**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.336 of 2016 (O&M)
Date of Decision: *August 17, 2017*

PRAHLAD SHARMA

...PETITIONER

Versus

ASHARFI DEVI AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Vibhav Jain, Advocate and
Mr. Arun Gupta, Advocate,
for the petitioner.

Mr. Mohan Jain, Senior Advocate with
Mr. Vikram Jain, Advocate,
Mr. Arastu Chopra, Advocate and
Mr. Fateh Saini, Advocate,
for the respondents.

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JASPAL SINGH, J.

Aggrieved against the order dated December 21, 2015 (Annexure P-22) passed by learned Additional District Judge, Faridabad, dismissing the appeal preferred by the petitioner against the order dated

November 07, 2015 (Annexure P-17) passed by learned Civil Judge (Junior Division), Faridabad, whereby an application filed by respondents No.1 & 2 under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure (for short 'Code') was allowed to the extent that the operation of order dated August 18, 2015, vide which respondent No.2-Mahinder Sharma-trustee was removed from Jan Hit Sewa Charitable Trust (for brevity of 'Trust') shall remain stayed during the pendency of the suit, petitioner-Prahlad Sharma has preferred the instant revision petition.

2. Shorn off unnecessary details, facts necessary for the disposal of the instant revision petition are that vide Trust Deed dated June 02, 1989, Shri Shambhu Dayal Shastri formulated a Trust known as Jan Hit Sewa Charitable Trust as a sole trustee. During his lifetime, Shri Shambhu Dayal Shahtri appointed plaintiffs No.1 & 2 and defendant No.1 as whole life trustees of the Trust. In addition thereto, he also appointed R.D. Sharma and Govind Vaswani as additional trustees for a period of three years. Subsequently, vide supplementary Trust Deed dated April 27, 2015, plaintiff No.1-Asharfi Devi was appointed as Patron for life of the Trust, whereas, plaintiff No.2-Mahinder Sharma and defendant No.1-Prahlad Sharma-petitioner were appointed as executive trustees for life with equal rights. It has been alleged by the plaintiffs that defendant No.1/petitioner in connivance with his co-defendants has been working against the aim and object of the Trust by involving himself in misdeeds. He accompanied by large number of his supporters barged into Ashram intimidating them. He also succeeded in obtaining their thumb impressions on blank letter head papers by putting them under duress and coercion. Those papers can be

misused by defendant No.1 as per his convenience. Moreover, some other complaints were also lodged with the police against various acts and conduct of defendant No.1. However, plaintiff No.1 was compelled to withdraw one of the complaints lodged by her against defendant No.1 and his accomplices. The Trust Deed dated April 27, 2015 was duly executed and signed by plaintiff No.2 as well as defendant No.1 but pursuant thereto, defendant No.1/petitioner did not take any step for implementation thereof. Rather, defendant No.1 without taking the plaintiffs in confidence and without their consent, executed another supplementary Trust Deed dated July 03, 2015 in connivance with other trustees nullifying the Trust Deed dated April 27, 2015. Defendant No.1/petitioner issued show cause notice dated August 09, 2015 to plaintiff No.2-Mahinder Sharma on the pretext of meeting of Board of trustees allegedly held on August 05, 2015. However, plaintiff No.2 was never served with any notice of the said meeting. The show cause notice dated August 09, 2015 was replied by plaintiff No.2 on August 24, 2015. But prior to that, impugned order dated August 18, 2015 was passed by defendant No.1, whereby plaintiff No.2-Mahinder Sharma was removed from the Trust and it was also published in the local newspaper. The alleged removal of plaintiff No.2 from the Trust is absolutely in violation and infringement of amended Trust Deed dated April 27, 2015. In fact, defendant No.1 in collusion with other defendants is siphoning the Trust money which is against the aim and object of the Trust. Accordingly, plaintiffs/respondents No.1 & 2 were constrained to institute the suit challenging the order dated August 18, 2015 and further by way of an application moved under Order XXXIX Rule 1 & 2 read with Section

151 of the Code sought issuance of ad interim injunction restraining the defendants from implementing the Trust Deed dated July 03, 2015; executing the operation of the impugned order dated August 18, 2015 passed by defendant No.1; and restraining the defendants for using social banners and posters for the promotion of various Trust without asserting them as a part thereof.

