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REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 799 OF 2018
IN
TRUST PETITION NO. 1 OF 2017**

HARISHCHANDRA AMARNATH PURI

Adult, aged about 73 years, occupation: retired,
Senior Citizen, presently residing at Rockford,
Chicago, Illinois, USA

... Applicant

IN THE MATTER BETWEEN :

HARISHCHANDRA AMARNATH PURI,

Adult, aged about 73 years, occupation: retired,
Senior Citizen, presently residing at Rockford,
Chicago, Illinois, USA.

... Petitioner

~ VERSUS ~

1. VIJAY KUMAR AMARNATH PURI,

Adult, aged about 70 years, occupation: ...,
Indian Inhabitant, residing at 2A, Henry
Road, Curzon House, Mumbai 400 005.

2. DINESH ALIAS DEVENDRAKUMAR PURI,

Adult, aged about 63 years, occupation:
business, residing at 3rd Floor, Flat No. 303,
2A Henry Road, Curzon House, Mumbai
400 005.

3. SAVRINA DILIPKUMAR PURI,

Adult, aged about 63 years, occupation: ...,
Indian Inhabitant, residing at 2A, Henry
Road, Curzon House, Mumbai 400 005.

4. TANUJ DILIPKUMAR PURI,

Adult, aged about 34 years, occupation:
business, Indian Inhabitant, residing at 2A,
Henry Road, Curzon House, Mumbai 400
005.

5. UPASANA PURI ARORA,

Adult, aged about 29 years, occupation:
business , Indian Inhabitant, residing at 2A,
Henry Road, Curzon House, Mumbai 400
005.

... Respondents

AND

1. PRAVINKUMAR AMARNATH PURI,

Adult, aged about 61 years, occupation:
business, Indian Inhabitant, residing at 2A,
Henry Road, Curzon House, Mumbai 400
005

2. SUNILKUMAR AMARNATH PURI,

Adult, aged about 61 years, occupation:
business, Indian Inhabitant, residing at 6801

Spring Creek Road, Rockford, Illinois 6114
and 2A Henry Road, Curzon House,
Mumbai 400 005.

... *Proposed*
Respondents Nos.
6 & 7

APPEARANCES

FOR THE PETITIONER	Ms Rajni Iyer , <i>Senior Advocate,</i> <i>with Mr Agnel Carneiro, i/b M/s Mulla &</i> <i>Mulla & Craigie, Blunt & Caroe.</i>
FOR RESPONDENT NO.1	Mr FE De’Vitre , <i>Senior Advocate</i> <i>with Mr Ankit Lohia and Ms Sujata i/b</i> <i>PY Shankar.</i>
FOR RESPONDENT NO.2 TO 5	Mr Nirav Shah , <i>Advocate,</i> <i>with Mr Anuj Jaiswal, i/b M/s Little &</i> <i>Co.</i>
FOR PROPOSED RESPONDENT NO. 6	Mr Karl Tamboly , <i>Advocate,</i> <i>i/b Mr Arun Panickar.</i>
FOR PROPOSED RESPONDENT NO. 7	Mr JP Sen , <i>Senior Advocate,</i> <i>with Ms Naira Jeejeebhoy, Mr Hrushi</i> <i>Narvekar, Mr Vivek Vashi, Ms Shaheda</i> <i>Madraswala, Ms Aishwarya Singh and Mr</i> <i>Cyrus Jal, i/b M/s Vashi & Vashi.</i>

CORAM : **G.S.Patel, J.**
JUDGMENT RESERVED ON : **6th February 2019**
JUDGMENT PRONOUNCED ON : **1st March 2019**
JUDGMENT:

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A. The Questions for Determination

1. The Petitioner claims that a large and valuable immovable property in South Mumbai is the property of a private family trust established by his father. He says he is a beneficiary of the trust. He filed the Trust Petition against some of his half-brothers and others seeking an injunction against them from acting as trustees, and the appointment of a receiver of the property. His lawyer amended the

petition in 2017, dropped the two principal defendants, deleted some prayers and added prayers for dissolution of the trust and its distribution. A year on, the Petitioner sought to undo that amendment by filing this Chamber Summons. In it, he says said his lawyer sought the 2017 amendment without first consulting him. He also says the 2017 amendment violates a legal doctrine, '*once a trust, always a trust*'. Should the Petitioner be allowed to revert his petition to a state before its amendment? Is such a claim permissible in law? Is the Petitioner correct or justified in saying his earlier lawyer ought to have consulted him on such an amendment? Is the legal doctrine properly invoked? These are the questions I am to decide in this Chamber Summons.

B. Curzon House & the Puri Family Trust

2. Facing the city's harbour to the east at Colaba, Curzon House is a stately ground and four-floor structure at the junction of Henry Road and Strand Road at Colaba. It stands roughly midway between the Taj Mahal Hotel at Apollo Bunder to the north and the Radio Club to the south. The leasehold plot on which the building stands is of about 1080 sq mts. It is owned by the Mumbai Port Trust. This is the estate in dispute in the Trust Petition and in the Petitioner's Chamber Summons.

3. Amarnath Bhimamal Puri was a cloth merchant in Bombay with, by all accounts, a successful business in the early years of the 20th century. He and his wife Lajwanti had one son, Harishchandra,

the present Petitioner, born in 1944. Lajwanti died in April 1949.¹ Amarnath remarried very soon after, in June 1949. In time, his second wife, Chanchal Rani, also known as Rashmi Rani, bore him five sons, more or less at two-year intervals: Vijaykumar (born 1950), Dilipkumar (born 1952), Dinesh (or Devendrakumar, born 1954), Pravinkumar (born 1957) and Sunilkumar (born 1960). These five are, therefore, Harishchandra's step-brothers. Dilipkumar died in 2017. He was survived by his widow and two children. Vijaykumar and Dinesh/Devendrakumar are Respondents Nos. 1 and 2 to the Petition. Dilipkumar's three heirs are Respondents Nos. 3, 4 and 5. Pravinkumar and Sunilkumar were, until 24th July 2017 when they were deleted from the array of parties, Respondents Nos. 6 and 7.

4. In 1956, Amarnath formed a private trust called the Bhimamal Amarnath Puri Trust. The trust was to provide for Amarnath's sons Harishchandra, Vijaykumar, Dinesh and Dilipkumar, then all minors. Amarnath settled Rs.71,000 on trust. Chanchal Rani was appointed a trustee. She was to pay the net income after expenses to the guardian of the four minor sons twice a year during their lifetime. Each son got an equal share in this income. She was herself appointed their guardian. On the death of any of the sons, his share was to descend to his heirs; and if he had no lineal descendants, was to be added to the shares of the surviving brothers. The Indenture of Trust contemplated the purchase or acquisition of immovable property, and allowed the Trustees to sell any such immovable property. Clause 8 said that there would be a maximum of eight trustees, the majority of whom were always to be members of

¹ The Petition does not give the date and puts the year as 1948.

Amarnath's family, his relatives. On attaining majority, the four sons would act (the clause says 'shall act') and be eligible for appointment as trustees; and, moreover, on attaining majority, would be 'deemed to be' trustees. Chanchal Rani had the right to appoint additional trustees. Pravinkumar and Sunilkumar were not born at the time. They find no mention in the Trust Deed.

