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

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Date of decision : 13th December, 2017

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FAO(OS) 146/2017

SUSHEEL KUMAR KHANNA AND ANR. Appellants

Through : Mr. Mohit Chaudhary,
Mr. Kunal Sachdeva and
Mr. Divyansh Kishore Sharma,
Advs.

versus

M/S GSBA TRUST AND ORS Respondents

Through : Ms. Shashi Kiran and
Mr. Sujit Kumar Jha, Advs. for
R-1 to 4 & 6.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This appeal assails the order dated 11th April, 2017 passed in ***CS(OS)No.532/2015 Shusheel Kumar Khanna & Anr. vs. M/s GSBA Trust & Ors*** by the ld. Single Judge on I.A.No.4046/2015 (*under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure*) filed by the appellant/plaintiff and I.A.No.13497/2015 (*under Order XXXIX Rule 4 of Code of Civil Procedure*) filed by the respondent/defendant nos.1 to 4 & 6.

2. The plaintiff, claiming appointment as a trustee in the defendant

no. 1 trust under the resolution dated 12th April, 2014, filed CS(OS)No.532/2015 against the defendants seeking the following prayers : -

“A. Declare that defendant no.2 to defendant no.4 are guilty of breach of trust, towards defendant no.1 trust; and/or

B. Pass a decree for removal of defendant no.2 to defendant no.4 from acting as trustees of defendant no.1 trust and appoint new trustees in their place; and/or

C. Pass a decree of mandatory injunction directing the removal of defendant no.(s)2 to 4 from the Board of Trustee(s) of defendant no. Trust; and/or

D. Pass a decree calling upon defendant no.(s)2 to 4 to render true and proper accounts of defendant no.1 Trust from the date of availing of Term Loan from Oriental Bank of Commerce till date; and/or

E. Pass a decree against defendant no.(s)2 to 4 calling upon the said defendants to restore illegal/wrongful enrichment/monetary gains pocketed by the said defendants to defendant no.1 Trust; and/or

F. Pass a decree of permanent injunction against defendant no.(s)2 - 4 restraining the aid defendants from dealing in any manner/alienating/creating any third party interest in the Trust Property ad measuring 4.542 hectares situated at Khata No.377, Sikanderpur Bhaiswal, NH-73, Chhutmalpur, Pargana Bhagwanpur, Tehsil Roorkee, District Haridwar, Uttarakhand.

G. Pass any other order or orders as this Hon'ble Court may deem just and fit in the facts and circumstances of the case”

3. Along with the suit, the plaintiff/appellant had filed I.A.No.4046/2015 under Order XXXIX Rules 1 and 2 on which *ex-parte ad interim* order was passed on 27th February, 2015 restraining

the defendants from selling, alienating or transferring the property of the trust situated at *Khata No.277, Sikanderpur Bhaiswal, NH-73, Chhutmalpur, Pargana Bhagwanpur, Tehsil Roorkee, District Haridwar, Uttarakhand* till further orders. The defendant nos.1 to 4 and 6 filed I.A.No.13497/205 under Order XXXIX Rule 4 seeking vacation of the *ex-parte* order of injunction.

4. It is to be noted that respondent no.5 herein, who was arrayed as defendant no.5 in the suit, supported the claim of the plaintiff/appellant.

5. Leave was sought by the plaintiff to sue under Section 92 of the CPC by way of I.A.No.4045/2015 which was allowed by the Id. Single Judge on 11th December, 2015.

6. It appears that in support of their defence as well as application for vacation of injunction, the respondents are *inter alia* relying on an agreement dated 28th March, 2014 executed between Dr. P.L. Maghu, settler of the defendant no.1 trust and Dr. Sanjeev Gupta, defendant no.5.

7. It is also an admitted position that the appellants/plaintiffs have disputed the execution of the said agreement. This agreement relates to substitution of the Trustee and makes a reference to the plaintiff/appellant as well. Respondent no.1 had also relied on minutes of the meeting of the trust dated 28th March, 2014. Again the appellant had disputed the correctness as well as authenticity of the record of the minutes. Id. Single Judge however has relied upon these documents while taking a *prima facie* view on the impugned order dated 11th April, 2017 and vacating the *ex-parte* injunction granted in

favour of the appellant. As a result, the I.A.No.4046/2015 filed by the plaintiff was rejected while I.A.No.13469/2015 was allowed.

8. Additionally, the Id. Single Judge has observed that a view taken on the application of the appellant being I.A.No.4045/2015 seeking leave to sue under Section 92 of the Code of Civil Procedure by the order dated 11th December, 2015 deserves to be reconsidered.

9. We are informed by Mr. Mohit Chaudhary, Id. counsel for the appellant that in view of the observations of the Id. Single Judge, I.A.No.14172/2017 has been filed by the respondent seeking dismissal of the suit. As a result, both these applications are pending before the Id. Single Judge.

10. It is to be noted that on 11th April, 2017, the Id. Single Judge had directed the parties to file their respective original documents within three weeks and to file affidavits of admission/denial of documents within one week thereafter. The matter was directed to be listed before the Joint Registrar on 12th May, 2017.

11. The appellant has drawn our attention to notice under Order XII Rule 8 of the CPC dated 20th August, 2015 requesting respondents to produce the documents including the documents aforesaid, relied upon by the respondent. It is submitted that the respondents have not produced the documents in terms of the order dated 11th April, 2017 and have not responded to the said notice as well.

12. Be that as it may, the appeal for the first time had come up before us on 12th May, 2017, when we passed the following order: -

“CM No.17897/2017 (Exemption)

Allowed, subject to just exceptions.

The application is allowed.

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Issue notice to the respondents, returnable on 30th October, 2017.

It is directed that till the next date of hearing, the respondents shall maintain status quo with regard to title, possession and construction of the property bearing Khata No.277, Sikanderpur Bhaiswal, NH-73, Chhutmalpur, Pargana, Bhagwanpur, Tehsil Roorkee, District Haridwar, Uttarakhand

List on 30th October, 2017.

Dasti.”

This interim order continues to bind the parties till date.

13. Given the challenge to the documents relied upon by the respondents and also the admitted position that the said immovable property belongs to the trust, we are of the view that the impugned order vacating the interim order is not sustainable.

14. It is not disputed by the respondents that the immoveable property which is the subject matter of the suit is owned by the respondent no.1/trust. Given the challenge with regard to execution and bindingness of the documents relied upon by the defendants, the aspect of challenge by the plaintiff/appellant to the documents relied upon by the defendants/respondents would also be required to be considered. The non-production of original documents would also be a relevant matter. The reasons for the non-production would required to be considered by the Id. Single Judge in order to take a view on the matter.

15. In view thereof, we set aside the order dated 11th April, 2017 only to the extent that it dismisses I.A. No. 4046/2015 and allows I.A.

No.13497/2015. These applications shall be heard and decided afresh by the Id. Single Judge. It is directed that till disposal of these applications, the interim order dated 12th May, 2017 passed by this court shall continue.

16. We make it clear that we have not expressed any opinion on the objection with regard to the maintainability of the suit under Section 92 of the CPC.

17. The learned Single Judge would decide the pending application being I.A. No. 14172/2017 and would take an view independent of this aspect of the matter while deciding I.A. Nos.4046/2015, 13497/2015 and all other pending applications.

18. List I.A. Nos.4046/2015, 13497/2015, 14172/2017 and all pending application on 16th January, 2018 before the learned Single Judge for directions.

19. This appeal is disposed of in the above terms.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 13, 2017

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