

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****TRUST PETITION NO.6 OF 2014**

Shanta Vinod Sejpal

...Petitioner

vs

Pratap Karamshi Sejpal/Thakkar And 2 Ors.

...Respondents

....

Dr. Birendra Saraf, a/w. Ms. Apurva Thipsay and Ms. Sheetal Shah, i/b.
M/s. Mehta & Girdharlal, for the Petitioner.

Ms. Dipti Bhuta, i/b. J.V. Parmar, for Respondent No.1.

Mr. Sharan Jagtiani, a/w. Mr. Aurup Dasgupta and Mr. Shrey Shah, i/b.
Jhangiani Narula & Associates, for Respondent No.2.

Mr. Himanshu Kode, for Respondent No.3.

Mr. Ganesh Ambekar, i/b. Dua Associates, for Respondent Nos. 4 and 5.

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CORAM : S.C. GUPTE, J.**DATED: 27 APRIL, 2018****(ORAL JUDGMENT):**

. This trust petition seeks removal of a trustee as well as declaration of invalidity of appointment of another trustee as also various other reliefs, including distribution of the net income of the trust property to the beneficiaries in accordance with the indenture of trust and accounts. It is the case of the Petitioner, who claims to be a beneficiary under the indenture of trust, that Respondent No.1, who is a trustee of a trust, has violated various statutory provisions concerning the administration of the trust, including the mandate against conversion of

the trust property to his own use and for his own benefit and denial of net income of the trust to the beneficiaries.

2. The brief facts of the case for the purposes of the present trust petition may be noted as follows:-

By an indenture of trust dated 9 October 1965 (registered on 23 February 1966), a structure of ground floor in a land bearing Survey No.308 D(Part) and 310 (Part) at Mulund in the registration Sub-district of Bandra, District Bombay Suburban was leased by the then lessors, who were trustees under a deed of settlement to four individuals, Respondent Nos. 1, 2, 4 and 5 herein, who were brothers and then carrying on business as partners of a firm in the name and style of M/s. Venus Waterproof Products Manufacturing Company. By another indenture executed on 10 June 1967, the first floor constructed on this structure was also leased by the then lessors, being the trustees under a deed of settlement, to the four individuals named above as partners of M/s. Venus Waterproof Products Manufacturing Company. By another indenture dated 26 May 1969, a further structure of ground plus one, together with WC and toilet, was leased to M/s. Venus Waterproof Products Manufacturing Company. On 16 January 1971, a deed of settlement was executed by one Laxmidas Vagji Palan by transferring a certain sum upon trust to the trustees named therein. The trustees included Respondent Nos. 1 and 2 herein along with their parents, Karamshi Chatrabhuj Sejpal and Godavariben Karamshi Sejpal. (This trust is hereinafter referred to as "Sejpal Trust".) On 1 February 1971, Sejpal Trust, by a deed of conveyance, purchased the property, being

Survey No.308 D, together with the factory, godown and other structures referred to above. The premises, as noted above, were tenanted at that time by the firm of M/s. Venus Waterproof Products Manufacturing Company, of which the four individuals named above were partners. Wife of Respondent No.1, namely, the Petitioner herein, and one Hansa Pratap Sejpal and the two brothers and sister of Respondent Nos. 1 and 2, Bhagwandas Karamshi Sejpal (Respondent No.4) and Jagdish Karamshi Sejpal (Respondent No.5) and Jyotsna Karamshi Sejpal, were also beneficiaries of Sejpal Trust. The Petitioner had 25% share in the income as well as corpus of Sejpal Trust (originally 23.05% share, which was later, upon surrender of 6% share of Jyotsna Karamshi Sejpal, augmented to 25%). On 21 December 2000, Karamshi Chatrabhuj Sejpal died leaving his widow, Godavariben, and his two sons, Respondent Nos. 1 and 2 herein, as the surviving trustees. The surviving trustees never appointed new trustees. Godavariben died on 2013, leaving behind Respondent Nos. 1 and 2 as the only surviving trustees. The trust income *inter alia* consisted of rent paid by M/s. Venus Waterproof Products Manufacturing Company for the tenancy of the premises. Sometime in the first half of 2004, disputes arose between the partners of M/s. Venus Waterproof Products Manufacturing Company. By a memorandum of understanding dated 7 May 2004, these disputes were referred to arbitration. An award was published by the arbitrator on 17 December 2009. It is the case of the Petitioner that the disputes before the arbitrator comprised only of disputes concerning the partnership firm of M/s. Venus Waterproof Products Manufacturing Company and not relating to Sejpal Trust or its properties. It is the grievance of the Petitioner that sometime later, Respondent No.2 (her husband) was not