5. In 1956–1957, Amarnath acquired the Curzon House property (the land and building). The Petition says in paragraph 5 that Amarnath took the property on a 99-year lease from the Bombay Port Trust in Chanchal Rani's name 'being a Trustee of the said Trust'. This does not seem to be accurate. There are more details in the Affidavit in Reply by Vijay Kumar, the 1st Defendant. I draw on that for factual completeness and because it seems more accurate. The Port Trust owns the property. In 1901, it leased the property to one Ebrahim. Curzon House was then still being built. The lease was for 99 years, and was renewable. It prohibited any assignment without the previous written consent of the Port Trust. In 1906, Ebrahim assigned the lease for the remainder of the term to one Flora Nathan. She died in 1937 bequeathing the property in her Will to her daughter, Mozelle. The Will received probate in 1938. Later that year, Mozelle assigned the lease to herself and held the property until 19th September 1956 when she and Amarnath entered into an assignment agreement for Rs.61,000/-. Amarnath paid Rs.6000 as earnest. That left a balance of Rs.55,000/-. This is one area of dispute, for Harishchandra and Dinesh (who seems to support him) say that the balance price came out of trust funds. Vijaykumar says otherwise; he contends that Amarnath paid the balance *before* he created the Trust, for the Indenture of that Trust is

dated 19th October 1956, exactly one month *after* the agreement between Amarnath and Mozelle. However, the actual assignment from Mozelle followed, and is dated 21st January 1957. The assignment was in favour of Chanchal Rani for the remainder of the lease term.

C. The Controversy in the Trust Petition

6. Is Curzon House trust property? This is the controversy in the Trust petition. Harishchandra says Chanchal Rani took the Curzon House as a trustee and held it on Trust and it is, therefore, Trust property. Vijaykumar disputes this. So do other contestants. They say Chanchal Rani took the assignment in her personal name, not as a Trustee. The Indenture of Assignment is not with the Trust. It does not name or recognize Chanchal Rani as a Trustee. Chanchal Rani did not convey or further assign the Curzon House property to the Trust at any time. The Indenture of Assignment speaks of Chanchal Rani as being a reference to her heirs, executors, administrators and permitted assigns. This, Vijaykumar et al say, could never be a reference to Chanchal Rani other than in her personal capacity. Further, the assignment to Chanchal Rani was BPT-approved, and this approval is in writing, by a letter dated 14th January 1957 from the BPT to Chanchal Rani. The BPT records still show the Chanchal Rani — not the Trust — as the lessee.

7. However, in his petition, Harishchandra says Chanchal Rani made a declaration (to no one in particular) on 2nd March 1957 to the effect that she took the Curzon House property as a trustee and

held it as such on trust for the Trust. A copy of this document is at Exhibit “B” to the petition. In it, Chanchal Rani said she took the property *as a Trustee*, and paid the consideration of Rs. 61,000/- (to Mozelle) from Trust Funds she *already* had. She said the BPT permitted the assignment ‘*but in my favour only and not as a trustee*’. She said this was ‘for convenience’. Then she confirmed that she held the Curzon House Property as a trustee, that it was trust property, and purchased with the trust funds mentioned in the Deed dated 18th October 1956. She went on to say that neither she nor her heirs had any interest or claim in the property.

8. The response from Vijaykumar is that Chanchal Rani also executed two Deeds of Variation in 1964 and 1972 with the BPT. Again, these documents described her in her personal capacity and included her ‘heirs, executors, administrators and permitted assigns’. These documents amended the terms of the lease. Vijaykumar contends that if the 1957 declaration had any legal effect, Chanchal Rani would not and could not have executed these Deeds of Variation that were directly contradictory. Further, Chanchal Rani wrote to the BPT in 1998 and 2000 as a lessee of the Curzon House property asking that the names of Sunilkumar and Pravinkumar be included as lessees, and also seeking a renewal of the lease. The property card records, too, Vijaykumar says, show only the name of Chanchal Rani, not the Trust. It seems the BPT brought suit against Chanchal Rani in the Small Causes Court. In appeal, the parties entered into Consent Terms in December 1996. The BPT accepted Chanchal Rani as the lessee of the plot. Vijaykumar says attempts were made in those proceedings to say the

property was Trust property. The BPT opposed this, and the Trial Court found against Chanchal Rani.

9. There is no dispute that Curzon House had some tenants. Some tenants vacated. We are not concerned with that. The Puri family took up residence on an upper floor, but that, too, matters little at this stage. In a further Affidavit in Reply dated 27th March 2018, Vijaykumar produced copies of rent receipts signed by Dilipkumar in favour of various tenants. He says that until 2006, Dilipkumar signed these receipts 'for Chanchalrani Amarnath', and not on behalf of the Trust. From 2007 onwards, Vijaykumar himself has issued rent receipts in the same manner.

10. Vijaykumar therefore claims that everyone treated the Curzon House property as Chanchal Rani's personal property, not Trust property. He claims (in the first affidavit) that all five of Chanchal Rani's sons have agreed and admitted that Chanchal Rani was the sole owner of the property. He then refers to events and correspondence with the BPT after Chanchal Rani died on 30th April 2004. This correspondence in relation to the property was, he claims, by and on behalf of Chanchal Rani's heirs. He says the BPT has accepted this heirship and wrote to 'the legal heirs of Chanchal Rani'.

11. Harishchandra seems to have left India for the USA around 1976 in search of what he himself describes as 'greener pastures'. From the 1980s until at least 2010 he visited India intermittently.

When he did, he ‘visited’ the fourth floor of Curzon House, which was, according to him, then vacant.

12. Respondent No.2, Dinesh alias Devendra Kumar, also filed an Affidavit in Reply. There are some details of tenancies and tenant disputes. Overall, Dinesh clearly supports Harishchandra and opposes the stand of Vijaykumar. Dinesh reaffirms Harishchandra’s position that Curzon House was and is Trust property; he says the family always treated it as such, as did the tenants. He references a rent receipt signed by Pravinkumar. This is issued in the name of the Trust. Both he and Harishchandra refer to Chanchal Rani’s Will dated 26th August 2003. In this, they say, Chanchal Rani made no reference at all to the Curzon House property. He alleges that Pravin and Sunil have purported to deal illegally with the property.

13. It is also not in dispute that Harishchandra filed a partition Suit No. 162 of 2016 in this Court. He sought a declaration of co-ownership of the property. He says he did so on limited information. He did not then have the documents that he now relies on in this trust petition. Pravinkumar filed a Motion for rejection of the plaint. Harishchandra contested this Motion. On 22nd June 2017, Harishchandra withdrew the suit before Colabawalla J. His lawyer said Harishchandra wished ‘to pursue other remedies that may be available’. The suit was dismissed as withdrawn *in view of this statement*. Vijaykumar also contends that given this background there is a serious dispute about the title to Curzon House — does it fall in Chanchal Rani’s estate, or is it Trust property? That, he and his lawyers say, lies outside the remit of any petition under the Indian Trusts Act. It must and can only be decided in a regular civil

suit. There is also a contention of maintainability under Section 34 of the Indian Trusts Act, for, Vijaykumar says, Harishchandra's petition seeks relief as a beneficiary, not as a trustee.

14. The trust petition is not being decided today. I have set out this narrative in some detail for a solitary reason: it speaks directly to the nature of the controversy in this Chamber Summons.

D. The 2017 Amendment to the Trust Petition

15. The Affidavits in Reply to which I have referred were all filed in late 2017 and 2018, much later in point of time. We are concerned with an earlier stage. Harishchandra filed the Trust Petition on 23rd June 2017. Harishchandra also filed a Motion for interim relief. This was before SC Gupte J on 10th July 2017. This is the order Gupte J passed on that day:

Learned Counsel for the Petitioner seeks leave to delete Respondent Nos. 6 and 7 from the cause title of the petition and **also seeks to amend the trust petition by incorporating the relief for dissolution of the trust and distribution of the trust property between the beneficiaries.**

Respondent Nos. 6 and 7 are, accordingly, deleted from the cause title of the petition. Leave to amend is granted to the Petitioner for incorporating the relief for dissolution of the trust and distribution of the trust property by adding a prayer in the petition and also making appropriate averments in the body of the petition.

