

2024:PHHC:164018



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122 & 126

Date of decision: 25.11.2024

CWP-31650-2024

K M SHISU VIHAR SOCIETY AND ANOTHERPetitioners

VERSUS

STATE OF HARYANA AND OTHERSRespondents

CWP-31729-2024

SETH KIRODIMAL CHARITY TRUST AND ANOTHERPetitioners

VERSUS

STATE OF HARYANA AND OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Nipun Verma, Advocate
for the petitioner(s).

VINOD S. BHARDWAJ, J. (Oral)

Both these writ petitions involving common dispute amongst same parties are being decided by a common order. For the facility of reference facts are, however, extracted from ***CWP-31650-2024*** titled as ***“K.M. Shisu Vihar Society and another versus State of Haryana and others”***.

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2. Challenge in both the above said writ petition is to the order dated 08.11.2024 whereby the State Registrar of Societies passed separate orders in Appeal No. 108 of 2014 & 109 of 2014 against the order dated 22.10.2024 passed by the District Registrar of Societies, Bhiwani passing an order of abatement in the petition and has allowed the review application, the appeals have now been listed for hearing and adjudication on merits under Section 79 (5) of the Haryana Registration and Regulation of Societies Act, 2012 (For short 'the HRRS Act, 2012) alongwith the permission to review.

3. Briefly summarized the facts of the present case are that the petitioner No.2 i.e. Seth Kirodimal Charity Trust was founded by a deed of settlement executed between the Settlor Seth Kirodimal and his wife and others. The said trust is registered in the State of Chhattisgarh. It is stated to have been provided in the trust deed that no person outside the family of the Settlor shall be appointed as a trustee. The petitioner No.1- K.M. Shisu Vihar Society was found by Seth Kirodimal Charity Trust and the said Society is duly registered under the HRRS Act, 2012. As per the bye laws of the Society, its office bearers were to be nominated by the Trust. One Kalicharan Keshan had been indulging in activities against the interest of the aforesaid trust due to which the trust removed him from the trusteeship vide resolution dated 21.02.2010. The said resolution was challenged by Kalicharan Keshan by filing a Civil Suit at Raigarh. Enforcement of the resolution dated 21.02.2010 was stayed by the Civil Court. The trust, however, appointed/nominated Sh. Vaketsch Acharya and Sh. Manish

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Singhaniya to form the new managing Committee vide its resolution dated 29.03.2011 but Sh. Vaketsh Aacharya is also stated to have not taken any interest in complying with the said resolution. A new management Committee of the trust was, thereafter, constituted under the Chairmanship of one Rajesh Kumar Moda vide resolution dated 08.04.2014 empowering him to lay down the by-laws and to seek re-registration of the Society under the new Act of 2012. In compliance thereto, the petitioner No.1-Society was re-registered with the Registrar under the HRRS Act, 2012 bearing Registration No. HR/013/2014/00720 dated 22.04.2014. It is thus claimed that the Managing Committee under the Chairmanship of Rajesh Kumar Moda is thus a legal entity and is authorized to manage the affairs of the petitioner No.1-Society and that Kalicharan Keshan, the person through whom Appeals No. 108 and 109 of 2014 had been instituted, had no concern with the Society. It is further contended that Kalicharan Keshan had also moved an application before the District Registrar of Firms and Societies, Bhiwani, which was returned on 31.03.2014 purportedly after observing that he cannot be considered to be a member of the Managing Committee of the Society. The said order passed by the District Registrar of Firms and Societies was subject matter of challenge in Appeal No. 108 & 109 of 2014 before the State Registrar of Societies. Objections against seeking re-registration of the petitioner No.1-Society were also filed by Kalicharan Keshan before the District Registrar of Firms and Societies but the said objections were rejected after informing that the societies including K.M. Shisu Vihar Society i.e. petitioner No.1 had applied for allotment of new re-

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registration numbers and new managing Committee had already been approved as per the rules and regulations of the year 2012. Against the order allotting new registration number, appeal No. 109 of 2014 was filed. The same was not being decided despite a lapse of more than a decade. CWP-10477 of 2024 titled as "*Seth Kirodimal Charity Trust versus State Registrar of Societies, Haryana and others*" was hence filed before this Court seeking directions to the respondents to decide the appeal which was pending since the year 2014. The said writ petition was disposed of vide order dated 19.07.2024, on the statement of the State Counsel to the effect that an expeditious decision shall be taken on the pending appeals and a decision shall be passed within a period of three months.

