**#24**

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

**<u>Date of decision: 24.08.2016</u>**

**RFA 451/2016**

**DARSHAN TRUST AND ORS** ..... Appellants

Through: Mr. Meet Malhotra, Sr. Advocate with Ms. Ramni Taneja, Advocate

versus

**SUB REGISTRAR III** ..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel (Criminal), GNCTD with Mr. Rajpal, Sub-Registrar-III, Asaf Ali Road, New Delhi

**CORAM:**
**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

***<u>SIDDHARTH MRIDUL, J (ORAL)</u>***

**1.** I have heard Mr. Meet Malhotra, learned Senior Counsel appearing on behalf of the appellant and Mr. Rahul Mehra, learned Standing Counsel (Criminal), Government of NCT of Delhi and with the consent of counsel for the parties the present appeal is being heard and disposed of by way of the following order.

**2.** The present appeal under Section 96 of the Code of Civil Procedure, 1908 (for short 'CPC') read with Order 41 of CPC assails the judgment dated 27.02.2016, passed by the ADJ, Patiala House Courts, New Delhi in

C.S. No.322/13, titled *"Darshan Trust and Others vs. Sub-Registrar III"* whereby the relief for rectification of the Deed of Trust dated 09.06.1987 was rejected.

**3.** The appellant Darshan Trust is a Public Charitable Trust stated to be formed in Delhi on 09.06.1987 pursuant to a Deed of Trust of the same day. The said Deed of Trust dated 09.06.1987 is duly registered by Sub-Registrar, New Delhi on 09.06.1987.

**4.** It has been urged on behalf of the appellant that the said Deed of Trust is an 'instrument' under the Indian Stamp Act, 1899, as applicable to Delhi and, therefore, the said suit being CS No.322/13, under Section 26(1)(a) of the Specific Relief Act, 1963 seeking rectification of the said Deed of Trust was instituted by the duly authorized representative of the said Trust.

**5.** It would be relevant at this juncture to consider the provisions of Section 26(1)(a) and 26(2) of the Specific Relief Act here:

> "26. **When instrument may be rectified. –** (1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies] does not express their real intention, then –
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> (a) either party or his representative in interest may institute a suit to have the instrument rectified;
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> (b) …..
>
> (c) …..
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> (2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without

> prejudice to rights acquired by third persons in good faith and for value."

**6.** A plain reading of the above extracted provision reveals that either party to a contract or other instrument in writing may institute a suit to have the instrument rectified on the ground that the instrument does not express the real intention of the parties because of a fraud or a mistake. It is further observed that the court is conferred with the discretion to direct the rectification of the instrument so as to express the real intention of the parties, so far as, this can be done without prejudice to rights acquired by third persons in good faith and for value.

**7.** The said CS No.322/13 came to be dismissed by the trial court by way of the impugned order on 27.02.2016 with the following findings:-

> "10. It appears from above that in the Deed of Settlement the author has elaborately provided powers, provisions, agreements and declarations etc. and if the Settlor/author had an intention to permit amalgamation with the trust of similar object, he would have provided for the same. If the author of Trust has no intention to allow such amalgamation, that is why no provision exist for the same. Merely because at this point of time, the plaintiffs feel desire of such clause, it cannot be allowed under the garb of <u>mistake</u> of the author. The legal connotation of amalgamation is very vast and it acts as merger and diminishing the original entity. In this case, by amalgamation, the original trust will either get extinguish or will be recreated. There is no provision to allow such relief because it amounts to doing something indirectly which could not be done directly. There is no scope for reading any mistake into the Deed of Trust."

**8.** A plain reading of the above leads to an inescapable conclusion that the trial court opined that the rectification sought on the ground of mistake of the author of the Trust was not sustainable, as it did not reveal the real intention of the author of the Trust.

**9.** Mr. Meet Malhotra, learned Senior Counsel appearing on behalf of the appellant makes a solitary submission. It is urged on behalf of the appellant that without assailing the findings, as aforestated, arrived at in the impugned order, the Trustees have wide powers, as is evident from Clauses 6,14,15 and 16 of the said Deed of Trust dated 09.06.1987.