3. Upon notice of the suit as well as injunction application, defendants filed written statement as well as reply to injunction application. It has been asserted by the defendants that suit is not maintainable on account of non-joinder of necessary party i.e. Trust; that defendants No.5 to 8 have been unnecessarily dragged in the litigation; that plaintiff No.1 has no cause of action against any of the defendants; that plaintiffs have concealed and suppressed the true and real facts while filing the suit; and that impugned order dated August 18, 2015 has been passed by the Trust by adopting due procedure required for removal of a trustee. It has further been averred in the reply that plaintiff No.2 was served with a show cause notice on August 09, 2015, which was responded on August 24, 2015. But on August 17, 2015, Board of trustees passed a resolution regarding removal of plaintiff No.2 from the Trust whereafter, order dated August 18, 2015 was passed against him. Plaintiff No.2 was well aware and had full knowledge of notice dated August 09, 2015 as well as the action being taken on August 13, 2015 when he communicated to the trustees that he will not attend the meeting to be convened on August 17, 2015. Trust Deed dated April 27, 2015 stood nullified vide another modified Trust Deed dated July 03, 2015, which was passed in view of resolution dated July 01, 2015.

The requisite notice of meeting dated July 01, 2015 was given to both the plaintiffs. In pursuance thereof, they also attended the said meeting but subsequently, they left the venue of the meeting. It has further been averred in the reply that in a meeting of the Trust held on October 30, 2004, a resolution was passed with regard to procedure to be adopted for disqualifying the trustee and for removal of the trustee from the Trust. The founder of the Trust (which is a public charitable Trust) was taken away by the nature in the month of May, 2007. However, prior to his demise, on April 23, 2007, defendant No.1/petitioner was appointed as successor of sole trustee namely Sh. Shambhu Dayal Shastri on June 04, 2007. He was entrusted with affairs of the Trust being in that position, defendant No.1 was competent to appoint or remove any attorney or lawyer on behalf of the Trust and he was only person competent to represent the Trust before Government authority. Plaintiff No.2 siphoned a huge money of the Trust. Neither he accounted for nor deposited the money collected by way of 'DAN PATRAS' in the bank for a long period. It was only thereafter, by way of supplementary Trust Deed dated July 03, 2015, earlier Trust Deed dated April 27, 2015 was nullified, that too, in the presence of the plaintiffs. Thus, plaintiffs/respondents No.1 & 2 especially plaintiff No.2 has nothing to do with the Trust after his removal. Accordingly, defendant No.1-petitioner prayed for dismissal of injunction application.

4. After hearing the learned counsel for the parties and appraisal of various documents available on file, vide order dated November 07, 2015 learned Civil Judge (Junior Division), Faridabad, partly allowed the injunction application to the extent that operation of the order dated August

18, 2015 shall remain stayed till the decision of the suit.

5. Feeling dis-heartened against the aforesaid order, defendant No.1/petitioner preferred an appeal before District Judge, Faridabad, which was entrusted to the court of Additional District Judge, Faridabad for its disposal. After hearing the learned counsel for the parties and scrutinizing the various documents available on record it concurred with the conclusion arrived at by trial court and dismissed the appeal vide judgment/order dated December 21, 2015 which necessitated the filing of instant revision petition.

6. While assailing the impugned orders dated December 21, 2015 and November 07, 2015 passed by both the courts below, it has been ebulliently argued by learned counsel for the petitioner that same are absolutely against the documents available on file and settled canons of law as well as principles governing the grant of injunction. Mis-appreciation of various documents available on record has resulted into miscarriage of justice.