Amendment to be carried out within two weeks
Reverification of the amended petition is dispensed with.

16. I reproduce below the prayers of the Petition before and after the amendment. The original prayers deleted by the amendment are shown as struck-through. Those added are in italics.

~~(A) That this Hon'ble Court be pleased to restrain the Respondents No. 6 and 7 from acting as trustees under the Indenture of Trust dated 19th October 1956 being EXHIBIT "A" hereto or representing the trust in any manner whatsoever.~~

(A) *That this Hon'ble Court be pleased to dissolve the Trust being the Bhimamal Amarnath Puri Trust which was promulgated under the Indenture of Trust dated 19th October 1956.*

(B) *That the corpus under the Bhimamal Amarnath Puri Trust along with the property being ground plus four storey building situated on Survey No. 9560 of Colaba Division, Mumbai and more particularly known as Curzon House as being part of the Bhimamal Amarnath Puri Trust as indicated by a Declaration dated 2nd March 1957 be distributed amongst the beneficiaries as indicated under the Indenture of Trust dated 19th October 1956.*

~~(B)~~ (C) *The Court Receiver, High Court Bombay or any other fit and proper person be appointed as Receiver/ administrator in respect of the Trust Property being ground plus four storey building situated on Survey No. 9560 of Colaba Division, Mumbai and more popularly known as Curzon House as indicated in the Declaration dated 2nd March 1957 with all powers under Order XL of the Code of Civil Procedure, including the power of sale and thereafter*

distribute the proceeds to the beneficiaries *as per the Indenture of Trust dated 19th October 1956*;

~~(C) — That this Hon'ble Court be pleased to direct the vesting of the corpus of the Trust in favour of Trustees being Respondents No. 2 and 3.~~

~~(D) — That the Respondents No. 6 and 7 be ordered and directed to render the true and correct account in respect of the said Trust settled under the Indenture of Trust Deed dated 19th October 1956.~~

~~(E) — This Hon'ble Court be pleased to restrain the Respondents No. 6 and 7 from any manner acting and/or representing as a Trustee of the said Trust, or dealing with the said property.~~

~~(F) — That this Hon'ble Court be pleased to direct the Respondents No. 6 and 7 to deposit all the records of the Trust with the office of the Court Receiver, High Court, Bombay.~~

~~(G) — Pending the hearing and final disposal of the instant Petition the Respondents No. 6 and 7 be restrained by an order of injunction of this Hon'ble Court from dealing with and/or disposing of and/or creating 3rd party interest and/or rights in respect of the trust Property situated junction of Henry Road and Strand Road being cadastral Survey No. 392 aggregating to 1292 sq yards equivalent to 1080.92 sq mtrs and being part of Survey No. 9560 of Colaba Division, Mumbai the building constructed thereon known as Curzon House;~~

~~(H)~~(D) Ad-interim and interim reliefs in terms of prayer clauses (a) to (g) above be granted in favour of the Petitioner;

(H)(E) For costs;

(H)(F) For any other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant Petition.

17. The amendment deleted Respondents Nos. 6 and 7, Pravinkumar and Sunilkumar, and made changes to the references to these two in the body of the Petition. But there were also important changes to paragraphs 14, 15, 16, 17, 19 and 20. Paragraph 22 was entirely substituted. Paragraphs 24, 25 and 26 stood deleted. These are the changes made, shown in the same manner as the amended prayers quoted above.

14. The Suit being Suit No. 162 of 2016 filed by the Petitioner was for effectuating partition of the said Property and Declaration of the Petitioner as a co-owner purely on the basis of what information was available with the Petitioner however, during the pendency of the Suit various events transpired which relegated the Petitioner to personally have dialogue on his visits to India with the deceased Dilipkumar Puri and thereafter the Respondents Nos. 3, 4 and 5. The documents annexed to the instant Petition and further documents which the Petitioner was shown and supplied by Respondents Nos. 3, 4 and 5 abundantly proves that there is no dispute with regard to the said Property and that the said Property being a Trust Property is being run, ~~controlled and managed by the Respondents Nos. 6 and 7 with impunity and without the fear of law and there is an apparent unjust enrichment caused by the Respondents Nos. 6 and 7~~ much to the exclusion of the Petitioner and the other beneficiaries for whom the Settlor being the deceased father had promulgated the said Trust as far back as 19th October

1956. It so has emerged that the Respondents Nos. 6 and 7 are not trustees but are impersonifying to be trustees and under the guise of being trustees have carried out acts detrimental to the Petitioner and other trustees and beneficiaries. The Petitioner was given a copy of the rent receipt issued at the instance of Respondents Nos. 6 and 7 as can be established from the said rent receipt dated 1st April 2004. A copy of which is hereto annexed and marked as EXHIBIT-"L". It also so appears that as the Respondents Nos. 6 and 7 controlled the affairs of the building, they transferred tenancy rights with no authority as can be evidenced from the documents the Petitioner craves leave to refer to and rely upon. It so appears that after the institution of the Suit No. 162 of 2016, correspondence ensued between the Respondent Nos. 1, 2 and late Dilipkumar Puri with *other heirs being Sunil and Pravin* the conspectus of which correspondence proves that the Respondents No. 1, 2 and late Dilipkumar Puri and after the deceased the Respondents No. 3, 4 and 5 have contended that the said Property is a trust Property whilst the Respondents No. 6 and 7 have contended that the said Property is inherited and is not a trust Property. The Petitioner craves leave to refer to and rely upon the correspondence when produced between the respective Advocates the copies of which were furnished to the Petitioner by Respondents No. 3 to 5.

15. On receipt of the said documents clarifying the correct legal position and the said property and on the basis of the Application for rejection of Plaint the Petitioner had no other recourse but to seek withdrawal of the Suit being Suit No. 162 of 2016 and to file this Trust Petition as contemplated under law and for various provisions to seek various directions under the Indian Trusts Act, 1882 which Suit came to be withdrawn on 22nd June, 2017. Whilst withdrawing the said Suit, The Petitioner mentioned that

he desires to take out appropriate proceedings within the appropriate laws. The Petitioner in lieu of what is stated hereinabove states that the Petitioner is admittedly a trustee but being a resident of the United States of America could not perform all acts, matters and things which were necessary and/or incidental to the running of the said Trust. However, the Petitioner who is a beneficiary is entitled to various orders and reliefs so as to protect his interest and therefore had sought redressal of his grievances on the basis of few of the documents which the Petitioner had and once having obtained other documents, the same concludes to the fact that the property in question is a Trust Property. The Petitioner states that the Respondents Nos. 6 and 7 have been controlling all the affairs of the said Property much to the exclusion of the *Petitioner* other trustees and the beneficiaries and have continued to carry out all activities of the said Property much to the deprivation of the trustees and beneficiaries as was promulgated under the Trust Deed. The contemporaneous correspondence produced at the hearing of this Petition would show that the Respondents No. 6 and 7 are denying the title of the said Property and are in denial that the said Property is a property of the said Trust which is why the Petitioner has sought redressal of his grievances by instituting the instant Petition. However, the documents annexed hereto and the correspondence concludes that the said Property is a Trust Property. The documents further conclude the rights of the beneficiary and with the usurpation of power by the Respondents No. 6 and 7, it is clear that the Respondents No. 6 and 7 are illegally holding the said Property and misleading all to believe that the Respondents No. 6 and 7 are the only trustees of the said Trust.