even allowed to enter the premises or permitted to be involved in the affairs of the trust, though the award merely provided for his exit (along with his group) from the firm of M/s. Venus Waterproof Products Manufacturing Company. It is the grievance of the Petitioner that Respondent No.1, thereafter, mismanaged the affairs of the trust and committed various acts of breach of trust. These acts *inter alia* included depriving the Petitioner of her beneficial interest in the income and property of the trust, illegal appointment of his son, Respondent No.3 herein, as a trustee of the trust, failure to furnish any account of the trust property and its income to the beneficiaries, including the Petitioner, and creation of further third party rights in the property through the original lessee, namely, M/s. Venus Waterproof Products Manufacturing Company, as sub-lessees without any permission from Sejpal Trust. It is the grievance of the Petitioner that though she continues to be shown as a beneficiary in the records of the trust till date, she is virtually divested of all her share in the income and property of the trust. It is submitted that the trust in fact does not appear to be receiving any rent from M/s. Venus Waterproof Products Manufacturing Company, who has created third party rights in the property in connivance with Respondent No.1 as trustee of Sejpal Trust. It is submitted that despite the terms of the lease providing for liability of the lessee (i.e. M/s. Venus Waterproof Products Manufacturing Company) to keep the premises in good repair, including all additions or alterations made thereto, repairs and alterations have been carried out to the factory building, the expenses of which have been recovered from the trust. It is also submitted that even electricity charges, water taxes, property taxes, etc., which are to the account of the lessee, are paid from out of the trust

funds. It is submitted that as a part of these acts of mis-management and breach of trust, Respondent No.1 has not only ousted Respondent No.2 from the management of the trust but even illegally inducted his son, Respondent No.3 herein, without having any power to do so. In this petition, we are not directly concerned with the purported ouster of Respondent No.2 from the trusteeship of Sejpal Trust as such, which is a subject matter of dispute in a separate proceeding pending between the parties before the City Civil Court at Bombay. We are concerned here directly with the rights of a beneficiary of the trust to have the trust managed properly and in accordance with the indenture of trust and, in that sense, we are concerned indirectly even with the ouster of Respondent No.2. There is presently an interim order in favour of Respondent No.2 so that he continues to be a trustee of Sejpal Trust as of today, though it is the case of both the Petitioner and Respondent No.2 that he is in fact not being consulted in the matter of administration of the trust by Respondent No.1.

3. We are broadly concerned in the present trust petition with two or three crucial aspects concerning the management of the trust. These include the beneficial interest of the Petitioner in the trust property and income. It is the stand of Respondent No.1 as the trustee in charge of the conduct of the affairs of the trust that the Petitioner has by virtue of the award passed by the arbitrator in the disputes referred under the MOU of 7 May 2004, the Petitioner has ceased to be a beneficiary of Sejpal Trust. The second crucial aspect we are concerned with is the appointment of Respondent No.3 as a trustee of Sejpal Trust. The third aspect concerns rendering of accounts of Sejpal Trust by

Respondent No.1. These include the trust income derived out of the rent payable by M/s. Venus Waterproof Products Manufacturing Company as well as the amounts, if any, receivable from third party sub-lessees, who appear to have been inducted into the premises. Based on the findings of this Court on these crucial issues, this Court will have to consider the reliefs claimed in the present petition and, if necessary, mould further or other appropriate reliefs.