**10.** It would be relevant at this juncture to extract the relevant clauses of the said Deed of Trust dated 09.06.1987, which are reproduced as under:-

> "6. It shall be lawful for the Trustees at any time and from time to time to borrow money as well as to sell, mortgage, assign, transfer, demise or let on lease for any period however long or otherwise disposal of and deal with the Trust Fund including any immovable properties comprised therein or any part thereof either by public auction or by private contract and on such terms and conditions as they the Trustees think fit with liberty to the Trustees to buy in rescind or vary any contracts for sale, mortgage, assignment, lease or other disposition as aforesaid and resell the same or enter into a fresh contract for transfer, assignment, lease or other dispositions without being answerable for any loss occasioned thereby and with power also to execute a necessary assignments, conveyance, mortgages, transfers, assurances for the same and to give receipts and discharges for the consideration moneys and all the moneys. All moneys raising from such sale, mortgage, transfer or other disposition shall be deemed to be part of the trust Estate and all be dealt with accordingly.
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> …… …… …… …… ……
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> …… …… …… …… ……

> 14. The Trustees shall determine all questions and matters of doubt in the execution of the Trusts, including the meaning and construction of any of the articles and provisions herein contained and do all acts and execute all the trusts, power and authorities appertaining to these presents unanimously, and in case of disagreement, by majority, each Trustee shall having one vote only. The Trustees shall be at liberty to make rules or by-laws for the due administration of the Trust provided such rules and bye-laws and not inconsistent with what is herein contained.
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> 15. For the purpose mentioned above or any of them, the Trustees shall at liberty to enter into, sign, execute and deliver all such tracts, deeds, assurances and writings/as they made deem necessary expedient. The Trustees shall also be entitled to incur all legitimate expenses which they consider to be beneficial to and in the interest of the Trust.
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> 16. Trustees shall be entitled to invest the trust Fund or such other funds of the Trust as are not immediately required, in any investments and the Trustees shall also be at liberty to invest the Trust fund or any part thereof on the mortgage of any immovable property situated in any part of the Republic of India (either of freehold or household or any other tenure) and the Trustees shall also be entitle to purchase vacant land of any tenure and to construct buildings and other structure thereon as the Trustees may consider necessary and the interest of the Trust and they shall also be entitled to pull and demolish to rebuild any building or erecton as they may consider necessary and in the interests of the Trust AND the Trustees will have power to alter, very or transfer the investments from time to time in such manner as to Trustees may think fit and proper in the interests of the Trust."

**11.** It is the submission of Mr. Meet Malhotra, learned Senior Counsel appearing on behalf of the appellant that although the institution of the said suit may have been an exercise in futility, the requisite powers are available to the Trustees, in terms of the aforesaid clauses, to carry out necessary amendments, for the purposes of the Trust.

**12.** In view of the foregoing, it is axiomatic that the only relief that the appellant seeks in the present proceedings is an observation that the impugned order dated 27.02.2016 may not come in the way of the Trustees, making necessary amendments in the said Deed of Trust dated 09.06.1987 in consonance with its clauses and stated objectives.

**13.** A perusal of the clauses relied upon by the appellant amply demonstrate that the said Deed of Trust dated 09.06.1987 vests the Trustees with wide powers to carry out its purposes and make necessary amendments to achieve its stated objectives.

**14.** In view of the above, whilst confirming the impugned judgment dated 27.02.2016, I dispose of the present appeal with a direction that in the event the appellant seeks to amend the clauses of the Deed of Trust dated 09.06.1987, strictly in consonance with the powers provided in its clauses, the same would not prejudice their entitlement or stand in the way of their being able so to do.

**15.** With the above direction, the appeal is disposed of.

**16.** Needless to state, I am grateful for the assistance rendered to this Court by Mr. Rahul Mehra, Standing Counsel (Criminal), Government of NCT of Delhi and Mr. Rajpal, Sub-Registrar – III, Asaf Ali Road, New Delhi, in the present appeal.

**SIDDHARTH MRIDUL, J**

**AUGUST 24, 2016**
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