16. The Petitioner states that the Petitioner has been also confronted with the a Public Notice dated 7th January

2017 issued by the Respondents Nos. 1, 2 and late Dilipkumar Puri which Public Notice appears to have been reflected in the Newspapers notifying the names of the trustees and beneficiaries of the said Trust and that ~~the Respondents No. 6 and 7 do not have~~ *no one other than them* has any right, title and interest in respect of the Trust Property. Hereto annexed and marked as **Exhibit "M"** is a copy of the Public Notice dated 7th January 2017. The Petitioner also has been informed that the position as is in respect of the entire Trust Property is reflected from the information as is set out at **Exhibit "N"**, which is the position of the Trust Property as on today.

17. The Trustees were under an obligation to handover the corpus or the fruits arising out of the said Property and its investments in favour of the beneficiaries but having taken over the said Property under the guise of the said Trust, ~~the Respondents No. 6 and 7 are carrying out activities of that of Trustees of the said Trust and have]~~ *the Petitioner is deprived the as beneficiaries beneficiary* of the legitimate income and profits arising there from. ~~The Respondents No. 6 and 7 with a malafide and dishonest intention are deliberately holding over the said Property and are not permitting any function of the said Trust and have taken over the said Trust much to the deprivation of the Petitioner and the other trustees and beneficiaries. The Respondents No. 6 and 7 are wrongfully holding over the corpus of the said Trust under false pretext. There is no justification to the Respondents No. 6 and 7 for wrongfully holding the corpus.~~ As per the clear provision of the said Trust the benefits arising out of the said Property are to be equally distributed and that the trustees are liable to distribute the trust Property in accordance with the directions of the said Settlor as found in the said Trust.

19. The beneficiaries have also been deprived of the use of the said Property. In light of the above, the Petitioner states that the Respondents Nos. 6 and 7 ~~allegedly have managed the affairs of the said Trust~~ *are being run* and have assumed the role of trustees and are acting in breach of the Trust, and against the interest of the beneficiary.

20. The Petitioner states that in the mid March, 2017 the Petitioner had visited Mumbai and upon gaining knowledge about the death of the said Dilipkumar Puri and also visited the Trust Property, wherein it was noticed that the entire 1st floor of the Trust Property is lying vacant. It ~~also was evident that the impersonification of the Respondents No. 6 and 7 was ongoing which is why at.~~ At the instance of the Respondent No. 2, the Petitioner accepted and admitted the Respondent No. 3 as the trustee of the said Trust who also would be the heir of late Dilipkumar Puri the original beneficiary and trustee of the said trust. The Petitioner thereafter requested the Respondents to furnish more details on the basis of which the instant Petition has been filed as it is concluded that the said Property is of the Trust and the said Trust being a private Trust is still valid and subsisting.

22. ~~In the circumstances, the Petitioner seeks a declaration that the Respondents No. 6 and 7 have no right, title or interest whatsoever in the said property or power or authority in respect thereof and are in breach of their obligations and is guilty of breach of trust and is liable to be restrained to act as trustees and that the present trustees be permitted to carry out the running of the Trust activities without obstruction of the Respondents No. 6 and 7.~~

22. *The Petitioner states that the Petitioner is presently aged 73 years. The 1st and 2nd Respondent are also senior citizens. The 4th beneficiary has already expired. The Trust was promulgated for the safeguard of the beneficiaries, being the Petitioner, 1st and 2nd Respondent and the late Dilip Puri. No benefits have till date been recovered by the Petitioner from the said Trust since its promulgation. The Trust has in itself a property being Trust Property which would fetch an amount of crores of Rupees apart from the tenancies existing thereat. The said Trust cannot be ongoing through out and has therefore to be dissolved. Upon dissolution, the proceeds of the said Trust can be distributed to the benefit of the beneficiaries in the life time of the beneficiaries. With the absence of information in respect of working, functioning and financial status of the Trust it is incumbent and in the interest of all beneficiaries that the said Trust be dissolved.*

~~24. Under the circumstances, it is respectfully submitted on behalf of the Petitioner that in view of the blatant breach committed by the Respondents No. 6 and 7 acting contrary to the mandate of the Trust are not entitled to act on behalf of the trustee or in respect of the said property. Therefore, in view of the breach committed by them and their wrongful actions it is necessary that this Hon'ble Court be pleased to restrain the Respondents No. 6 and 7 to represent the trust or deal with the said property act as trustees under the Indenture of Trust dated 19th October 1956.~~

~~25. The Petitioner submits that if the Respondent Nos. 6 and 7 are allowed to deal with the said Property to the exclusion of the Petitioner it will result in grave injustice, loss and irreparable damage.~~

~~26. — In the alternative, the Respondents No. 6 and 7 and any persons claiming through or under them be restrained by an order of injunction from not obstructing and/or interfering with the trustees of the Bhimamal Amarnath Puri Trust being the Respondents No. 2 and 3 from carrying out the activities as trustees.~~

E. The Trust Petition After Its Amendment

18. Matters seemed to rest there for a while, in the sense Harishchandra said and did nothing to indicate that he had any change of mind, or even received any contrary legal advice. On 13th November 2017, BP Colabawalla J disposed of Harishchandra's Motion for interim relief in the Trust Petition saying it was infructuous since the primary reliefs sought were against Respondents Nos. 6 and 7, Pravinkumar and Sunilkumar, who had since been dropped. The Motion was dismissed as withdrawn. There were also directions to file replies in the main Trust Petition, since none had till then been filed. The Trust Petition came up before Gupte J on at least five dates thereafter, between 1st March 2018 and 25th April 2018. It appears to have been argued before Gupte J on 18th and 19th April 2018. The order of 19th April 2018 says the matter (evidently the amended Trust Petition) was part-heard; and the matter was then notified on 25th April 2018. On none of these dates did Harishchandra attempt a re-consideration of the amendment.

19. The final hearing did not conclude. Then the roster changed: the Trust Petition was now in the assignment of AK Menon J from

June 2018. On 7th June 2018, Harishchandra engaged M/s Mulla & Mulla & Craigie, Blunt & Caroe as his advocates on record; that is the date of M/s Mulla & Mulla's vakalatnama. In paragraph 18 at pages 79-80, Harishchandra says M/s Mulla & Mulla were given the papers only in the evening of Friday, 8th June 2018. The matter was next notified before AK Menon J on 13th June 2018. Harishchandra claims that his new lawyers now told that court that he wanted to make an application to the Hon'ble the Chief Justice on the administrative side to have the matter assigned to Gupte J as part-heard (pages 3-4, paragraph 8). Menon J's order of that date does not note this, but there seems to be no dispute about it. But even now, nobody sought a reconsideration of the amendment that Gupte J had allowed almost a year earlier on 10th July 2017. While I note that Menon J's order of 13th June 2018 does not note any such request being made on Harishchandra's behalf, it is evident that until that date, and for several weeks thereafter, Harishchandra intended to pursue the petition as amended.

20. It was not until 10th July 2018 that Harishchandra for the first time sought to undo the 2017 amendment, ordered exactly one year earlier, by filing this Chamber Summons.

F. The Case in the Chamber Summons

21. Ostensibly — but only ostensibly — for an amendment, the entire Chamber Summons is premised on two postulates. First, that on 10th July 2017, when Harishchandra's then advocate-on-record sought an amendment, he did so 'without any deliberation' with

Harishchandra; and, second, that Harishchandra is ‘now’ advised that the 2017 amendment is misconceived, contrary to the Indian Trusts Act, and violates a principle enunciated thus: *once a Trust, always a Trust*.

22. There are several difficulties with this construct, and I will next attempt to identify and address the component questions one by one.