4. That after the decision of the writ petition, hearing of the case was fixed by the State Registrar of Societies but an application was filed by one Pawan Kumar Bansal-respondent No.5, seeking impleadment as a necessary party under Order 1 Rule 10 of Code of Civil Procedure, 1908. The State Registrar passed an order on 22.10.2024 abating the appeal and after recording that Kalicharan Keshan had already died on 07.11.2020. It is stated that even though Pawan Kumar Bansal was also heard by the State Registrar when the appeal was decided on 22.10.2024 abating the same, however, he filed an application for review of the said order dated 22.10.2024, on 07.11.2024. It is contended that the State Registrar sought approval of the same from the Registrar General of Societies and thereafter sent a communication to the petitioner through e-mail that the review has been allowed and thereafter the matter was fixed for hearing of the parties.

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The present petition has thus been filed challenging the permission granted to review the order of 22.10.2024 and also the subsequent order dated 08.11.2024 whereby the State Registrar of Societies reviewed his earlier order dated 22.10.2024 and has restored the appeal to its original number to be heard on merits.

5. Learned Counsel appearing on behalf of the petitioner has raised the following arguments:-

i) That no opportunity of hearing was granted to the petitioner by the State Registrar while making a recommendation for review and also at the time when permission for review was granted by the Registrar General of Societies. He further contends that the State Registrar reviewed his own order dated 22.10.2024 and restored the appeal to the original number without affording any opportunity of hearing. Hence, the said order was bad and in violation of the principles of natural justice and;

ii) It is further argued that the application moved by Pawan Kumar Bansal under Order 1 Rule 10 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for impleadment was not maintainable firstly because he had no capacity to represent late Kalicharan Keshan and he was not an office bearer in the Society. Besides, the said application under Order 1 Rule 10 of CPC is not maintainable at the fag end of a case. It is also contended that there was litigation between the parties regarding formation of managing Committee in different societies and that K.M. Shisu Vihar Society i.e. petitioner No.1 was re-registered on the application of the petitioner-Trust under the Act of 2012. The Society formed by Kalicharan

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Keshan was not approved by the District Registrar as it was in violation of the terms and conditions of the Trust of the Society. Due to litigation before various Courts, the illegal society constituted by Kalicharan Keshan portrayed to be in operation since the appeal was not decided by the State Registrar even till October, 2024 and that the Society allegedly formed by Kalicharan Keshan was no society in the eyes of law but it continued to enjoy an undue status under the garb of pendency of the appeal.

6. The grievance as espoused by the petitioner-Society as well as Trust thus is that the appeal preferred by Kalicharan Keshan in individual capacity and as a self proclaimed president of K.M. Shisu Vihar Society has again been ordered to be fixed for hearing afresh and that at the stage of allowing the review application, the petitioner Society and Trust were not granted an opportunity of hearing.

7. I have heard learned Counsel appearing on behalf of the petitioner and have gone through the documents appended alongwith the present writ petition.

8. It is evident from perusal of the same that the Appeal No. 108 of 2014 had been allegedly preferred by the petitioner No.1-Society through Kalicharan Keshan who portrayed himself as the President and founder member/trustee of the said Society. Challenge in the said appeal was to the order dated 31.03.2014 passed by the District Registrar Firms and Societies, Bhiwani by virtue whereof the original papers/documents submitted by the petitioner-Society had been returned without taking any action and for seeking allotment of new Registration number, as per the approval of the

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new managing Committee under him. Notices were stated to have been issued to the office bearers to join the proceedings through video conferencing. During the pendency of the said appeal, Kalicharan Keshan died on 07.11.2020. One Jitender Kumar Goyal also entered appearance on behalf of the petitioner No.2-trust and submitted that the appeal had become infructuous and requested for dismissal of the same since re-registration of the Society stood completed and a valid registration certificate had been issued. The said Kalicharan Keshan had also filed objections against re-registration of the society which were reported by the District Registrar of Societies, Bhiwani. It is claimed that despite the above decision but Kalicharan did not hand over charge of Society. An application for handing over charge of K.M. Shisu Vihar Society, by the re-registered society under Rajesh Kumar Moda, to which Kalicharan Keshan filed his objection about pendency of the appeal.