7. Firstly, simple suit for declaration injunction and injunction challenging the order dated August 18, 2015 passed by defendant No.1 is not legally maintainable as respondents/plaintiffs were obliged to initiate the proceedings in accordance with Section 92 of the Code which has not been done in the instant case. Secondly, order dated August 18, 2015 passed by the Trust already stood registered and implemented. Thus, staying the operation thereof by way of ad interim injunction is illegal and perverse. Thirdly, while disposing of an injunction application moved under Order XXXIX Rule 1 & 2 read with Section 151 of the Code, the courts below have granted the final relief claimed in the suit, which is

impermissible under law. On the one hand, the courts below are of the view that it is a matter of evidence whether the order of removal of respondent No.2/plaintiff-Mahinder Sharma from the Trust is in accordance with law and procedure as well as canons of the Trust and on the other hand, main relief has been granted to the plaintiff while staying the operation of the order of removal of Mahinder Sharma dated August 18, 2015 passed by the Trust. To buttress his aforesaid contentions, learned counsel for the petitioner has placed reliance upon various judgments ***P. Subba Rao and ors. vs. Andhra Association (Regd.) and ors. 2008 (102) DRJ 201; Avtar Singh Hit vs. Delhi Sikh Gurdwara Management Committee and ors., 2006 (8) SCC 487; Maa Sarala Distributor vs. Hindustan Cocacola Beverages Pvt. Ltd., CLT (2008) Supplementary 832; Mohan Lal Sukhadia University and Anr. vs. Chandrabhan Singh, 2002 SCC Online Raj. 374; U.P. Junior Doctors' Action Committee and ors. vs. Dr. B. Sheetal Nandwani and ors., 1992 Supplementary (1) SCC 680 and S. Nagendra vs. C. Mahesh Kumar, MANU/KA/1617/2015..***

8. It was next argument by the learned counsel for the petitioner that courts below have wrongly applied Section 31 of the Specific Relief Act (for short 'Act'). In fact, said provision has been mis-read and misconstrued by learned trial court. Section 31 of the Act envisages that any person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. It further provides that if instrument has been registered

under the Indian Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, so as to keep its record in the relevant books of the fact of its cancellation, whereas in the instant case, Trust while exercising its powers has annulled the supplementary Trust Deed dated April 27, 2015, which was passed without issuing any notice to the rest of the trustees, wherein properties of the Trust were reduced to the personal fiefdom of three persons. The Trust while annulling the Trust Deed dated April 27, 2015, has exercised its powers granted to it under the original Trust Deed dated June 02, 1989.

9. Learned counsel for the petitioner further submits that suit of the plaintiffs/respondents No.1 & 2 deserves to be thrown out and they are not required to be heard even on merits on account of non-disclosure of material facts i.e. by deliberately stating that they had no knowledge of the meeting of July 01, 2015 as well as non-disclosure the 30th of October, 2004 minutes of meeting, in view of the dictum laid down by the Hon'ble Apex Court in cases ***S.P. Chengalvaraya Naidu (Dead) by L.Rs. Versus Jagannath (Dead by L.Rs.) and ors. (1994) 1 Supreme Court Cases 1; Central Board of Secondary Education Versus Vineeta Mahajan (Ms.) and another, (1994) 1 Supreme Court Cases 6 and Union of India and others vs. Ramesu Gandhi, (2012) 1 Supreme Court Cases 476***.

10. Learned counsel for the petitioner further contends that the Indian Trust Act also does not apply in the instant case as it involves the public, religious trusts and endowments, in view of various judgments of the Hon'ble Apex Court in cases ***Mahesh Tulshan vs. Rajendra Kumar Banka***

& Ors., 2001 SCC On Line Cal. 635 and ***Joint Commissioner Hindu Religious and Charitable Endowments, Admn. Department vs. Jayaraman and ors. 2006 (1) SCC 257***.

