

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO.GA/4/2018
(OLD NO:GA/3113/2018)
WITH
CS /43/2016
IN
APO/160/2018
IN THE MATTER OF :
MALATI TULSHAN
VS
ABHISHEK AGARWALLA & ORS.

AND

IA NO.GA/4/2018
(OLD NO:GA/3114/2018)
WITH
ACR/1/2002
IN
APO/161/2018
IN THE MATTER OF :
MALATI TUSHAN.
VS
RAJENDRA KUMAR BANKA & ORS.

AND

APO/192/2018
WITH
ACR/1/2002
IA NO:GA/1/2018 (OLD NO.GA/1700/2018), GA/2/2018 (OLD NO:GA/1702/2018),
GA/3/2019, GA/4/2021, GA/5/2022
IN THE MATTER OF:
RAJ SURAJMAL BAHADUR CHARITABLE TRUST
AND
ABHISHEK AGARWALLA
VS
RAJENDRA KUMAR BANKA AND ANR.

AND

IA NO.GA/1/2018 (OLD NO:GA/1703/2018)
IA NO.GA/2/2018 (OLD NO:GA/1704/2018)
APO/193/2018
WITH
CS/43/2016
IN THE MATTER OF :
ABHISHEK AGARWALLA & ORS.
VS
RAJENDRA KUMAR BANKA & ORS.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

-And-

The Hon'ble JUSTICE LAPITA BANERJI

Date : 23rd February, 2023.

Mr. Sakya Sen with Mr. Sukrit Mukherjee,
Mr. Ovik Sengupta & Mr. Shiv Ratan Kankrania, Advs.
... for Appellants.

Mr. Samrat Sen, Sr. Adv.
... Supervisory Trustee

Mr. Pranab Halder, Adv.
... Assisting Supervisory Trustee

Mr. Nirmalya Dasgupta with Ms. Pallavi Pain, Advs.
... for Trustee.

Mr. Siddhartha Banerjee with Mr. Sailendra Nath Chakraborty,
Mr. Sudipta Narayan Ghosh & Mr. Sabyasachi Hazra, Advs.
... for Malati Tulshan.

Mr. Reetobroto Kr. Mitra with Mr. Sabyasachi Sen, Adv.
... for Mahesh Tulshan.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Pursuant to an order dated February 10, 2023, **ACR/1/2002** filed by the Trustees of the property, was dismissed and all the interim orders passed therein, were vacated. It has been specifically recorded in the said order that the petitioner nos. 1 and 2 in ACR/1/2022 have expired. Since no Vakalatnama has been filed on behalf of petitioner no.3 despite several opportunities, it was held that there was none to represent the petitioner

and as such, the petitioner was not interested in proceeding with the said matter.

Pursuant to an order dated April 20, 2015 passed in GA/1782/2014 in ACR/1/2002, the petitioner no.3 therein was appointed as one of the Interim Trustees in place and stead of one, Rajendra Kumar Banka. The said petitioner no.3 was the sole signatory to the two bank accounts maintained with the UCO Bank on behalf of the trust.

By an order dated January 5, 2022 passed by a Coordinate Bench, two Supervisory Trustees were appointed in place and stead of the previous Supervisory Trustee appointed in ACR/1/2002. The said order was passed in APO/160/2018 arising out of CS/43/2016 along with APO/161/2018 and APO/192/2018 in ACR/1/2002.

Mr. Dasgupta, learned Counsel appearing on behalf of the petitioner no.3 in ACR/1/2002, submits that since the two Supervisory Trustees have been appointed in place and stead of the erstwhile Supervisory Trustee appointed in ACR/1/2002, with the vacation of the interim orders on February 10, 2023, the Supervisory Trustees have also been discharged. Therefore, the only Trustee to deal with all the trust fund and properties, is his client.

Mr. Sen, learned Counsel appears on behalf of the plaintiff in CS/43/2016 and appellant in APO/160/2018. He submits that the two

Supervisory Trustees have been appointed in APO/160/2018 since all the matters were taken up together and considered by the Coordinate Bench.

Mr. Mitra, learned Counsel and Mr. Banerjee, learned Counsel appearing for parties claiming to be Trustees, also support the submissions made by Mr. Sen.

A report has been filed by the Supervisory Trustees in Court today. Such report is retained with the record.

Mr. Samrat Sen, one of the learned Supervisory Trustees submits that by a written communication dated February 16, 2023, both the Supervisory Trustees have been intimated by the petitioner no.3 in ACR/1/2002 that they have been discharged due to the order dated February 10, 2023 and the petitioner no.3 requested them to hand over all the necessary papers and documents pertaining to the Trust and fund over to him.

In the light of the discussions made hereinabove and the materials placed before the Court, this Court makes it clear that the Supervisory Trustees appointed by the order dated January 5, 2022 were appointed not only in ACR/1/2002 but also in CS/43/2016 since the proceedings relate to the same Trust Properties and are to continue to discharge their duties until the disposal of the suit and/or until further orders of this Court.

Furthermore, it is clarified that upon consideration of the submissions made on behalf of the Supervisory Trustees that in the event any application is made or step be taken by any of the parties to the suit for alienation, encumbrance and/or for dealing with the trust properties in any manner, the same shall not be done without intimation to the Supervisory Trustees and also the leave of this Court.

It is also clarified that Supervisory Trustees will make necessary applications before the Bank concerned for dealing with the aforesaid Bank accounts and for issuing the cheques in respect of the Trust funds henceforth.

The Bank is directed to take necessary steps upon such applications being made by the Supervisory Trustees.

It is made clear that Mr. Banka, petitioner no.3 in ACR/1/2002, is not the authorised signatory to deal with the said accounts any more.

The Supervisory Trustees are also directed to communicate this order to the Bank concerned.

In view of the fact that ACR/1/2002 has already been dismissed, appeals arising out of the said ACR being **APO/161/2018** and **APO/192/2018** are also **dismissed as infructuous**.

Let the appeals being **APO/160/2018** and **APO/193/2018** appear next for further consideration under the same heading '**For Hearing**' in the **Monthly List** of **April 2023**.

Bank and all parties to act on a server copy of the order downloaded from the official website of this Court.

(LAPITA BANERJI, J.)

(SUBRATA TALUKDAR, J.)