I Propriety and probity in pleadings

23. I am constrained to begin with this, for not once but repeatedly, Harishchandra’s affidavits leave almost every to be desired in this regard. His Affidavit in Support and Affidavit in Rejoinder are filed through his Constituted Attorney, one Ramesh Panjabi. There is only one late affidavit of 2nd January 2019, filed following my directions, by Harishchandra himself. Both affidavits through Panjabi cross the line of acceptability and propriety. In paragraph 10 of the Affidavit in Support at page 2 of the brief, Panjabi attributes words and intentions to Gupte J, and purports to record what allegedly transpired at a hearing in that court on 10th July 2017: that the learned judge orally suggested that this was a fit case for a receiver, that the respondents resisted, that the learned judge questioned the locus of Pravinkumar and Sunilkumar. None of this is in the order of 10th July 2017.

24. Paragraph 7 of the same affidavit continues in this vein. It now says that on 18th and 19th April 2018, Gupte J was ‘inclined to pass

an order appointing' the Court Receiver, but respondents' counsel sought time for settlement; and the court adjourned the matter for that purpose. The orders of 18th and 19th April 2018 say nothing of the kind; I have checked them myself.

25. Then in paragraph 8 comes the assertion that before Menon J on 13th June 2018 Harishchandra's lawyers sought time saying they wanted to make an application to have the matter assigned as part-heard to Gupte J. The order of 13th June 2018 does not say that either. Again, I have checked it.

26. In the Affidavit in Rejoinder, Panjabi re-affirms and re-iterates these statements.

27. In paragraph 4 of the further affidavit of 2nd January 2017, Harishchandra says he has no personal knowledge of what happened in court on 10th July 2017.

28. Harishchandra and Panjabi are laypersons, not lawyers. Perhaps they cannot be expected to fully understand what should or should not be said on affidavit. Perhaps these are all niceties beyond their ken. That cannot, however, be said of their advocates-on-record, M/s Mulla & Mulla, and I should have thought that a venerable law firm of such long standing and repute would certainly know better. Perhaps this is in today's shriller times more commonplace than it once used to be. But that does not make it proper or salutary. It is most improper to attribute intentions, inclinations or opinions to a judge when these are not found in the

order itself. It borders on misconduct. It wholly alters the even balance of court proceedings. Gupte J's orders of 10th July 2017 and thereafter themselves express none of the opinions that Harishchandra and Panjabi attribute to him. They are neutrally worded and circumspect. Even in April 2018, the matter was part-heard. It was not decided. Gupte J did not express any view on the merits of the Trust Petition at all. It is most emphatically not for any party to say he did; and even if the party so instructs his advocates, it is the responsibility of those advocates to decline to follow any such 'instructions'. In not doing so, M/s Mulla & Mulla failed to bear in mind that no advocate, whether an advocate-on-record or a counsel, is never a mere mouthpiece of his client. He is first and foremost an officer of the court (and more on this towards the end of this order). In discharge of that duty, he can do nothing to compromise the neutrality and integrity of the judicial decision-making process. The affidavits go too far, and it is M/s Mulla & Mulla who must accept responsibility for this wholly unacceptable condition and content of the filings on behalf of Harishchandra.

29. I pointed this out at the hearing. I did so repeatedly. No one instructing Ms Iyer for Harishchandra made a move to say that those paragraphs would be withdrawn, though in fairness as counsel she agreed they were wholly improper. I confess I do not know what to make of her instructing attorneys' conduct. And it does no good to put in something wholly improper, prejudicial and unethical like this, and then have counsel agree that it is unacceptable, but carry on as if the assertions are inconsequential. They are not. In my view, they are sufficient to warrant severe censure of the firm. I am letting this pass, but only this once.

30. The comments on the court and the learned judge are also entirely unnecessary. They add nothing at all to the substance of the argument. Is the Chamber Summons to be allowed only because the applicant avers that a particular judge orally said something on a particular hearing date? That can never be. What good then is it to say any of this except to attempt to cause prejudice? A firm of solicitors can reasonably be expected to know better than to insert a filing of this kind into the record. I can find no justification at all for the inclusion of these assertions. I refuse to believe that we are so utterly without an ethical compass that every single utterance of a litigant, no matter how improper, no matter how prejudicial, is legitimate inclusion in a court record.

II The Need for Consultation & Deliberation

31. The Affidavit in Support by Panjabi says there was no consultation 'with the Petitioner' before the amendment was effected. It does not say that Panjabi as the Constituted Attorney was not consulted. That comes only in the further affidavit of 2nd January 2019, when Harishchandra now says that neither he nor Panjabi were consulted.

32. To begin with, a consultation with Harishchandra could not have been mandatory. That is why he had a Constituted Attorney in the first place.

33. That apart, Ms Iyer argues, on the basis of no law or precedent that I can tell, that there is a distinction in the authority or

discretion of arguing counsel and that of an attorney or an advocate-on-record. A counsel may concede without a client's instructions, I understand her to suggest, but an attorney or advocate-on-record cannot in any circumstances. I can see no such distinction, especially with the official abolition of the dual system. All, whether counsel or advocates-on-record, are officers of the court. They all enjoy the same standing, and there are many practitioners who both file vakalatnamas and argue their own briefs. Before a court, all advocates, senior, junior, counsel, attorney, stand on exactly the same footing, none more and none less than any other. I do not see how a counsel's concession may bind a litigant without his consent, but that of an attorney cannot. The concept of counsel — one engaged to argue on another lawyer's appearance — is nothing new. The proviso to Order III Rule 4(5) of the Code of Civil Procedure, 1908 specifically contemplates a pleader who has entered appearance appointing another pleader to argue on behalf of his client.

34. Again, the lack of consultation is not by itself determinative. The 2017 amendment will not be allowed to be undone *only* because Harishchandra and Panjabi were not consulted, even assuming their consultation or consent to be necessary. Here, Harishchandra ties himself in knots. On the one hand, his affidavit (improperly) attempts to say what, according to him (and he was not there at the time), happened on 10th July 2017. He says the court questioned the correctness of joining Pravinkumar and Sunilkumar 'as they were not beneficiaries' and his advocate-on-record *therefore* sought the amendment. But if the assertion is true (and leaving aside questions

of its propriety), then no question could ever have arisen of needing Harishchandra's consent.

35. Mr Sen for Respondent No. 7 invites attentions to paragraphs 3, 9 and 10 of the Affidavit in Support and paragraphs 4 and 5 of the 2019 Affidavit. In paragraph 3 of the support affidavit, Panjabi speaking for Harishchandra (as his Constituted Attorney) summarizes Pravinkumar's and Sunilkumar's grounds of opposition to Harishchandra's Motion for interim relief. In paragraph 9 of that affidavit, he tells of the appointment of M/s Mulla and Mulla and the fresh advice received. In paragraph 10, he expounds the legal principle he now embraces. In paragraph 4 of the 2019 affidavit, Harishchandra says he is personally unaware of the circumstances in which the 2017 amendment was effected. In paragraph 5, he reiterates the legal principle. There is no case anywhere that the previous advocate-on-record acted contrary to instructions; and it is clearly admitted that Panjabi was present in Court at the time of the amendment. Further, Harishchandra has even now not revoked Panjabi's authority. There is, Mr Sen says, and I think quite correctly, no question of prior consultation or instructions being required.