11. While concluding his arguments, it has been submitted by learned counsel for the petitioner that since impugned order dated August 18, 2015 whereby plaintiff/respondent No.2 was removed from the Trust has already been implemented; that plaintiffs have not approached the court with clean hands and suppressed the true and real facts; that the impugned order has been passed by the courts below by considering the Trust property to be the property of the plaintiffs and not that of the Trust; that final relief has been granted by way of interim relief by the courts below; that provisions of the Indian Trust Act are not applicable; that suit is not maintainable on account of non-filing of the suit in accordance with Section 92 of the Code; that Section 31 of the Specific Relief Act is not applicable and that impugned order(s) are capricious, perverse, against the principles governing the grant of injunction. Thus, impugned orders being not sustainable in the eyes of law are liable to be set aside by way of acceptance of instant revision petition. Consequently, injunction application under Order XXXIX Rule 1 & 2 read with Section 151 CPC preferred by the plaintiffs/respondents would stand dismissed.

12. These arguments have been controverted by learned counsel for the respondents contending that there is no infirmity, illegality and perversity in the impugned order(s) passed by both the Courts below and same are absolutely in consonance with documentary evidence available on file as well as settled canons of law. As such, the same do not call for

interference by this Court.

13. Even otherwise, there is no applicability of Section 92 of the Code. Basically, plaintiffs have assailed the removal order dated August 18, 2015, which is illegal and against the procedure known to law. The suit filed by the plaintiffs/respondents is not for vindication of right of public but are seeking declaration of their individual and personal rights. As such, it falls outside the scope of Section 92 of the Code. Moreover, removal of trustee from the Trust is one of the relief(s) mentioned under Section 92 of the Code. The petitioner did not approach the civil court under the aforementioned provision for removal of respondent No.2-Mahinder Sharma from the Trust. As such, operation of removal order dated August 18, 2015 being legally unsustainable has rightly been stayed by the courts below during the pendency of the civil suit. While relying upon judgment of the Hon'ble Apex Court captioned as ***Vidyodaya Trust vs. Mohan Prasad R & Ors., 2008 (4) SCC 115***, it has been submitted that if suit for declaration is filed for vindication of his personal rights then Section 92 CPC has no application. Moreover, petitioner has not taken any objection with regard to maintainability of the suit under Section 92 of the Code in the written statement filed before the trial court. Thus, legally he cannot raise such objection before this Court for the first time.

14. Learned counsel for the respondents No.1 & 2 further argued that learned trial court vide its order dated November 07, 2015 has partly allowed an application under Order XXXIX Rule 1 & 2 of the Code filed by the respondents No.1 & 2 and has stayed the operation of order dated August 18, 2015 passed by the Trust till the decision of the suit. The trial

court has held that execution of the supplementary Trust Deed dated April 27, 2015, which is by way of registration cannot be cancelled and declared null and void by way of resolution July 01, 2015 and supplementary Trust Deed dated July 03, 2015, which is not signed by any of the life time trustees and further that while executing or passing the earlier supplementary Trust Deed dated April 27, 2015, the proper procedure prescribed by law under Section 31 of the Act was adopted. But while executing the cancellation of said Trust Deed dated April 27, 2015, proper procedure has not been adopted. Furthermore, supplementary Trust Deed dated April 27, 2015 was executed between plaintiffs and defendant No.1 but Trust Deed dated July 03, 2015 vide which Trust Deed dated April 27, 2015 has been nullified does not bear the signatures of the plaintiffs. Although, Trust Deed dated July 03, 2015 is alleged to have been executed by some of the trustees who are only additional trustees yet no document has been brought on record to show as to how they had the power to execute any such Trust Deed dated July 03, 2015.

15. Learned counsel for the respondents further urged that in order to defeat the interest of the respondents No.1 & 2/plaintiffs, petitioner/defendant No.1 has created false and fabricated documents. In order to justify the removal of respondent No.2, the minutes of meeting dated October 30, 2004 were created, which are alleged to have been attended by three trustees namely Prahlad Sharma, Mahinder Sharma and Govind Vaswani. However, no other trustee except petitioner/defendant No.2-Prahlad Sharma has signed on the aforesaid minutes of the meeting. Thereafter, at the appellate stage, petitioner attached resolution dated July

