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

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DECIDED ON: 15.02.2016

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RFA (OS) 137/2015, CM APPL.4532/2016

JAUHARI LAL & ANR Appellant
Through: Mrs. Pratibha M. Singh, Sr.
Advocate with Mr. Anirudh Wadhwa, Ms.
Nikita and Ms. Tanya Sharma, Advocates.

Versus

GURUDEV ASHRAM TRUST AND ORS Respondents
Through: Mr. Manish Kumar with Mr.
Piyush Kaushik and Mr. Mohit Arora,
Advocates for Resp-2&3.
Mr. Sanjeev Anand with Mr. Arush Khanna,
Advocates for Resp-1,4&5.
Mr. Darpan Wadhwa, Advocate for Resp-6.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

1. The present appeal is directed against an order dated 15.10.2015 disposing of CS(OS) 958/2003 - filed under Section 92 of the Code of Civil Procedure, 1908 ("CPC").
2. The brief facts are that a Public Trust known as "Shri Gurudev Ashram" was created by a deed dated 22.04.1973. Late Shri T.N Khanna was one of the original trustee/donor - he was impleaded as second defendant in the suit. At the time of creation of the Trust, five

trustees were nominated; two of who died and two resigned. Consequently, only one, i.e., the original settler survives. According to the terms of the deed, the vacancies in the Trust were to be filled by nomination by Swami Muktananda Paramhansa in terms of condition no.8 which is extracted below: -

“8. Shree Swami Muktananda Paramhansa shall always have the power to appoint a person as an additional Trustee or to fill any vacancy in the office of the Trustees of the Trust.”

3. The plaintiff/appellant sought and was granted leave to file the suit under Section 92 of the CPC. The principal reliefs claimed were two fold - one is incorporation of a proper appointment mechanism to facilitate the smooth functioning of the Trust in the event of vacancies in the Trust caused either by death, resignation or otherwise; the other was framing of a scheme, more importantly, after amendment of certain clauses (apart from clauses 8, 9, 17, 18 & 19 of the deed) and settlement of the proper scheme for administration.

4. Learned Single Judge who tried the suit heard the parties and on 10.10.2012 indicated that it would be in the fitness of things if some independent individuals unconnected with the Trust or the denomination were to be nominated as Trustees. Consequently, the suit was adjourned for further proceedings. By the impugned judgment, the learned Single Judge disposed of the entire suit. The relevant observations leading to the disposal/termination of the suit are as follows: -

“2. Before me today the only relief which is prayed on behalf of the plaintiffs is that sufficient number of trustees be appointed and who are independent persons, so that

the trust functions in accordance with the purposes of the trust. The object is to ensure that such persons are appointed as trustees who have stature and would run the trust and achieve the purposes of the trust. In the order dated 10.10.2012, it is recorded that uneven number of trustees are to be appointed, and today it is agreed that the following five persons can be appointed as trustees of the trust:-

(i) Hon'ble Mr. Justice Ajit Prakash Shah (retd. Chief Justice of this Court) resident of F-15, Hauz Khas Enclave, New Delhi-110016, Mobile No.9910160007.

(ii) Hon'ble Ms. Justice Manju Goel (retired Judge of this Court), resident of R-128, Greater Kailash-I, New Delhi-110048, Mobile No.9818000330.

(iii) Mr. P.K. Saxena, ADJ (retd.) resident of Flat No.261, Plot No.5, Sector-9, Dwarka, New Delhi, Mobile No.9910384668.

(iv) Ms. Rekha Chandok (daughter of Sh. T.N. Khanna, the settler of trust, and who is defendant no.4 in the suit), resident of 13, Chinar Drive, DLF Farms, Chattarpur, New Delhi 110030, Mobile No.9810185516.

(v) Ms. Ruchi Ahuja (daughter of Sh. T.N. Khanna and wife of Mr. Divey Ahuja), resident of A-53, Kailash Colony, New Delhi-110048, Mobile No.9810263450.

3. This Court, at this stage, need not go on the aspect as to how the trust should be directed to function including by framing a scheme of management, inasmuch as, once persons of stature have been agreed to be appointed by this Court as trustees as stated above, this Court does not find that there will arise any difficulty in carrying out the purposes of trust and running the trust in accordance with the purposes of trust as set out in the trust deed. Of course, any decision under Section 92 CPC, whether of this suit or of any other suit, cannot/does not operate

as res judicata or final for all times because on a fresh cause of action arising i.e fresh facts appearing which may require change of trustees or issuing of any other directions, the same can be considered at that relevant stage when the particular cause of action will arise.