4. Insofar as the beneficial interest of the Petitioner is concerned, the argument of Respondent No.1 is that when the disputes between the parties were referred to arbitration, they included not only the share of Respondent No.2 and his group (which must include his wife, the Petitioner herein) in the partnership of M/s. Venus Waterproof Products Manufacturing Company but even the beneficial interest of his group, i.e. the Petitioner herein, in the income and property of Sejpal Trust. In the first place, no such inclusion is apparent from the terms of the MOU itself. In fact the terms of the MOU belie such submission. The MOU firstly describes the three partnerships and their partners. The partnerships were essentially between four partners, including Respondent Nos. 1 and 2 herein. The MOU provides that Respondent No.2 shall retire from the three firms with effect from 8 May 2004. It further provides that accounts of these three firms shall be made upto date within a reasonable period. It provides that in consideration of retirement of Respondent No.2 from the firms, certain individual items of property, described in the MOU, would be given to Respondent No.2. These assets would belong to Respondent No.2 exclusively in future. As against this, Respondent No.2 would relinquish all his rights from the

other properties. The parties agreed towards clearance of liabilities of the firms. The parties agreed to approach Mr. N.G. Thakker, Advocate, to sort out their difficulties in future. The MOU expressly provides that Respondent No.2 would not resign from Sejpal Trust by virtue of the arrangement provided in the MOU. It was disputes arising out of these MOU, which were referred to the arbitration of Mr. N.G. Thakker, Senior Advocate. The award in its prefatory paragraphs refers to the order of reference. This order was passed in a companion suit between the parties. It is an admitted position that this suit concerned merely the disputes arising out of the retirement of Respondent No.2 from the three partnership firms. The award also recites that the disputes relating to the partnerships were sought to be resolved under the MOU of 7 May 2004; that the MOU was substantially acted upon; that the disputes arose under the MOU which were referred to arbitration. The award in its operative part declares of retirement of Respondent No.2 from the partnership firm with effect from close of business hours on 7 May 2004. The award provides for various documents to be executed and actions to be taken by the parties in pursuance of such retirement. The award ascertains the liabilities of the firm as of the date of retirement and sets them out in the award and provides for payment of a certain sum by the firm of Karamshi Chatrabhuji & Company to Respondent No.2. The award directs sale or disposal of some goods and discharge of liabilities through the net sale proceeds in the manner stated in the award. It states that all other claims and counter-claims of the parties stand disallowed. What is conspicuous by its absence in the award is the reference to Sejpal Trust, that is to say, either the trusteeship of Respondent No.2 or the beneficial interest of the Petitioner herein in the

income and property of the trust. Learned Counsel for Respondent No.1, however, submits that by reason of reference to agreed figures and statement in the written statement of the Respondents referred to in the award, which *inter alia* includes receivables of the Petitioner in the beneficiary account, namely, a sum of Rs.2.34 lakhs, to be paid separately, the beneficial interest of the Petitioner herein in Sejpal Trust has been dealt with in the award.

5. Let us now test whether it is in fact so dealt with in the award by virtue of incorporation of the reference or otherwise. In the first place, it is apparent from the documents on record before this Court that the amount of Rs.2.34 lakhs referred to in the document cannot be said to be the share of the Petitioner as a beneficiary in the corpus of the trust. If one has regard to the accounts of the trust rendered from year to year, it is apparent that the respective shares of the beneficiaries in the net income of the trust were not paid to the beneficiaries but credited to their account. The amount of Rs.2.34 lakhs, thus, appears to have accumulated over the years as payable to the Petitioner herein as her share in the income of Sejpal Trust as of the date of the award. It is pertinent to note that even after the date of the award and till date further shares of income from year to year have been credited to the account of the Petitioner herein as her shares in the income as a beneficiary year after year. Thus, in the first place, the provision for payment of Rs.2.34 lakhs to the Petitioner herein cannot be termed as a provision for her exit from the trust as its beneficiary. Secondly, it cannot be said that this amount represents her share in the corpus of the trust or even, for that matter, her share in the future income of the trust.

