out the various anomalies noticed in the method of book keeping in the school. The report interalia, noted:

> *"Cash receipts on record or the copies of the cash receipts received from parents bear the signature of Mr. Kishan (as was told to us,) so we have kept the nomenclature of ledger account as Cash with Kishan Prior to 22-10-2010 for the cash transaction prior to 22-10-2010:*
>
> *Cash with Kishan prior to 22-10-2010*
> *in HVB Academy*   *Rs. 171.00 Lacs*
> *Cash in hand in HVB global academy*   *Rs. 3.25 Lacs*
> *Cash in hand in HVB Society*   *Rs. 1.75 Lacs"*

4 According to the Plaintiffs the said Report came as a shock as none of these amounts were actually available with the Plaintiffs and as such there was cash that was unaccounted for to the tune of Rs.1.76 Crores. According to the Plaintiffs, the Defendant No.1 as a counter-

blast filed various proceedings before the Charity Commissioner, the Labour Court and the Esplanade Court with a view to pressurize the Plaintiffs to abandon the attempts to recover the sums/amounts defalcated by the Defendant. On learning that the Plaintiffs were determined to adopt legal proceedings including civil and criminal against the Defendant, the Defendant approached the Plaintiffs for amicable resolution and addressed a letter to the Plaintiff No.1 dated 8 November 2011 recording that all the charges that he had made in the various legal proceedings adopted by him were erroneous and without any merit. The Defendant agreed to apply for withdrawal/dismissal of the legal proceedings filed by him. He also unconditionally withdrew the letters, which he had addressed to the Principal and Staff Members of the School and the Principals of some other ICSE Schools. The Defendant requested the Plaintiff No.2 to accept an amount of Rs.20 lacs "to close the chapter" on the basis that there would be no other claims or proceedings of civil or criminal against him. He confirmed that he would give all explanations as may be required by the Chartered Accountants after verification of the accounts for the years 2009-10 and 2010-11 (up to 15 October 2010) and further that he would pay such amounts as may be determined by the Chartered Accountant. The Plaintiff No.1 with a view to resolve the matters amicably, accepted the proposal of the Defendant. Pursuant to the said settlement, the Defendant applied for withdrawal/dismissal of all the legal proceedings filed by him. The Defendant also resigned from the services of the said School. The Defendant addressed a letter dated 8 November 2011 to the Plaintiff no.1 enclosing therewith ten cheques in an aggregate sum of Rs. 5 lacs and assured the Plaintiff no.1 that the said cheques would be honoured and that all the payments mentioned in the said letter would be cleared on or before 25 November 2011. The Defendant requested the Plaintiffs to “adjust balance amount from any pending pay”. He also held out assurance that he would pay his PF amount after receipt of the same from PF Office. Out of the aforesaid ten cheques only four cheques aggregating to Rs.2 lacs were honoured and no further payments were made by the Defendant and the Defendant failed to pay the amount of Rs.20,00,000/- as agreed. Despite his assurance in the letter dated 8 November 2011 the Defendant offered no explanation to the Report of the independent Chartered Accountants which found discrepancies to the extent of Rs.1.76 Crores. In the circumstances, the Plaintiffs have filed the above suit seeking recovery of sum of Rs.1.74 Crores after giving credit of the sum of Rs.2 lacs paid by the Respondent, alongwith interest at the rate of 18% per annum from the date of the filing of the suit till payment and/or realization as set out in the particulars of the claim.

5 The Defendant has failed to file Written Statement despite the service of writ of summons by way of substituted service. The claim of the Plaintiffs has gone uncontroverted. The suit is listed for ex-parte decree.

6 The Plaintiffs have filed an Affidavit in lieu of examination-in-chief and compilation of documents, on the basis whereof the claim of the Plaintiffs stands proved. The Plaintiffs have made out a case for the grant of reliefs and are entitled to a ex-parte decree under Order VIII Rule 10 of the Code of Civil Procedure, 1908. Hence the following order:

ORDER

The suit is decreed in terms of prayer clauses 22(i) and (ii) of the Plaint, with a modification that the Plaintiffs shall be entitled to simple interest at the rate of 8% per annum from the date of filing of suit till payment or realization.

(A.A. SAYED, J.)

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