4. In view of the above, this suit is disposed of by appointing the aforesaid five persons as trustees to run the trust "Shree Gurudev Ashram". If any fees are payable to the trustees, the trustees will fix the same by consultation with each other and this Court requests the trustees that the remuneration be fixed by them keeping in view all facts and circumstances pertaining to the subject trust "Shree Gurudev Ashram". The trustees may co-opt a temporary member with respect to a particular meeting of the trust inasmuch as it is very much possible that on certain occasions trustees may have to seek expert advice or specialized advice on a matter pertaining to running and management of the trust.

5. Suit is accordingly disposed of in terms of aforesaid observations. Decree sheet be prepared. Copy of this order be sent to all the trustees by the Registry of this Court. I.A. Nos.4904/2003 (under Section 151 CPC), 10416-17/2003 (under Order 1 Rule 10 CPC), 4039/2012 (for filing the original documents), 20930/2012 (for change of date), 20006/13 (for amendment of trust deed), 5845/2014 (for appoint of L.C.), 8393/2014(for amendment of trust deed), 6321/2015 (for appointment of Receiver) & 8302/2015 (under Section 151 CPC)"

5. It is urged by the appellant that the consent recorded and given before the learned Single Judge was only for the purpose of facilitating the interim management and not to entirely dispose of the suit altogether. Counsel submitted that the Section 92 proceedings are of special nature and character which involves the rights of large body of individuals with commonality of interest in the proper functioning

of a Public Trust. Learned counsel relied upon the decision of a Privy Council in *Mahomed Ismail Ariff and Ors. v. Hajee Ahmed Moolla Dawood and Anr.*, (1916) ILR 43 P.C. 1085. Reliance was also placed upon the Division Bench ruling of the Bombay High Court in *Fakir Mohamed Abdul Razak v. The Charity Commissioner, Bombay and Ors.*, AIR 1976 Bom 304. It was also urged that given the fact that the independent Trustees now appointed cannot be expected to indefinitely discharge the duties and responsibilities caused on them, the Single Judge could not have adopted the course of disposing of the suit finally without considering their suggestions both with respect to the changes, if any, proposed as well as the personnel to function as Trustees.

6. Mr. Manish Kumar, Advocate appearing on behalf of the second and third respondents - who are arrayed as defendants in the suit and one of whom was replaced by virtue of the impugned judgment, submits that the appellants cannot distance themselves from the submissions made before the learned Single Judge. Counsel highlighted that the appellants did not urge all the reliefs claimed by them at the stage of hearing and cannot now be allowed to resile from their statements. He also submitted that the said defendants have filed the cross objections. It is stated that the cross objections are focused upon the grievance that without hearing, one of the Trustees was removed and if the said arrangement were to be continued merely as an interim one, their rights would be seriously prejudiced.

7. Section 92 of the CPC is a special provision which confers a unique jurisdiction upon the Court. A litigant cannot directly approach

the Court seeking for a grievance with regard to the functioning of a Public Trusts to be heard. The special procedure which acts both as safeguard and also confers a responsibility on the Court envisions two kinds of procedures for an invocation of the Court's jurisdiction. The first is that the suit can be registered upon motion of the Advocate General of the concerned State. Independently or concurrently with that, it is open to the two or more persons having interest in the Trust or its functioning to apply to the Court under Section 91 for leave to file a suit. A unique nature of these proceedings has been commented upon in numerous decisions. In *Mahomed Ismail Ariff (supra)*, the Court highlighted that the proposals given by one party or the other - even by way of agreement do not bind it because the larger interest of the general public who are served by the Trust have to be kept in mind. The Privy Council stated as follows: -

“21. In their Lordships' opinion, the real point in issue in the case, owing probably to the nature of the pleadings, has to some extent been missed by the Courts in India. It has been treated as a question involving the determination of conflicting rights rather than a consideration of the best method for fully and effectively carrying out the purpose for which the trust was created. The suit is brought under section 539 of the Code, which vests a very wide discretion in the Court. It declares (omitting the parts not material to this case) that- whenever the direction of the Court is deemed necessary for the administration of any express or constructive trust created for public, charitable, or religious purposes, the Advocate-General, acting ex officio, or two or more persons having a direct interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit in the High Court, or the District Court within the local limits of whose civil

jurisdiction the whole or any part of the subject matter of the trust is situate, to obtain a decree-