36. This takes us to the next question, which is what is it exactly that the amendment did. If we look at the petition as it stood before and after the amendment, and of the wording of Gupte J's order, the amendment was clearly to meet a question of law: that of maintainability, and of seeking appropriate relief. To take this sequentially: First, Gupte J's order allowed the deletion of the names of Pravinkumar and Sunilkumar and *also leave to amend to seek*

dissolution of the trust and distribution of the trust property. The original petition sought no such relief of dissolution and distribution. It sought only to restrain Pravinkumar and Sunilkumar from acting as trustees, and the appointment of a Court Receiver. That order of receivership could never be a final order in itself. It would have to be a step in aid of some final relief; and there was no final relief to which that order could have been tied. Post-amendment, the receivership prayer remained, but it was now tied to a final relief for dissolution of the trust and distribution of the trust property. Second, the amendment for the first time sought a substantive final relief (for dissolution and distribution), a result manifestly in Harishchandra's interest. Both are matters of law and of the frame of the Trust Petition. Neither is a question of fact. In this context, it is worth recalling that Pravinkumar and Sunilkumar did not claim to be acting as trustees in regard to Curzon House. That would have implied their acceptance that Curzon House was, in fact, trust property, a position they have consistently denied and contested. Therefore, it was logical to seek what was to all intents and purposes a declaration that Curzon House was indeed trust property and then seek dissolution of the trust and the distribution of the trust property among named beneficiaries. I am wholly unable to understand what it is that Harishchandra could have said to this in any consultation or deliberation.

37. Further: Gupte J's order is of 10th July 2017. It was not until a full year later, on 10th July 2018, that for the first time Harishchandra accused his previous lawyer of not 'deliberating' the amendment with him. It is one thing to say that there was incorrect legal advice; it is quite another to pillory an advocate for failing to

take instructions. That need for consultation did not have to await the epiphany of any legal principle. On its own, therefore, this ground of lack of consultation is clearly an after-thought.

III The principle invoked: Once a Trust, Always a Trust

38. Indeed, nobody is able to explain what Harishchandra could have said to his then advocate-on-record if consulted. He only says that the amendment is contrary to the Indian Trusts Act. He does not say how, and nobody explains it with any clarity. He then invokes what he calls a ‘principle of law’, framed thus: *once a Trust, always a Trust*. He does not explain the relevance or the application of it to this case, nor does he explain how it is in any sense violated by the amendment. He proceeds on the basis that it is an immutable truth, and the suggestion seems to be that if a property is trust property, it remains trust property in perpetuity until the end of time.

39. What is the legal framework of this principle? Aiyar’s commentary on the Indian Trusts Act places it under Section 76:² when one of several trustees dies, the trust itself survives and the trust property passes to the other trustees, unless the instrument of trust declares otherwise. It is said to be a ‘trite proposition of law’, like that other proposition ‘once a mortgage, always a mortgage’. *Kahnweiler v Anderson* is a very old decision of 1878 of the Supreme Court of North Carolina that references the concept as a well known

² S Krishnamurthi Aiyar, *Commentary on the Indian Trusts Act*, 9th ed., 2017, pp. 571-572.

one, so it must be older still.³ Where a trust subsists, it continues to so subsist until termination by some act showing the unequivocal purpose of the beneficiary to terminate the relationship of trustee and beneficiary. Hence: once a trust, always a trust; and it follows, therefore, that courts are slow to end a trust, or to allow parties to do so, before the obligations in it are performed. In *C Nagamanickaya & Ors v K Syamanthakamma & Ors*, a single judge of the Madras High Court was dealing with a challenge to an alienation of charitable trust property.⁴ The legal representative of a trustee claimed adverse possession. G Rajasuria J held that once a property is found to be trust property, it cannot be allowed to be dissipated in any manner. He said the principle was akin to the other, *once a mortgage, always a mortgage*. In *Jhang Biradari Housing Residents Society v Bharat Bhushan Sachdeva*, a Division Bench of the Delhi High Court had before it an appeal in a suit for a declaration of title to immovable property at Rohtak Road, New Delhi.⁵ The Division Bench considered Sections 73 and 75 of the Indian Trusts Act for the common principle that when a trustee dies, his legal representatives — not necessarily only his legal heirs — could rightly manage the property until a proper trustee is appointed. Even a trustee de son tort could so manage the property. The Division Bench echoed the words of Rajasuria J in paragraph 22 in setting out the principle. Then there is the decision of the Supreme Court in *KS Varghese v St Peter's & St Paul's Syrian Orthodox*

³ 78 NC 133 (NC 1878).

⁴ 2012-2-LW 970, paragraph 32, *p.* 985.

⁵ (2015) 222 DLT 578 (DB), per Pradeep Nandrajog, J, as he then was.

Church.⁶ The court was addressing a dispute between two factions each seeking control over the spiritual and temporal management of the affairs (and property) of the Orthodox Syrian Church. In paragraph 91, the court said that ‘very spirit of creation’ of a trust, from time immemorial, has always embodied the concept that *once a trust, always a trust* — the trust cannot be ended except as permitted in law. In paragraph 177, the Supreme Court said that even a majority of parishioners could not act in defeasance of the trust once established and found to exist: *once a trust, always a trust*. In paragraphs 207 and 208, the court explained this to mean that it is not open to members of public or private trusts to appropriate trust properties for themselves.

40. Harishchandra’s invocation of the principle to invalidate or reverse the 2017 amendment is, in my view, wholly misconceived. The principle only states that a trust remains a trust until it is ended in accordance with law; and that a property remains trust property until that time comes. This is why it is said to be ‘trite’ and akin to the similarly worded principle applicable to mortgages: a mortgage ends only on foreclosure or redemption. For a private trust, there is no principle that a trust property continues as such indefinitely. Indeed, Sections 77 and 78 of the Indian Trusts Act indicate to the contrary. Section 77 contemplates the extinguishing of a trust in any one of four specified conditions. Section 78 speaks of revocation of a trust, including by consent of beneficiaries competent to contract. I am not here assessing the merits of the petition at all, but only whether the 2017 amendment could fairly be said to violate this

⁶ (2017) 15 SCC 333.

principle, for Harishchandra's case is that the amendment itself was misconceived in law. As I have noted, he does not anywhere explain why this would be so, and there is nothing in the antecedent facts going back to the formation of the trust — meant for the benefit of Amarnath Puri's sons while they were minors — to support this theory.

41. In his last affidavit of 2nd January 2019, Harishchandra says he has now been advised that the principle is that the functioning of the Trust is governed by the Trust Deed, failing which the competent court is jurisdictionally empowered to pass necessary directions to protect the trust property. That, as we have seen, is an incorrect and untenable proposition when put in so absolute a manner. It overlooks statutory provisions, and ignores the specific purpose of the trust deed itself.

42. Harishchandra's entire cause, with or without the amendment, is that Curzon House is indeed trust property. That is his starting premise, and that is what he must establish in the trust petition. But assuming he does so — what then? Is he, on the invocation of this 'trite' principle, entitled to a continuance of the property as trust property for all time to come? Is that all to which he is entitled? Or is he, as the amendment clearly posits, entitled to rather more, viz., a dissolution of the trust, and a passing of title to a portion of the trust property to his name as a beneficiary? To succeed in this Chamber Summons, Harishchandra must show that he is not entitled, as a matter of law, to the relief of dissolution and distribution. That is not done, and it cannot be done.