Learned Counsel for Respondent No.1 has no other explanation to offer for the credits to the beneficiary account after the date of the award, besides stating that though the Petitioner has ceased to be the beneficiary of the trust, the trust, for some inexplicable reason, continued to credit her account with further shares in the income of the trust.

6. Coming now to the appointment of Respondent No.3, it is apparent that Respondent No.1 has no such power to appoint unilaterally any trustee on the board of Sejpal Trust. The appointment provision in the deed of settlement provides for appointment of a new trustee by surviving or continuing trustee/s. In case any trustee dies or desires to retire or refuses or becomes incapable to act in the trust, appointment of a new trustee must be made by the board of trustees for the time being acting together. As of the date of the appointment of Respondent No.3 as a trustee of Sejpal Trust, Respondent No.2 continued to be a trustee of the trust. In the first place, there is no provision pointed out before me which enables Respondent No.1 as a continuing trustee to oust his fellow trustee, i.e. Respondent No.2, from the trusteeship of the trust. The office of the trustee can lie vacant only in four circumstances, namely, his death, his retirement, his refusal to act as a trustee, or his becoming incapable to act as such trustee. None of these four circumstances is shown to have occurred so as to give rise to the ouster of Respondent No.2 from the trusteeship of the trust. In any event, under an order passed by the City Civil Court, his office as a trustee was protected and he was entitled to continue to act as such trustee. In the premises, the appointment of Respondent No.3 as a trustee of Sejpal Trust unilaterally by Respondent No.1 has no legal efficacy.

7. Coming now to the accounts of the trust, it is not a matter of dispute that Respondent No.1 has not rendered any account. No accounts are placed before the Court. Learned Counsel for Respondent No.1 in fact accepted before this Court that Respondent No.1 was not averse to furnishing such accounts. It is also a matter apparent on the record that expenses incurred towards repairs or renovations to the trust property, which is leased to M/s. Venus Waterproof Products Manufacturing Company, are recovered from or adjusted against the amounts payable by the lessee to Sejpal Trust. This in the face of an express provision in the agreement of lease that these expenses shall be to the account of the lessee and borne by it. It is also apparent from the report of the Court Commissioner that today there are various third parties, who are in possession of galas in the suit property. There is no explanation how these third party rights have been created without reference to the trustees of Sejpal Trust. There is also no explanation as to the income received or receivable from these third parties to the lessee, namely, M/s. Venus Waterproof Products Manufacturing Company. It is, however, apparent that no part of compensation payable by these third parties, either in the form of premium or as part of rent, comes to the coffers of Sejpal Trust. In the premises, it is absolutely imperative for Respondent No.1 to render full accounts of the trust property and income.

8. In the light of the foregoing discussion, it is now important to consider the relief that can be granted to the Petitioner on the present trust petition. Before we do so, it is, however, necessary to consider one

particular submission of Respondent No.1. Relying on the judgment of this Court in the case of **Manhar Shivji Shethia vs. Lilavati Madhusudan Shethia**¹, learned Counsel for Respondent No.1 submits that the reliefs sought in the petition can be dealt with in a suit and this Court should refrain from granting those reliefs in a summary hearing as in the case of the present petition. It is not that merely because there are contentious issues in a trust petition, this Court should refrain from exercising its jurisdiction and relegate the parties to a suit. The Court may direct the parties to approach the civil court for reliefs if the same require leading of extensive evidence or call for a full-fledged trial. As I have shown above, that is not the case here. The grievances complained of by the Petitioner are clearly capable of being considered on mere pleadings and do not call for any elaborate trial.