*(a) appointing new trustees under the trust;
(e) settling a scheme for its management;
or granting such further or other relief as the nature of the case may require.*

22. In giving effect to the provisions of the section and in appointing new trustees and settling a scheme, the Court is entitled to take into consideration not merely the wishes of the founder, so far as they can be ascertained, but also the past history of the institution, and the way in which the management has been carried on heretofore, in conjunction with other existing conditions that may have grown up since its foundation. It has also the power of giving any directions and laying down any rules which might facilitate the work of management, and, if necessary, the appointment of trustees in the future.”

8. This rule has been applied in *Swami Parmatmanand Saraswati & Anr. V. Ramji Tripathi & Anr*, AIR 1974 SC 2141 and *Harender Nath Bhattacharya v. Kali Ram Das*, AIR 1972 SC 246.

9. The appellant’s reliance on the judgment of Bombay High Court in *Fakir Mohamed Abdul Razak (supra)* is also apt. The High Court had observed as follows: -

“39. It is true that the learned Charity Commissioner has not filed any appeal against the decree. It is not said before us that although Mr. C. K. Dabke, the learned counsel appearing for the Charity Commissioner had made a statement which the learned District Judge has recorded, he had no instructions from the Charity Commissioner to concede that the defendant may be appointed as the Managing Trustee. But it was the duty of the Court to ascertain what was the duty of the Court to ascertain what was in the best interests of the Trusts in the facts and circumstances of the case particularly having regard to the

fact that Haji Malang Dargah was visited every week by thousands of people belonging to all communities. It was necessary to make sure that the trustees appointed will make proper arrangements for the management of the trust and for the proper utilisation of the offerings of the missions of devotees visiting the Dargah.

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48. We would like to observe that the Court of justice must follow the procedure prescribed by law. They should not adopt a procedure like the one which was adopted by the learned District Judge in the president case of deciding the matter on the basis of statement of three of the Advocates appearing before the Court in consuetude and protracted litigation like the present one. These statements were not signed by the parties or their advocates. I do not think the public expects Courts to justice to decide the disputes between the parties to the litigation merely on statements of Advocates particularly in a case like the present one where the suit was pending from 1953. It is difficult to understand why the learned District Judge immediately after the objections were filed thought it necessary to adjourn the case only for one day to dispose of the matter in this extraordinary manner.”

10. The cross objectors had relied upon a Division Bench ruling in *Inder Kumar Kathuria v. Krishan Kumar Kathuria and Ors.* 2014 (140) DRJ 462 to submit that wherever submissions are made by counsel on behalf of the parties, contrary stand is precluded.

11. This Court is of the opinion that except reading the impugned judgment as an interim order, there is no manner by which it can be sustained in law. As highlighted in the Privy Council’s decision and the other judgments of the Supreme Court, Section 92 has occupied a unique and special feature of civil procedure in India. The Court

acquires an extremely wide jurisdiction in public interest to oversee the management, affairs and inject the correct measures wherever necessary in the functioning of the public trusts. Such being the case, the Single Judge in this Court's opinion could not have by one stroke appointed Trustees by consent permanently and at the same time disposed of the suit without examining the changes to the Trust Deed and other instruments which govern its functioning. That duty could not have been abdicated as it were - and has regrettably happened in the circumstances of this case. The Court's final order would necessarily have to be in the form of the decree embodying the changes it would accept after the proposals are furnished to it and duly considered by it upon a proper hearing of all the parties and taking into consideration such materials as are relevant for arriving at those conclusions. Till such time, the appointments and measures, if any, are only tentative and meant to assist in the final resolution of the dispute rather than ending the entire suit.

12. In light of the above observations, the impugned judgment is set aside only to the extent that the suit shall be remitted for further proceedings. It is, however, made clear that the appointment of the Trustees is not interfered with. Depending upon the report of the Trustees and the suggestions made, the learned Single Judge shall proceed with the matter further and after taking into consideration all the materials and the evidence before it, the Court shall render its final judgment and decree.

13. The suit is accordingly revived in the above terms and listed before the concerned Single Judge for appropriate proceedings on 30.03.2016.

14. The appeal is allowed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

FEBRUARY 15, 2016
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