

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.2372 Of 2022
(Through hybrid mode)**

Neelachal Mission Trust, BBSR ***Petitioner***

Mr. Budhadev Routray, Sr. Advocate
Mr. Saswat Das, Advocate
Mr. A. Mohanty, Advocate

-versus-

***Punjab National Bank,
Bhubaneswar and others*** ***Opposite Parties***

Mr. G.D. Kar, Advocate
Mr. D.P. Nanda, Sr. Advocate for intervener
Mr. A.K. Padhi, Advocate
Mr. B.K. Padhi, Advocate
Mr. S.S. Padhy, Advocate
Mr. A.S. Mohanty, Advocate
Mr. S. Jena, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER

07.09.2022

I.A. No.5507 of 2022

**Order
No.**

5.

1. Mr. Routray, learned senior advocate appears on behalf of petitioner. He submits, his client is the trust, represented through its Chairman. Prayer (v) is being pressed for as relief. He points out from earlier order dated 25th March, 2022 made in the writ petition that one of four accounts mentioned in said prayer was erroneously numbered and relief sought is not in respect thereof. The erroneously numbered bank account is no.0553002100025560.

2. He submits, resistance against operation of the three accounts by his client is from the interveners, whose suit stood dismissed for default on 3rd December, 2021. It appears, interveners applied for restoration of the suit and notice was issued to the bank, who, by impugned letter dated 27th December, 2021 said that in view of notice for restoration of suit, the case had not been dismissed. He proceeds to demonstrate that claim no.1 in the suit was in respect of the erroneously numbered account, against which his client is not pressing for relief. None of the other three accounts mentioned in prayer (v) are subject matter of the suit, dismissed for default and as yet not restored. He submits further, the bank has taken position to abide by order to be made by this Court.

3. Mr. Kar, learned advocate appears on behalf of the bank and confirms that his client will abide by order to be made by this Court regarding prayer of petitioner for allowing operation of the three accounts as made by prayer (v).

4. Mr. Nanda, learned senior advocate appears on behalf of the interveners. He draws attention to prayer (iii) in the plaint. It is reproduced below.

“(iii) Let a decree directing enquiry into the accounts of the ‘Neelachal Mission Trust’ by an independent auditor to be appointed by the Court for the current financial year i.e. 2016-17 as well as for

the past three financial years i.e. 2013-14, 2014-15 & 2015-16 be passed.”

He submits, all accounts of the trust are subject matter of the suit. He relies on **judgment dated 1st October, 2021** of the Supreme Court in **Civil Appeal nos. 5899 and 5904 of 2021 (Jai Balaji Industries vs. D.K. Mohanty and others)**, paragraphs 17.1 and 18 (Manupatra print). He submits, in similar fact situation, where appeal under section 37 in Arbitration and Conciliation Act was dismissed for default and restoration application duly made within prescribed time, there was attempt by the operational creditor to seek insolvency resolution, the Court declared that where prayer for restoration was pending consideration, it has no hesitation in saying that in such a case, without a final decision on the prayer for restoration, insolvency proceeding at instance of an operational creditor cannot be put into operation.

5. He submits, in any event the writ petition is not maintainable. He relies on **judgment dated 16th September, 1983** of a Division Bench in the High Court of Delhi (**Duli Chand Vs. Mahabir Prshad Trilok Chand Charitable Trust**), paragraphs 16 and 17 (Manupatra print). He submits, view taken was, a trust is not a legal entity. It is the trustees who are legal entities. The trustees must join together in maintaining a suit. **Mahabir Prshad** (supra) was followed by a learned Single Judge of Calcutta High Court in **judgment dated 12th**

September, 2019 (Vijay Sports Club vs. State of West Bengal and others) available at **2019 SCC OnLine Cal 2331**, paragraph-9 (SCC online print). Hence, He submits, petitioner alone cannot maintain the writ petition in seeking to operate accounts of the trust, which are subject matter of his client's suit and no order should be made, atleast till restoration of the suit is decided.

6. Mr. Routray replies by drawing attention to annexure-9 in the writ petition being letter dated 18th January, 2022 from Utkal University to the institute run by the trust, giving particulars of amount of fees to be deposited. Further particulars have been given in paragraph-16C in the writ petition. He submits, by reason of litigation, the institute and the trust itself is unable to function. He submits further, the interveners themselves did not file the suit in name of all trustees. Mr. Nanda submits, all trustees have been impleaded, others as defendants.

7. Upon hearing submissions of parties, Court is of view that prayer made in the petition is required to be allowed. This is because the interveners have sought for enquiry on accounts of the trust. Specific claim in the plaint is in respect of mentioned accounts, which are separate from the three accounts mentioned in the prayer (v) in the writ petition. However, interest the interveners need also be protected.

8. The interveners and other trustees are added as party. Petitioner will file consolidated cause title. I.A. no.5507 of 2022 is allowed and disposed of. Now that all the trustees are parties to the writ petition further directions are being made.

9. There will be order in terms of prayer (v) in the writ petition in respect of those accounts except erroneously mentioned account no.0553002100025560. Petitioner is required to obtain and furnish quarterly statement of accounts in respect of the three accounts to be operated pursuant to this order, to added opposite parties. Continuance, termination or otherwise of this order will be subject to final order made in the suit of the interveners being **O.S. no.13 of 2016 (Sri Sudhakar Pati and others vs. Sri Damodar Pati and others)** pending in the Court of District Judge, Khurda at Bhubaneswar.

10. With above directions, the writ petition is disposed of.

(Arindam Sinha)
Judge

Sks