9. Secondly, the various acts of misfeasance or malfeasance alleged on the part of Respondent No.1 and his continuance as a trustee of the trust on account of those acts are matters which will bear a greater scrutiny and should appropriately form part of a separate proceeding by way of a suit based on accounts amongst other things. It is sufficient for our purposes in this petition to note that the very act of denying the beneficial interest of one of the four beneficiaries of the trust for no apparent justification, either in fact or in law, does call for a corrective action. As for the appointment of Respondent No.3 it is clear from the very deed of settlement that there is no power in any particular trustee to unilaterally appoint a new trustee, unless of course such particular trustee is the sole surviving trustee. That is not the case here. Respondent No.2 continues to act as a trustee along with Respondent

¹ 2000(1) Bom.C.R. 817

No.1. In that case, any appointment made by Respondent No.1 unilaterally cannot stand. It is also quite clear that if the trusteeship of Respondent No.3 cannot stand for any reason the affairs of the trust cannot be appropriately be managed through Respondent Nos. 1 and 2, who alone are the continuing trustees as of today, and who do not see eye to eye. It is also apparent that Respondent No.1 has been conducting the affairs of the trust unilaterally to the exclusion of Respondent No.2. In the premises, it would be imperative to appoint a third person as an additional trustee of Sejpal Trust so as to conduct its affairs on a day-to-day basis and apply its income and property for the purposes reserved under the deed of settlement. Insofar as the accounts are concerned, Respondent No.1 can be made to furnish such accounts and this should include even the arrangement, if any, between the trust and M/s. Venus Waterproof Products Manufacturing Company and the various third parties, who are in occupation of galas in the suit property or any of them. It would be then advisable to reserve liberty to the Petitioner to apply to the Court for appropriate reliefs arising out of these accounts. Such reliefs may include even removal of Respondent No.1 from the trusteeship of Sejpal Trust. Based on the material before the Court and after a full-fledged trial, this question can be considered in the suit by the civil court. It may simply be imperative for the purposes of the trust petition to declare the share of the Petitioner in the income and property of the trust as a beneficiary thereof. These then are the guiding principles of the operative order that may be passed in the trust petition.

10. In the premises, the trust petition is disposed of in terms of the following order:-

(i) It is declared that the Petitioner continues to be a beneficiary of Sejpal Trust having 25% share in the income and property of the trust;

(ii) It is declared that the appointment of Respondent No.3, as a trustee of Sejpal Trust, is illegal and Respondent No.3 is removed from the trusteeship of the trust;

(iii) Mr. Jonathan S. Solomon, Solicitor, is appointed as an administrator of Sejpal Trust to act in conjunction with Respondent Nos. 1 and 2 herein for the management of the trust, including collection and distribution of the income and property of the trust;

(iv) Meetings of the board of trustees of the trust shall be conducted at such time and with such frequency as Mr. Solomon may deem fit with advance notice of four days to each of the trustees setting out the agenda of such meetings;

(v) This will, however, not prejudice the right of Mr. Solomon as an administrator of the trust to call for an urgent meeting with a shorter notice, if exigencies of the business so demand;

(vi) Respondent No.1 shall within a period of six weeks from today furnish account of the trust from May 2004 till today i.e. till the year ending 31 March 2018; Such account shall disclose the income of the trust, its distribution, if any, to the beneficiaries or its accumulation, as the case may be, the arrangements between the trust and the lessee, i.e. M/s. Venus Waterproof Products Manufacturing Company, regarding

creation of third party rights in the trust property;

(vii) The agreements with such third parties and the amount received from such third parties towards security deposit and either premium or rent through the years shall also be disclosed by Respondent No.1 within a period of six weeks from today;

(viii) As far as prospective accounts, i.e. from 1 April 2018 onwards, are concerned, these accounts shall be periodically rendered at such intervals as Mr. Solomon may deem fit to all the beneficiaries; The share of the beneficiaries, including the Petitioner herein, in the net income of the trust, shall be paid to her from time to time;

(ix) Based on these accounts, the Petitioner as well as Respondent No.2 will be at liberty to file a suit seeking appropriate reliefs, including some of the reliefs which are claimed in the present petition, but not considered for the purposes of this order. These reliefs may include removal of Respondent No.1 as a trustee of Sejpal Trust.

(x) No order as to costs.

11. At the request of learned Counsel for Respondent No.1, it is ordered that this order shall come into effect after a period of six weeks from today.

(S.C. GUPTE, J.)