43. There is yet one central aspect that the Chamber Summons totally overlooks. What the amended petition now seeks, and which it did not before, is a tangible positive relief. Harishchandra maintains, right until his 2019 affidavit, that he seeks to protect his rights *as a beneficiary*. If that be so, and leaving aside all questions of maintainability to be addressed at the hearing of the Trust Petition itself, the amendment does nothing at all to compromise those rights. If anything, it is this Chamber Summons that does not subserve those rights Harishchandra claims ‘as a beneficiary’. It is therefore not at all established that the amendment advice was wrong, or misconceived, and I am not at all certain that even on its own this can furnish a good ground in support of the Chamber Summons: see *Usha Rani v State of Punjab & Ors*, paragraph 9, where a Division Bench of the P&H High Court did not permit countenance precisely this argument.⁷

IV The True Nature of the Chamber Summons

44. Ms Iyer would have it that this Chamber Summons is utterly commonplace; all it seeks is an amendment, albeit an amendment to an amendment. Mr Sen disagrees with this formulation. The 2017 amendment was, he says, nothing short of an *abandonment* of Harishchandra’s claim against Pravinkumar and Sunilkumar; and it was an abandonment squarely within the frame of Order XXIII Rule 1 and Rule 1(4)(a) of the CPC: a plaintiff may abandon his claim in whole or in part against all or any defendants. When he does so, he

⁷ PLR (2005) 141 P&H 161 : 2005 SCC Online P&H 627.

is precluded from instituting any fresh suit in respect of the subject matter or part of the claim so abandoned. Therefore, Mr Sen argues, no fresh trust petition could today be filed for the 'abandoned' reliefs against Pravinkumar and Sunilkumar. Consequently, Harishchandra cannot be allowed to do by this application to undo an amendment that which he is barred in law from doing in a fresh petition.

45. Order XXIII is not restricted to civil suits, as Mr Sen points out.⁸ There is no reason why any different standard applies to a trust petition, and no such distinction is pointed out. In *Ajcon Capital Markets Ltd v Maya Rasayan Ltd*⁹ a Division Bench of this Court explained the purport and ambit of Order XXIII. If a plaintiff abandons his claim, but seeks to file a fresh action, he must seek prior leave at the time of abandonment or withdrawal; a fresh suit is barred. The abandonment can be on a mere statement to the Court. It is unilateral and voluntary. The defendant is never prejudiced by a withdrawal or abandonment, and his consent is therefore unnecessary.

46. Mr Sen is correct when he says this is in no sense a routine amendment application under Order VI Rule 17 of the Code of Civil Procedure, 1908. This is an attempt to reintroduce, without prior leave having been obtained, a claim that was abandoned or withdrawn against Respondents Nos. 6 and 7, Pravinkumar and

⁸ *Sarguja Transport Service v State Transport Appellate Tribunal*, (1987) 1 SCC 5, where it was held to be applicable to writ petitions under Article 226 of the Constitution of India.

⁹ (2003) 3 Mah LJ 421, paragraph 10.

Sunilkumar, viz., that they were functioning as trustees. It cannot be re-introduced now, and to do so would violate every well-established principle, including those enumerated by the Supreme Court in *Revajeetu Builders & Developers v Narayanaswamy & Sons & Ors.*¹⁰ What Harishchandra now seeks comes at a very late stage. It is not necessary any adjudication of Harishchandra's rights. Allowing it would cause immense prejudice, and would alter the nature of the case now being pursued. In response, to invoke a civil court's inherent jurisdiction under Section 151 of the CPC is no answer at all. As Mr Tamboly for the 6th Respondent points out, it is settled law that Section 151 is not a substantive provision that creates or confers any power or jurisdiction. It merely recognizes the discretion inherent in a court to do what is 'right', undo what is 'wrong', all to secure the ends of justice. But a court cannot do that which the law prohibits by invoking Section 151. When, therefore, there is an express bar in the Code, it cannot be overcome by invoking Section 151. It must always be exercised carefully and to prevent abuse of the process of the Court.¹¹

47. I hold, therefore, that this application is impermissible and the barred by the provisions of the CPC.

¹⁰ (2009) 10 SCC 84, paragraphs 63.

¹¹ *KK Velusamy v N Palanisamy*, (2011) 11 SCC 275.

V The question of bona fides; an attempt at forum shopping?

48. The question stares one in the face. The way the dates fall makes the Petitioner's conduct very disturbing; and the Affidavit in Support elides important facts, including court orders. The amendment was ordered on 10th July 2017. Harishchandra himself claims it was allowed on an application in response to a query from the Court. The amendment was effected a few days later, on 24th July. The Chamber Summons was filed on 10th July 2018, exactly one year after Gupte J's order. In that entire time, Harishchandra did not once question his earlier advocate-on-record's action. He did not once raise the plea of lack of consultation, which has nothing at all to do with any legal principle. At hearing after hearing during that year, Harishchandra did not question the amendment. On 22nd June 2017, the same lawyer who had amended the petition appeared before Colabawalla J and withdrew Harishchandra's previous suit. A few months later, on 13th November 2017 before Colabawalla J, the same lawyer withdrew Harishchandra's earlier Notice of Motion in this Trust Petition unconditionally. Again, there was no protest about lack of consultation or any legal principle. Neither of these dates before Colabawalla J are mentioned in the Affidavit in Support.

49. The Trust Petition itself continued to be listed before Gupte J. He heard it in mid-April 2018 on at least two days — and he heard the petition *as amended*. Again, there was no attempt made to question the previous lawyer's so-called lack of consultation, nor any invocation of any legal principle. Indeed, it was that lawyer who continued to represent Harishchandra, and he does not seem to

have been even once confronted for having acted without consultation. After the summer 2018 court vacation, the trust petition fell in Menon J's assignment. When he first took it up, he was only told — according now to Harishchandra himself — that Harishchandra wanted to apply to the Hon'ble the Chief Justice to have the matter assigned to Gupte J. Again, no questions were raised about any lack of consultation and legal principle.

50. This date before Menon J is important. The matter reached before him on 13th June 2018. By this time, Harishchandra had discharged his earlier lawyer and engaged M/s Mulla & Mulla. They entered appearance on 7th June 2018, and Harishchandra says they got a set of papers on 8th June 2018. Even then, the next Wednesday, 13th June when the matter was before Menon J, neither Harishchandra nor his new lawyers questioned the conduct of his previous lawyer or raised any question of a legal principle having been violated. It was not until 10th July 2018, a good month or so later, and a full year after Gupte J's order, that Harishchandra said all this for the first time.

51. Before Gupte J, Harishchandra made no application for review or recall. He filed no appeal against Gupte J's order. Therefore: as long as the matter was before Gupte J, Harishchandra was happy to proceed with the petition as amended. The moment the trust petition left Gupte J's assignment, there was an immediate re-think. It is difficult to see how, from this, it can fairly be said that the application is genuine or bona fide. It may nor may not approach forum shopping; but nothing in the application persuades me to take

the view that it is now brought in good faith. At the very least, it seems to be an attempted gamble. That is unacceptable.

52. As we have seen, the legal principle Harishchandra invokes is misdirected and misconceived. It has no application at all to these facts and the amendment as made cannot be said to violate that very old doctrine. The amendment gives the petition a focus previously entirely lacking, and now seeks tangible relief. Issues of maintainability of the petition need not be addressed now, and must be kept open; yet, it is clear that the final relief in the amended petition is now directed to a positive realization vis-à-vis the Curzon House property.

53. Therefore, the fulcrum of this case is really Harishchandra's assertion of lack of consultation. We have already seen how this was, on the specifics of this case, never necessary. We have also seen that the lack of consultation has reached Harishchandra no discernible harm in the frame of the amended petition. But it takes us back to the question Ms Iyer hints at, that is to say an almost invariable need for prior consultation, and of every lawyer being hamstrung for want of instructions in his conduct of the case. On this, I think I can profitably turn to Lord David Pannick's incisive work, *Advocates*.¹² In Chapter IV, he writes of lawyers' 'Duties and Powers'. This extract is from the opening of that chapter.

"There is a general consensus among the vast majority of advocates that they have two primary duties: a duty to represent the client and a duty to the court. 'He wishes to

¹² Pannick, David; *Advocates*; Oxford University Press, 1992.

promote his client's interest, and it is his duty to do so by all legitimate means. But he also,' as Sir John Donaldson MR noted in 1985, 'has an interest in the proper administration of justice, to which his profession is dedicated, and he owes a duty to the court to assist in ensuring that this is achieved.'"