11, 2015 passed by four trustees, in which, it was resolved that coram of the meeting of the trustees to be increased from 5 trustees. The minutes of the meeting dated October 30, 2004 were brought into existence/created with a view that in case coram of the meeting is not increased from 3 to 4 than it will not be possible to allege that supplementary Trust Deed dated April 27, 2015 lacks coram. Thus, in order to defeat the purpose and object of the Supplementary Trust Deed dated April 27, 2015, of which, all the lifetime trustees are signatories, the documents were brought into existence in the shape of minutes of meeting dated July 11, 2015. Moreover, original Trust Deed dated June 02, 1989 makes a clear distinction between lifetime/additional trustees as contained in Clause 6-C of the Trust Deed. Thus, lifetime trustees cannot be equated with additional trustees, who are enjoying different powers and status and have been assigned different functions as per the terms of the original Trust Deed.

16. Learned counsel for the respondents No.1 & 2 has further urged that the scope of appellate or revisional court to interfere with discretionary orders passed by the court at first instance in granting or refusing the prayer for temporary injunction is limited. Appellate Court is not to re-assess the material to reach at a conclusion different from the one arrived at by the court(s) below. Normally, Appellate Court would not be justified in interfering with exercising of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion exercised by the trial court is reasonable and judicious, fact that Appellate Court could have taken a different view may not justify interference with the trial courts who exercise

of its discretion. In support of this contention, learned counsel for the respondents No.1 & 2 has placed reliance upon the judgments passed by the Hon'ble Supreme Court in cases ***Skyline Education Institute (India) Pvt. Ltd. vs. S.L. Vaswani and anr., 2010 (2) SCC 142; Wander Ltd. vs. Antox India (P) Ltd., 1990 Supp. SCC 727; N.R. Dongre vs. Whirlpool Corporation, (1996) 5 SCC 714 and Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73***.

17. Moreover, supplementary Trust Deed dated April 27, 2015 was executed amongst all the three lifetime trustees and as such, it cannot be nullified by other trustees. Otherwise also, as argued earlier, a trustee even of a public trust can be removed only by procedure known to law. He cannot be removed by an executive fiat as has been observed by the Constitution Bench of the Hon'ble Apex Court in case ***Bishan Das & Ors. vs. State of Punjab & ors., AIR 1961 SCC 1750***. Thus, both the courts below have rightly concluded that impugned order dated August 18, 2015 is not in accordance with procedure prescribed for the removal of the life trustee and have injuncted the operation thereof during the pendency of civil suit. All the three ingredients i.e. prima facie of the case, balance of convenience and irreparable loss also stood established. Thus, impugned order(s) passed by both the courts below are absolutely perfect and in accordance with legal principles governing the grant of injunction. Instant petition being devoid of merit deserves to be dismissed.

18. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties, appraisal of documents available on record and scrutinizing the impugned order(s) passed by the

courts below, this Court is of the considered view that impugned order(s) are not sustainable in the eyes of law being against the principles governing the grant of injunction as well as documents available on record.

19. Undoubtedly, it is pretty settled by now that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed on record before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter, it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable loss/injury as has also been observed by the Hon'ble Apex Court in cases ***Wander Ltd. vs. Antox India (P) Ltd. (supra); N.R. Dongre vs. Whirlpool Corporation (supra) and Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd. (supra)*** referred to above and relied upon by the learned counsel for the respondents.

20. But equally settled is the principle of law that where the lower court(s) acts arbitrarily, perversely, capriciously or in dis-regard of sound legal principles or without considering all the relevant records, the appellate or revisional court is legally justified in setting aside the order(s) and interfere with the discretion exercised by the trial court. In this regard, we can have the reference of the pronouncement of judgment of this Court rendered in case ***Guru Nanak Education Trust vs. Balbir Singh, 1995 PLJ 207; 1995 (3) RRR 721; Vimla Devi vs. Jang Bahadur, AIR 1977 Rajasthan 196; Krishan Kumar vs. State of Haryana, 1992(1) RRR 433 (P&H); 1992 (1) Revenue Law Reporter 207***.

