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

+ **FAO 106/2014**

H S SARNA & ORS

..... Appellant

Through: Mr. K. Sultan Singh, Sr. Adv. with Mr.
A. Faraz Khan, Advocate.

versus

KULDEEP SINGH BHOGAL & ORS

..... Respondent

Through: Mr. Jasmeet Singh, Advocate for
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 23.05.2018

The learned counsel for the respondent submits upon instructions that although the Trust has been dissolved with the consent of respondent no.2, an indemnity cannot be granted to the erstwhile members of the Trust for the reason that R-2 considers the act of the appellant as illegal; these actions exposed R-2 to unwarranted liabilities and risk of loss of fair name in the estimation of the general public. He refers to the decision of Division Bench of this Court in *Director of Income Tax v. The Guru Harkishan Medical Trust* [ITA 1359/2009, decided on 04.03.2014] which inter alia held that the creation of the Trust was illegal and such illegality

would not fasten any tax liability upon R-2. It nevertheless held that the remedy for the present appellant to challenge the order of dissolution of the Trust would be exercised by the Appellate Court.

On the previous date this Court had recorded as under:

“Guru Harkrishan Medical Trust, a public charitable trust, was created in the year 2007. Therefore, its governance would be subject to the Charitable and Religious Trust Act, 1920. Additionally, if there was any doubt of misappropriation of its funds, the procedure prescribed under section 92 of the Code of Civil Procedure, 1908 (CPC), would have to be invoked along with the provisions of the aforesaid Act. In other words, the matter ought to have been examined by the Court designated under the Act. By the impugned order the Trust stands dissolved, because in an election, the appellants were removed from the trusteeship. However, apropos the dissolution of the Trust, the appellants contend that they and the other erstwhile Trustees should not be in any way or at any stage be held liable for anything apropos the Trust. This clarification from liability ought to have done as per the procedure prescribed in the Act.

At this stage, Mr. Jasmeet Singh, the learned counsel for respondent No. 2 states that after elections to R-2, the charge of the Trust was taken over by the newly elected members of R-2. The Court would note that the dissolution of the Trust was with the consent of the newly elected members of R-2. It is so reflected in the order of 18.04.2013. In other words, the subsequent members of respondent No.2 had taken upon themselves all liabilities of the dissolved Trust as of 18.04.2013. The learned counsel seeks time to obtain instructions apropos the nature of statement that could be given by R-2 to put the matter at rest i.e. that the appellant would have no liability of any sort, whatsoever, for the tenure of his membership in the Trust which stood dissolved with R-

2's consent; thus he would stand indemnified by R-2.”

Section 92 of the Code of Civil Procedure reads as under:

92. Public charities.- (1) *In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the court, may institute a suit, whether contentious or not, in the principal civil court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction whole or any part of the subject matter of the trust is situate to obtain a decree—*

- (a) removing any trustee;*
- (b) appointing a new trustee;*
- (c) vesting any property in a trustee;*
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;*
- (d) directing accounts and inquiries;*
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;*
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;*
- (g) settling a scheme; or*
- (h) granting such further or other relief as the nature of the case may require.*

(2) *Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any responding law in force in the territories which,*

immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypruss in one or more of the following circumstances, namely:—

(a) where the original; purposes of the trust, in whole or in part,—

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since, they were laid down,—

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or
(iii) ceased to be, in law, charitable, or
(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

Therefore, the dissolution of the Trust could be done only in terms of the statute. That not being so, the impugned order suffers from error in law. Accordingly, it is set aside. The case would be remanded to the Court concerned for proceedings apropos the dissolution of the Trust.

Should R-2 or any interested party desire to pursue the dissolution of the Trust, it will be done only in terms of the Act before a Court of competent jurisdiction.

The appeal is allowed.

NAJMI WAZIRI, J

MAY 23, 2018/acm