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

*Decided on: 30<sup>th</sup> January, 2018*

+ C.R.P. 31/2015 and CM 4353/2015

DASHMESH HOSPITAL & ORS ..... Petitioners

Through: Mr. H.S. Phoolka, Sr. Advocate  
with Mr. Daljinder Singh, Mr. Udit and Ms.  
Shilpa Dewan, Advocates

versus

HARPAL SINGH & ORS ..... Respondents

Through: Mr. Harpreet Singh Popli, Mr.  
Mukul Girdhar and Mr. Anuj Yadav,  
Advocates for R-1 to 5

Mr. Gautam Narayan, ASC with Mr. R.A.  
Iyer, Advocate for R-6

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. The petition at hand invokes the revisional jurisdiction of this court under Section 115 of the Code of Civil Procedure, 1908 (CPC) to bring a challenge to the order dated 22.01.2015 passed by the Additional District Judge on the application under Section 92 of the CPC presented by the first to fifth respondents herein seeking leave to institute a civil suit (CS 81/2014) for necessary reliefs concerning the second petitioner, a public charitable trust alleging mis-management of its affairs, particularly such as concerning the functioning of a hospital (first petitioner) run by it.
2. The aforesaid respondents (now plaintiffs of the suit) had described themselves in the application under Section 92 of the CPC

as individuals residing in the vicinity of the hospital availing of its facilities tendered free of cost by the public charity and being concerned about the mis-management since it affects them as beneficiaries. The petitioners had resisted the application for grant of leave under Section 92 of the CPC by a reply, the prime objection taken being to the *locus standi* of the applicants, submissions also being made to the effect that there was no cause of action arising against the backdrop of facts pleaded, Major Gian Singh, one of the trustees appointed by the Deed of Public Charitable Trust dated 02.01.1998 whereby the trust was established being instead guilty of certain misdemeanors including embezzlement of the funds of the trust. The Additional District Judge rejected the opposition by the petitioners and by the impugned order dated 22.01.2015 granted the leave under Section 92 CPC.

3. The learned senior counsel arguing for the petitioners placed reliance on decisions of the Supreme Court in *Mahant Harnam Singh Vs. Gurdial Singh and Anr.*, AIR 1967 SC 1415 and *Vidyodaya Trust Vs. Mohan Prasad R. and Ors.*, (2008) 4 SC 115 and of a learned single judge of this court reported as *Vinay Rai and Anr. Vs. Ram Krishan and Sons Charitable Trust & Ors.*, 165 (2009) DLT 255. The prime thrust of his argument was that the petitioners do not qualify as the persons at those instance a suit concerning the public charity can be allowed to be instituted, they not being able to show “having an interest in the trust”. It was argued that a case of dishonest intention or lack of probity is *sine qua non* for such leave under Section 92 to be granted. It was the argument of the petitioners that the respondents have no genuine interest or intent to protect the public right of the

beneficiaries, they being only the mouth-piece of Major Gian Singh, the petition having been instituted by them on the close heels of his removal from the board of trustees on 09.09.2012. The submission of the learned senior counsel was that the court must go beyond the reliefs claimed and examine if the endeavour of the plaintiffs of the suit is to vindicate the public rights or agitate purely private dispute under the cover of legitimacy.

4. As observed in *All India Women's Conference & Ors. Vs. Sarla Shah & Ors.*, (2004) 13 SCC 402, the basic ingredients which must be met to obtain relief under Section 92 CPC are : (i). *the existence of a public trust*; (ii). *allegations of breach of trust*; and (iii). *the necessity to issue directions for administration of the trust*. There is no doubt that the dispute concerns a public trust. There is no denial of the fact that the public trust runs the hospital offering free medical aid to the people at large. The petitioners case that they are the beneficiaries being local residents cannot be disbelieved without affording to them an opportunity to prove the said contentions.

5. While it is true that in the application for leave to institute a case with regard to the mismanagement of the public trust, the averments set out were cryptic but the facts remains that the plaintiff did allege before the Additional District Judge that the funds of the trust were being embezzelled or mis-managed. Though an impression is gained that the plaintiffs may have been speaking on the strength of the complaint made by Major Gian Singh and therefore, at his instance, by the averments made in the reply submitted by the petitioners themselves, the allegations of embezzlement of the funds

have been confirmed. This indeed is a cause for concern and makes out a case for the court to step in.

6. One of the possible areas where the civil court dealing with the case would have to traverse is the retrieval of the property of the trust from the persons who may have taken unauthorized control thereof. It may be that Major Gian Singh was removed from the board of trustees by the petitioners against the backdrop of revelation that he had started taking decisions on his own without the knowledge or permission of the members of the trust; had purchased Swift Car in his own name for his personal use from the funds of the hospital and chemist shop; or diverted funds by opening bank Accounts, and had indulged himself to take control of even two fixed deposit receipts of more than Rs.1,00,00,000/- (one crore) each. It also may be that the petitioners had lodged a criminal case against him for such dishonest acts of commission and omission which concededly affected the management of the hospital. But no efforts having been made to retrieve the assets of the properties of the trust from his hands, it cannot be said that the trust or its board of trustees have taken all the corrective measures.

7. In the given facts and circumstances, it cannot be said that the dispute brought before the court by the plaintiffs is intended to settle personal scores. Being local residents and beneficiaries of the hospital run by the trust, the plaintiffs have *prima facie* shown that they are persons having an interest in the trust and, therefore, competent to seek the leave under Section 92 of the CPC.

8. Given the facts concerning the mis-management of the funds of the trust, as confirmed in reply by the petitioners themselves, there is no reason why the impugned order should be interfered with.

9. The petition and the pending application are dismissed.

**R.K.GAUBA, J.**

**JANUARY 30, 2018**

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