Further in the same chapter, Lord Pannick says:

"Although the advocate owes important duties to his client, even the wishes and instructions of the client form only a partial restraint on the liberty of counsel. ... the court would intervene only if it had any lurking doubt that the litigant might have suffered an injustice as a result of flagrantly incompetent advocacy. This immunity [from claims for damages] was not confined to barristers: it also applied to solicitor advocates in courts in which they have a right of audience. This is now confirmed by the Courts and Legal Services Act 1990. ...

[The advocate] has important responsibilities to the court as well as to his client. Chief Justice Burger of the US Supreme Court has rightly criticized 'cynics who view the lawyer much as the "hired gun" of the Old West'. The advocate is more than a mouthpiece. As Mr Justice Blackburn explained, 'few counsel ... would accept a brief on [such] terms'. He 'owes allegiance to a higher cause'. ...

Despite the antiquated language and medieval concepts of honour involved in some of these statements, counsel need to be reminded that it is not simply their task to speak on behalf of their client. They do have additional, and sometimes conflicting, responsibilities. So broad are the legal privileges of the advocate and so vital his role in the administration of justice, that there must be some limits to

what he is entitled to say or do on behalf of his client. But where, and how, are the boundaries to be drawn? ...

It will therefore be appreciated that advocates have substantial duties to the court which may override the duty to their client. The duty to the court must, as Lord Denning explained, be performed notwithstanding 'the wishes of the client, no matter how pressing and no matter how high the fee'.

54. I note this — and without any particular emphasis — because, as we have seen, other than saying he was not consulted, Harishchandra says nothing at all about why any such consultation was even necessary. He assumes that everything a lawyer does in court can only be after consultation. He assumes, in other words, that his lawyer is in fact his mouthpiece, nothing more. This is wholly and utterly incorrect. In *Randel v W*,¹³ Lord Denning MR said:¹⁴

Counsel has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. Whereas when the Advocate puts his first duty to the Court, he has nothing to fear. But it is a mistake to suppose that he (the Advocate) is the mouthpiece of his client to say what he wants. The Code which obligates the Advocate to disregard the instructions of his client, if they conflict with his duty to the Court, is not a code of law — it is a code of honour. If he breaks it, he is

¹³ (1996) 3 All ER 657.

¹⁴ Cited with approval by the Supreme Court in *ES Reddi v Chief Secretary*, (1987) 3 SCC 258.

offending against the rules of the profession and is subject to its discipline.

55. Consider what happened in *Chandrakant Govind Sutar v MK Associates*.¹⁵ The presiding judge pronounced judgment in a civil revision application in open Court. He found for the petitioner. Immediately thereafter, counsel for the *petitioner* brought to the court's notice that the relevant decisions on maintainability had not been placed. He requested the judgement not be signed and requested a re-hearing. The request was granted. The matter was heard again on the additional issues. Counsel for the petitioner placed decisions that were determinative — *against the petitioner*. The civil revision application, one that was on the verge of success, was dismissed. The immediate cause was lost, but something far more vital was preserved. The point here is to note that under no circumstances, even with a likely result this fatal, is an advocate only his client's mouthpiece.

56. The presiding judge was Mr Justice AM Khanwilkar, then a puisne judge of this court. The lawyer in question was Mr AS Oka, very soon thereafter Mr Justice AS Oka.

57. As a judge, AS Oka J authored the Division Bench decision in *Subhash Datta Chaudhari & Ors v State of Maharashtra & Anr*.¹⁶ He said in the context of some material improperly shown to the court:

¹⁵ 2003 (4) Bom CR 169 : 2003 (1) Mh LJ 1011.

¹⁶ 2016 SCC Online Bom 9186.

"The action of showing the letters to the Court on Tuesday, the 16th August 2016 was nothing but an attempt to cause embarrassment to the Court. It was an attempt to indulge in forum hunting. When the Advocate for the Petitioners fully knew that the matter in which one of us (A.S Oka, J) appeared in the year 1997 was not even remotely connected to the present matter, as an officer of the Court, he ought not to have shown the said letters to the Court in the open Court. In fact, such actions directly interfere with the administration of justice. It also amounts to lowering the dignity of the Court. The Advocate was first an officer of this Court and then a mouthpiece of his client. It was his duty to impress upon his clients that such unfair tactics should not be adopted. But he failed to do so. We are refraining ourselves from taking the action against the Advocate on record for the Petitioners only because he states that he is tendering an unconditional apology to the Court."

This statement negates Harishchandra's approach. It also shows how the conduct of his present advocates in permitting filings of the stripe I have described is grossly improper.

58. In *R v O'Connell*,¹⁷ Mr Justice Crampton said:¹⁸

"Another doctrine broached by another eminent counsel I cannot pass by without a comment. That learned counsel described the advocate as the mere mouthpiece of his client, he told us that the speech of the counsel was to be taken as that of the client; and, thence, seemed to

¹⁷ [1884] 7 ILR 261 at 312.

¹⁸ Cited in *Director of Income Tax v Credit Agricole Indosuez*, (2015) 377 ITR 102, MS Sanklecha and NM Jamdar, JJ.

conclude that the client only was answerable for its language and sentiments.

Such, I do conceive, is not the office of an advocate. His office is a higher one. To consider him in that light is to degrade him. I would say of him as I would say of a member of the House of Commons-he is a representative, but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law-he will not wilfully misstate the facts, though it be to gain the cause for his client. He will ever bear in mind that if he be the advocate of an individual, and retained and remunerated (often inadequately) for his valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice; and there is no Crown or other licence which in any case, or for any party or purpose, can discharge him from that primary and paramount retainer."

59. How should a lawyer approach a point of law? In *State of UP v UP State Law Officers' Association*,¹⁹ the Supreme Court described the position:²⁰

The relationship between the lawyer and his client is one of trust and confidence. The client engages the lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law, which his client wants him

¹⁹ (1994) 2 SCC 204.

²⁰ Also: *OP Sharma v High Court of P&H*, (2011) 6 SCC 86.

to, however irrelevant they may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies.

60. Therefore, the entire case of the amendment being vulnerable for want of consultation is thoroughly misconceived. But it does not rest there. The argument is not just specious. It is devious, and it is false. Harishchandra's own case is that the amendment was in response to a dialogue at the Bar; and therefore not something wholly arbitrary. He does not say that the amendment application was perverse, or in any sense corrupt. His accusation against the previous advocate of not consulting is an allegation of misconduct. As we have seen, there is no universal or immutable requirement of prior consultation at every stage. Why, then, is this allegation made? The answer is plain: because Harishchandra knows that merely citing 'incorrect' legal advice is itself no ground for revisiting the amendment. It is also not demonstrated — or even attempted to be demonstrated — that the amendment takes so manifestly an incorrect legal position that it could never have been sought or made. The test really is this: if the court granted the amended relief of dissolution and distribution, would Harishchandra forsake that for a considerably lesser and more evanescent relief of continuance

of the trust? I seriously doubt that, and he does not, of course, say anything of the kind. In other words, so long as the amended relief seemed within reach, Harishchandra was happy to pursue and found no fault with the lawyer, or the advice he received. It is only when, due to exigencies of listing, he found he had to start again that Harishchandra came up with this notion of a re-think. This is the only reason to now throw the previous lawyer under the bus and accuse him of professional wrongdoing. Nothing in this fits any reasonable definition of bona fides or good faith.

61. Harishchandra's case that his current legal advice is that his previous legal advice was bad legal advice may itself be very bad legal advice.

G. Final Order

62. There is no merit to this Chamber Summons. The relief it seeks is barred by law. It is not bona fide and not in good faith. The Chamber Summons is dismissed. No costs.

(G.S. PATEL, J.)