21. Now in the light of aforesaid principles, it is to be determined whether the impugned orders are vitiated by an error of law apparent on the face of record or against the principles governing the grant of injunction or capricious, which has resulted in manifest in justice.

22. A glance at the history of the case depicts that Trust Deed dated June 02, 1989 was executed by Sh. Shambhu Dayal Shastri whereby a trust known as Jan Hit Sewa Charitable Trust was formulated as a sole trustee. However, during his lifetime, sole trustee appointed the plaintiffs No.1 & 2 and defendant No.1 as whole time trustees, whereas Mr. R.D. Sharma and Mr. Govind Vaswani were appointed as additional trustees for a period of three years. Subsequently, vide supplementary Trust Deed dated April 27, 2015, plaintiff No.1-Asharfi Devi was appointed as Patron for life of the Trust, whereas plaintiff No.2-Mahinder Sharma and defendant No.1-Prahlad Sharma-petitioner were appointed as executive trustees for life with equal rights. Thereafter, a supplementary Trust Deed dated July 03, 2015 was executed, whereby Trust Deed dated April 27, 2015 was nullified and subsequent thereto, plaintiff No.2 Mahinder Sharma was removed as a trustee vide impugned order dated August 18, 2015, which is the bone of contention in the instant revision petition. While disposing of an injunction application moved under Order XXXIX Rule 1 & 2 read with Section 151 of the Code, operation of order dated August 18, 2015 passed by defendant No.1 in pursuance of resolution was stayed and plaintiff No.2 was allowed to continue as a trustee by the trial court vide order November 07, 2015, which has since been upheld by the lower Appellate Court vide its order dated December 21, 2015.

23. Undisputably, the main relief sought by the respondents/plaintiffs is for declaration and injunction to the effect that order dated August 18, 2015 vide which plaintiff No.2 was removed arbitrarily or illegally without following procedure from the Trust is illegal, null and void and the courts below have accepted the said prayer and has stayed the operation of the order dated August 18, 2015 meaning thereby that even after removal from the Trust as a trustee, plaintiff No.2 is still continuing as such, on the strength of the impugned order(s) passed by the courts below, which amounts to grant of final relief at the time while granting the interim relief, which is not permissible under law and is violative of the principles governing the grant of injunction especially when it is yet to be ascertained or determined by the court on the basis of the evidence to be led by the parties as to whether the order dated August 18, 2015 suffers from any infirmity, illegality or is against the procedure to be adopted for the removal of the trustee. In case ***P. Subba Rao and ors. (supra)*** following in para No.12, High Court of Delhi held as under:-

> *"12. Having considered the ratio of the aforesaid decisions of the Supreme Court, we hold that the reliefs that are sought for by the appellants in these appeals cannot be granted, inasmuch as if such prayer is granted, the same would amount to grant of final relief in the form of an interim injunction, which cannot be granted as settled by the Supreme Court. Besides, any order passed in the injunction application amounting to unsettling a settled matter and throwing out the elected members as office bearers without giving them an opportunity of hearing would not be permissible as the same would amount to affecting valuable vested rights and infringing the same without giving the said parties an opportunity of hearing. Even otherwise, there is no prayer in the appeals for appointing an*

Administrator to run and administer the activities and functioning and administration of the association and, therefore, the question of appointment of such an Administrator would not arise at this stage. We may also refer to the decision of the Supreme Court in Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and others reported in MANU/SC/4630/2006 : (2006) 8 SCC 487. In paragraphs 31, 32 and 33 of the said judgment the Supreme Court held thus:

> *"31. In our view no relief could have been granted to the writ petitioners on account of the fact that the newly elected office bearers of the Executive Board, who would have been affected by the decision of the writ petitions, were not impleaded as party to the writ petitions. In Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue 1963 Supp (1) SCR 676 : AIR 1963 SC 786, it was observed that where in a petition for a writ of certiorari made to the High Court, only the tribunal whose order was sought to be quashed was made a party but the persons who were parties before the lower tribunal and in whose favour the impugned order was passed were not joined as parties; the writ petition was incompetent and had been rightly rejected by the High Court. In Prabodh Verma v. State of U.P. MANU/SC/0061/1984 : (1985) 1 SCR 216, it was held: (SCC p. 256)*
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> > *"A High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."*