9. One Dinesh Kumar Gupta, Advocate had entered appearance on behalf of one Pawan Kumar Bansal seeking to implead himself as a necessary party. It was stated that the appeal before the State Registrar of Societies had been filed on behalf of the Trust and the Society and it was claimed that Pawan Kumar Bansal was the elected body of the Society, for which an election had been conducted and also approved by the District Registrar. He prayed that appellant was the trustee & office bearer of the Trust and appeal had been filed against acceptance of an illegal governing body of the Society.

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10. After noticing the contentions, the District Registrar of Societies, held that as Kalicharan Keshan had died during the pendency of the appeal and hence ordered that the appeals had abated.

11. It is further reflected that Pawan Kumar Bansal-applicant thereafter preferred a review application under Section 79 (5) of the HRRS Act, 2012 for review of the said order dated 22.10.2024. It was claimed by him in the said application that he was an active member of the Society before the death of Kalicharan Keshan and still remains a member thereof and he is acting as General Secretary of the Society. He also furnished a list of certain other members of the Committee working in the Society and claimed to be managing the same since 07.11.2020. He disputed the entitlement of the petitioner No.2-Trust to interfere in the management of the Society. It was claimed by him that despite being in actual control of the Society and managing the same, the order dated 22.10.2024 records no observation regarding the application filed by Pawan Kumar Bansal for substituting his name in place of the original applicant and does not rule on any of the said aspects.

12. Hence, Pawan Kumar Bansal claimed himself to be a member of the duly constituted Governing Body of the petitioner No.1-Society. The permission to review was sought from the Registrar General of the Societies which was allowed upon consideration thereof. The State Registrar of Societies allowed the application for impleadment as necessary party and fixed the appeal for hearing.

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13. Now adverting to the issues, in so far as the question of grant of an opportunity to the parties, by the higher authority, before permission to review is granted is concerned, Section 79 (5) of the HRRS Act, 2012 does not stipulate grant of any opportunity of hearing to the parties before permission is to be granted to the competent authority to proceed ahead with a review. The said function is thus not deemed as an adjudicatory function and is more in the nature of an executive power subject to the Appellate authority being cognizant of the review application being preferred. Not being an adjudicatory function, legislature did not mandate hearing for such a ministerial act, the same cannot thus be inducted. More so, the parties none-the-less have right to raise all objections on merits before the adjudicating authority.

14. Now in the said background, the nature of controversy needs to be understood. The petitioner No.1-Society as well as the trust claimed that they are lawfully & validly registered Trust and Society. Counsel for the petitioner(s) has laid the emphasis that the Society already stands re-registered under Section 9 (4) of the HRRS Act, 2012 and that Kalicharan Keshan had no concern with the management or affairs of the Society. It has further arisen that Kalicharan Keshan had claimed himself to be the President of newly registered Society and raised objections with respect to the decision taken by the District Registrar of Firms and Societies granting re-registration to the petitioner-Trust herein. It was during the pendency of the appeal against the decision of the District Registrar before the State Registrar of Societies that Kalicharan Keshan passed away. A contention

