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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IA GA 4 of 2018
(Old GA 3113 of 2018)
With
CS 43 of 2016
In
APO 160 of 2018

MALATI TULSHAN
VERSUS
ABHISHEK AGARWALLA & ORS.

WITH

IA GA 4 of 2018
(Old GA 3114 of 2018)
With
ACR 1 of 2002
In
APO 161 of 2018

MALATI TULSHAN
VERSUS
RAJENDRA KUMAR BANKA & ORS.

WITH

APO 192 of 2018
With
ACR 1 of 2002
IA GA 1 of 2018
(Old GA 1700 of 2018)
GA 2 of 2018
(Old GA 1702 of 2018)
GA 3 of 2019
GA 4 of 2021

RAI SURAJMAL BAHADUR CHARITABLE TRUST
AND
ABHISHEK AGRAWALLA
VERSUS
RAJENDRA KUMAR BANKA & ANR.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

AND

The Hon'ble JUSTICE KRISHNA RAO

Date : 5th January,2022.

APPEARANCE:

In APO 160 of 2018:
Mr. Sabyasachi Sen,Adv.
..for the appellant

Mr. Nirmalya Dasgupta,Adv.
...for the respondents

In APO 160 of 2018, APO 161 of 2018 & APO 192 of 2018:
Mr. Swarnendu Ghosh,Adv.
Mr. Nirmalya Dasgupta,Adv.
Mr. Dibanath Dey,Adv.
Ms. Pallavi Pain,Adv.
...for interim trustee, Mitesh Banka.

Mr. J. Patnaik,Adv.

Mr. Sakya Sen,Adv.
Mr. S.R.Kakrania,Adv.

Mr. Siddhartha Banerjee,Adv.
Mr. Sailendra Chakraborty,Adv.
Mr. P.K.Hazra,Adv.
Mr. Sabyasachi Hazra,Adv.

Mr. Anshunath Chakraborty, Adv.
...for appellant in APO 160 of
2018 & APO 161 of & for respondents
in APO 192 of 2018

Mr. Shiv Ratan Kakrania, Adv.
...for respondent

The Court :- The matter appears today under the heading “**To Be Mentioned**”.

Before going into any other aspect of the matter touching on its merits, certain primary management issues touching on this adjudication are required to be sorted out.

The first issue that requires to be addressed concerns the appointment of a new Supervisory Trustee. By earlier orders of the Hon’ble Court respectively dated 5th September, 2019 and 17th December, 2021, the Senior Supervisory Trustee, also described as the Outgoing Supervisory Trustee, Mr. Dipak Basu, Learned Senior Counsel, was relieved of his responsibilities as Supervisory Trustee on grounds of his advanced age and his unwillingness to continue further in such capacity

Also by the said order dated 5th September, 2019, Mr. Suman Dutt, Learned Counsel, was appointed as the next Incoming Supervisory Trustee.

Mr. Dutt also expressed his unwillingness to hold the position of Supervisory Trustee any further and, therefore, was relieved of his responsibilities by the order of this Court dated 17th December, 2021 (*supra*).

Since the parties jointly submit that a new Supervisory Trustee is required to be appointed, this Court appoints Mr. Samrat Sen, Learned Counsel, as Supervisory Trustee. Mr. Pranab Halder, Learned Advocate is also appointed as the Assisting Supervisory Trustee.

The initial remuneration at the first instance of the Supervisory Trustee shall be Rs. 1 Lakh (Rupees One Lakh only) and that of the Assisting Supervisory Trustee shall be Rs. 50,000/- (Rupees Fifty Thousand only) to be paid by the Trust.

The Supervisory Trustees shall be also entitled to Secretarial Expenses at the first instance of Rs. 10,000/- (Rupees Ten Thousand only), to be also paid by the Trust.

This Court is required to next notice the contents of the order dated 13th march, 2020. It has been, inter alia, recorded that one Malati Tulshan was required to be present in Court on the next date fixed when the Hon'ble Court proposed to consider the transfer of a Trust property

by and on behalf of the said Malati Tulshan to a third party. A copy of the Deed of Conveyance of the said property was also handed over to learned Advocate for the said Malati Tulshan in Court on that date, i.e. 13th March, 2020.

Mr. Siddhartha Banerjee, learned Counsel appears for Malati Tulshan and submits that the name of his client is yet to be incorporated in the cause title of ACR -1 of 2002 and as a Respondent and, as a Defendant in CS 43 of 2016. However, such incorporation, as directed by the order of this Court dated 17th December, 2021, is yet to be formally completed.

Taking notice of Mr. Banerjee's submission, this Court further notices from the order dated 17th December, 2021 that the **Department** was directed to take steps to add Mr. Banerjee's client as earlier directed by order dated 23rd August, 2018 and reiterated by the order dated 17th December, 2021. Such steps be taken within a period of two weeks after the reopening of this Court after the Winter Vacation of 2021.

Since a period of two weeks is yet to be completed, let the Report of the **Department** be submitted on the next date.

However, in the meantime, Mr. Banerjee shall be permitted to take complete instructions from his client *appropo* the terms of the order dated 13th March, 2020 and, if so advised, affirm an affidavit on behalf of the said Malati Tulshan explaining the position as discussed by the order

dated 13th March, 2020 (*supra*). Let such affidavit be first placed before this Court when the matter is taken up for consideration on the next date prior to circulation amongst the other parties.

Next, Mr. Sabyasachi Sen, learned Counsel, submits that he appears on behalf of Mr. Mahesh Tulshan claiming to represent one of the controlling families within the trust. Mr. Ghosh, learned Counsel, appearing for the present Trustee, however, submits that in several orders of the Hon'ble Court, the said Mahesh Tulshan has been described as an interested person.

Mr. Ghosh thus points out that Mahesh Tulshan does not automatically qualify to be added as a respondent in ACR -1 of 2002 without filing a formal application in this regard, notwithstanding the submission of Mr. Sen that the said Mahesh Tulshan has filed a written statement in CS No. 43 of 2016.

Having considered the rival submissions, this Court is of the view that the prayer of Mr. Sen and the concerns of Mr. Ghosh can be best addressed by permitting Mr. Sen's client to file a formal application in this regard, a copy of which shall be served on the responding parties.

Let such application, if filed, appear for consideration on the next date.

Before parting with this order, it would be necessary to take notice of the prayer made by Mr. Sen that the Report prepared by Mr. Suman

Dutt, the erstwhile Supervisory Trustee be circulated amongst all the parties. It is directed that Mr. Sen and Mr. Haldar, the newly appointed Supervisory Trustee and the Assistant Supervisory Trustee respectively, shall receive all papers, including the Report, from Mr. Dutt and circulate the Report amongst all the parties.

The name of the other Learned Assisting Counsel and Learned Instructing Advocates appear in the order of their respective appearance in the cause title above.

Let this matter appear next under the heading “**For Orders**” in the **Monthly Combined List of February, 2022.**

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

(KRISHNA RAO,J.)

(SUBRATA TALUKDAR,J.)