> *32. In Ishwar Singh v. Kuldip Singh (1995) Supp. (1) SCC 179, it was held that a writ petition challenging selection and appointment to some posts without impleading the selected candidates was not maintainable. This view has been reiterated in Arun Tewari v. Zila Mansavi Shikshak Sangh AIR 1998 SC 331.*
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> *33. This being the settled legal position, the non-impleadment of the newly elected office bearers of the Executive Board was fatal and no relief could have been granted to the writ petitioners. The result of granting any relief in the writ petitions, as was done by the learned single Judge, was that the members of the newly elected Executive Board lost the office which they were holding without affording them an opportunity to present their case which is clearly impermissible in law. The writ petitions were liable to be dismissed on this count as well."*

24. While making the aforesaid observation, the Hon'ble Delhi High Court relied upon the pronouncement of the Hon'ble Apex Court delivered in case ***Deoraj vs. State of Maharashtra and ors. AIR 2004 SC 1975*** vide which the Hon'ble Supreme Court has cautioned that the power to grant any interim injunction by way of granting a final relief should be rarely exercised in rare and exceptional cases and the Court should grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing.

25. In case ***Burn Standard Company Ltd. and ors. vs. Dinabandhu Majumdar and anr., AIR 1995 SC 1499***, the Hon'ble Supreme Court deprecated the practice of grant of interim relief which

amounts to final relief, holding that Court should exercise its discretion while granting interim relief reasonably and judiciously, and if loss can be repairable or the loss can be satisfied by giving back wages etc. in the end, if petition ultimately succeeds, it is not desirable that the relief should be granted by interim order. Hon'ble Apex Court further observed as under:

> *"It should be granted only in exceptional circumstances where the damage cannot be repaired, for the reason that if no relief for continuance in service is granted and ultimately his claim.... is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received and he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief."*

26. Similar view has been reiterated in ***A.P. Christians Medical Educational Society vs. Govt. of A.P. AIR 1986 SC 1490*** as well as ***Prem Singh Chaudhary and ors. vs. State of Uttaranchal and ors. (2005) 11 SCC 567***.

27. Thus, the ratio of the aforesaid judgment is that interim relief amounting to final relief should not be granted by the courts at the time of disposal of ad interim application for injunction.

28. If the impugned order(s) passed by both the courts below are examined in the light of aforesaid settled legal proposition, this Court is of the considered view that both the courts below have exceeded their respective jurisdiction while granting the relief and staying the operation of the order dated August 18, 2015, which otherwise stood implemented prior to the filing of the suit.

29. In case ***S. Nagendra vs. C. Mahesh Kumar, MANU/KA/1617/2015, High Court of Karnataka at Bengaluru*** while dealing with somewhat similar controversy as involved in the instant revision petition, Hon'ble Apex Court observed that when a trustee has been removed from the Trust on the allegations of serious financial irregularities and fraud etc., it would neither be legal nor justifiable to grant ad interim injunction to continue him as a trustee. Para No.14 of this judgment is relevant which reads as under:-

> *"14. As is clear from the Trust Deed produced, the Trust is a public charitable Trust. It is running educational institutions including a Medical College. Any mismanagement of the Trust and its institutions will have serious repercussion on the fate of the students admitted to such institutions. When serious financial irregularities are alleged against the plaintiff and he has been removed from the position of Trustee, it will be neither legal nor justifiable to grant an interim injunction to continue him as a Trustee by restraining the Trust and the other Trustee from interfering with the discharge of duties by the plaintiff as a Trustee. What is worse is that on the same day the court has ordered police protection to the plaintiff to enforce the order of temporary injunction. This is also equally illegal."*