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was thus raised that the appeal stood abated. The applicant-Pawan Kumar Bansal claimed himself to have stepped into the shoes of Kalicharan Keshan and he wanted to be substituted in his place. Instead of the matter being examined including the claim of Pawan Kumar Bansal as substitute of Kalicharan Keshan, the State Registrar of Societies, however, ordered abatement of the appeal after noticing that Kalicharan Keshan had passed away. As a matter of fact as per Section 77 (2) of the HRRS Act, 2012, a suit or proceeding does not abate automatically by reason of any vacancy or change in the holder of the office of the President, the Secretary or any office bearers authorized under sub Section 1. Thus, the order to direct abatement of the appeal was in conflict with Section 77 (2) of the HRRS Act, 2012. So far as the actual dispute as to whether the petitioners herein are the real Society or the one which was being represented through Kalicharan Keshan is the Society entitled to raise an objection to the grant of re-registration certificate to the petitioner No.2-Trust and petitioner No.1-Society herein is concerned, the said issue still requires consideration, after granting an opportunity of hearing to the respective parties. Even though the applicant-Pawan Kumar Bansal raised a claim of being an authorized representative of the said Society, a claim which is seriously disputed and contested by the petitioners herein, however, the said claim needs an adjudication on merits before the same can be turned down. There can be no *prima facie* assumption of a fact as claimed by the petitioner and to disbelieve the claim raised by the respondent-applicant.

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15. The State Registrar of Societies thus clearly fell in an error in directing abatement of the appeal notwithstanding the statutory provision as contained under Section 77 (2) of the HRRS Act, 2012. It is also evident that the same being an inherent flaw in the order passed by the State Registrar, an application for review was filed in quick succession i.e. 07.11.2024 against the order of abatement was passed on 22.10.2024. It was only after seeking necessary permission from the Appellate Authority that the review application has been allowed. Consequently, the review already stands restored to its original number for which notices have been issued to the petitioner herein. The petitioner-Society as well as the Trust are competent and have the rights to raise all their objections on merit including rights in Pawan Kumar Bansal and the applicants could not be denied from seeking determination of their claim on the strength of the evidence that may be so adduced by them. The petitioners cannot be permitted to contend that merely because they dispute the entitlement of Kalicharan Keshan and the office bearers of the Society, hence, the contention raised by the applicant-Pawan Kumar Bansal for Kalicharan Keshan is liable to be disregarded. The said issue is yet to be determined on merits after granting an opportunity of hearing. An ouster of the claim of the respondent at the threshold, on the basis of a technicality of such a nature, would not be the intent of the statute. No substantive prejudice has occasioned or is reflected from the order of review. Moreover, the review as above was in the nature of a procedural review and not a substantive review. The petitioner could have approached the Appellate Court in case there was a substantive review resulting in

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reversing any finding. Since there was no adjudication of the claim of any of the parties on merit, at the time when the appeal was ordered to have been abated on 22.10.2024, hence, a mere re-opening of the process for determination of the *inter se* rights and claims made by the parties about being the actual society or the trust cannot be said to be a substantive review.

16. In the event of conflicting rights, the balance of equities and the convenience of the respective parties is to be seen. A mere semblance of a prejudice is not the same thing as an actuation of a prejudice in totality. Thus, a mere re-opening of the appeal to be heard and adjudicated on merits cannot be perceived as an act which is to the detriment of the rights of the petitioner herein and he cannot claim that an order dismissing the appeal on ground of abatement would amount to acceptance of its own rights. So far as its claim that a re-registration number had been issued on its application and that subsequent elections of the managing Committee have also been approved thus granting legitimacy to the existence of the petitioner-Society is concerned, the said ground is still available and it can be raised by the petitioner to establish its claim in the pending appeal. The order passed in review and hearing of the appeal does not in any manner amount to recording any adverse finding against the Trust.

17. For the following reasons, I do not find that any substantive case for seeking setting aside of the said orders is made out. There is no semblance of any real prejudice and filing of the present petition is merely a delay in adjudication of the dispute on merits and to claim declaration of



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right in their favour despite no such order on merits. Considering from either perspectives, the present writ petitions deserve to be dismissed at this stage.

18. Dismissal of the instant writ petitions shall, however, not stand as a bar against the petitioner from raising all pleas, in the pending appeal, before the State Registrar of Societies, Haryana, who shall decide the case on its own merits.

Ordered accordingly.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 25, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No