30. Adverting to the facts of the case in hand, prior to the execution of a Trust Deed dated April 27, 2015, a meeting of the trustees of the Trust was held on October 30, 2004 at Faridabad in the presence of Prahlad Sharma, Mahinder Sharma and Govind Vaswani and it was decided that any trustee (additional/life) of the Trust shall be disqualified to act as trustee(s) and shall be removed/dismissed from the Trust, by majority of the trustees

present in the meeting - If he/she commits any acts of malfeasance, misfeasance, misappropriation, breach of trust in respect of the Trust besides certain other events reflected in Clause 7 of the above referred minutes of the meeting of the trustees. However, he/she shall be given reasonable opportunity of being heard prior to the passing of any such order/resolution. The said minutes of meetings were not challenged at any point of time and remained the same while supplementary Trust Deed dated April 27, 2015 was executed. This meeting was attended by plaintiff No.2-Mahinder Sharma besides the other trustees Prahlad Sharma and Govind Vaswani.

31. Thus, if for the sake of arguments, resolution dated July 01, 2015 is ignored, even then the trustees with a majority were competent to oust or remove a trustee may be "life or additional". The lower courts have failed to notice the aforesaid minutes of meeting dated October 30, 2004.

32. It would also be pertinent to mention that as far as the applicability of Section 92 of the Code is concerned, in the opinion of this Court, same is not attracted especially when suit for declaration is filed for vindication of his personal right and judgment of the Hon'ble Apex Court captioned as ***Vidyodaya Trust vs. Mohan Prasad R & Ors., 2008 (4) SCC 115*** is fully applicable. Moreover, removal of plaintiff No.2-Mahinder Sharma was not in pursuance of Section 92 of the Code rather the same is in pursuance to the authorization of the trustees for the removal of additional or Life trustee by way of minutes of meeting dated October 30, 2004.

33. As far as non-adopting of the procedure provided under Section 31 of the Act is concerned, it has nothing to do with instant case, because it

does not fall within the mischief of Section 31 which envisages that any person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled, which is not the situation in the instant case. The aforesaid provision is not at all applicable or attracted in the case in hand, which appears to have been misconstrued by the trial court.

34. As regards the allegation of the respondents that documents i.e. minutes of meeting dated October 30, 2004, minutes of meeting held on July 01, 2015 or dated July 03, 2015 are forged or fabricated is concerned, it is a matter of evidence. Moreover, such allegation cannot be taken as a gospel truth at this stage especially when, the aforesaid documents bear their signatures/thumb impression.

35. Moreover, the courts below have not given a definite findings with regard to basic ingredients required to be established for the grant of injunction i.e. prima facie case, balance of convenience and irreparable loss, which cannot be compensated in terms of money, in case, injunction is not granted. It appears that both the courts below have treated the plaintiff No.2-Mahinder Sharma as co-owner or co-sharer of the Trust or Trust properties and have decided an injunction application. In fact, neither any prima facie case is made out in his favour nor balance of convenience lies. He is also not going to suffer any irreparable loss, which cannot be compensated in terms of money.

36. Moreover, in view of detailed discussion, it is clear that

plaintiff No.2 has no case for grant of temporary injunction.

37. In the light of what has been discussed above, this Court is of the considered view that grant of injunction in the instant case by the order dated November 07, 2015 is absolutely against the principles governing the grant of injunction and as such, order(s) under challenge are not sustainable in the eyes of law. Accordingly, instant revision petition is allowed whereby the orders dated November 07, 2015 passed by the trial court and dated December 21, 2015 passed by the lower appellate court dismissing the appeal are set aside. Consequently, injunction application moved under Order XXXIX Rule 1 & 2 read with Section 151 of the Code stands dismissed.

38. However, any observation made in this order shall have not bearing or binding effect on the disposal of the main suit, which shall be decided in view of the evidence adduced by the parties and the law applicable.

39. No order as to costs.

August 17, 2017 **(JASPAL SINGH)**
Ankur **JUDGE**

Whether speaking/reasoned **Yes/No**
Whether reportable **Yes/No**