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

% **Date of order: 9th September, 2024**

+ C.R.P. 25/2018 & CM APPL. 5790/2018 & CM APPL. 5791/2018 &
CM APPL. 5792/2018 & CM APPL. 39439/2019

DELHI DIOCESAN TRUST ASSOCIATIONPetitioner

Through: Mr. Sunil Kumar Singh, Advocate

versus

EDWIN WILLIAM & ANRRespondents

Through: None

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioner challenging the impugned orders dated 1st March, 2017 and 21st September, 2017 passed by the learned ADJ-01, South District, Saket Courts, New Delhi in suit bearing CS No. 7211/2016.

2. Learned counsel appearing on behalf of the petitioner herein/plaintiff before the learned Trial Court submitted that the petitioner had filed the aforesaid civil suit seeking possession and permanent injunction, and recovery of damages along with the compensation from respondent no. 1 herein/defendant before the learned Trial Court *qua* suit premises



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comprising two rooms, one toilet and bathroom, one *varandha*, once car garage along with the courtyard situated at Jangpura Church, 1, Church Road, Jangoura, Bhogal, New Delhi.

3. It is submitted that the aforesaid civil suit was filed by the plaintiff namely Delhi Diocesan Trust Association (hereinafter “Association”) through the then Authorised Representative namely Mr. V.K. Samuel, i.e., the respondent no. 2 herein, however, the respondent no. 2 (hereinafter “AR”) herein filed an application dated 28th February, 2017, under Order XXIII Rule 1 read with Section 151 of the CPC, seeking withdrawal of the said suit.

4. It is further submitted that the learned Trial Court erred in passing the impugned order dated 1st March, 2017 by virtue of which it allowed the above withdrawal application and dismissed the suit as withdrawn after recording the statement of the AR.

5. It is submitted that the above said order is erroneous and has been passed without taking into account the entire facts and circumstances available on record. It is submitted that the learned Trial Court failed to appreciate the fact that Mr. V.K. Samuel did not have valid authorization in his favour to file the withdrawal application as the same had been revoked by the Delhi Disocesan Council and the same has been duly recorded in the minutes of meeting of the Diocesan Council dated 6th September, 2013.

6. Learned counsel appearing on behalf of the petitioner submitted that Mr. Mohit Heinz Hitter, i.e., the AR in the present petition, had also filed the *Vakalatnama*. It is also submitted that the earlier AR changed the



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Vakaltanma and engaged some other counsel on behalf of the Association and filed an application dated 28th February, 2017 for withdrawal of the suit.

7. It is further submitted that prior to the filing of the said withdrawal application, Mr. Mohit Heinz Hitter had filed an application dated 30th January, 2017 under Section 151 of the CPC and Section 340 of the Code of Criminal Procedure, 1973 (hereinafter “Cr. P.C.”) for informing the learned Trial Court that the earlier AR’s power of attorney has already been withdrawn and that Mr. V.K. Samuel is committing an act of perjury by deliberately and dishonestly representing himself to be the AR of the plaintiff Association.

8. Learned counsel appearing on behalf of the petitioner pointed out the resolution dated 6th September, 2013 which is appended as Annexure P-25 with the instant petition and submitted that the authorization of Mr. V.K. Samuel was withdrawn by such resolution and Mr. Mohit Heinz Hitter was authorized by the Association for pursuing the matters and he was also the secretary of the said Association. It is also submitted that since Mr. Mohit Heinz Hitter is secretary, there is no need for passing any further resolution in favour of Mr. Mohit Heinz Hitter.

9. It is submitted that on the application dated 30th January, 2017 which is annexed as Annexure P-5 with the instant petition, the learned Trial Court had taken the cognizance and issued notice to the respondents *vide* order dated 8th February, 2017.

10. It is submitted that despite the knowledge that Mr. V.K. Samuel is not the authorized person, the application of withdrawal of the suit was allowed



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and the aforesaid suit was dismissed as withdrawn *vide* order dated 1st March, 2017.

11. Learned counsel appearing on behalf of the petitioner submitted that the withdrawal of the suit by Mr. V. K. Samuel who was not an authorized person is by way of misleading the learned Trial Court and the same is a fraudulent action.

12. It is submitted that *vide* the impugned order dated 21st September, 2017, the learned Trial Court dismissed the petitioner's application seeking criminal action against Mr. V.K. Samuel for the act of perjury and the same is contrary to the law as well as facts of the case.

13. It is submitted that the learned Trial Court erred in not considering the fact that Mr. V.K. Samuel had no authorization to pursue the civil suit. While passing the impugned order dated 21st September, 2017, thereby, dismissing the application of the plaintiff, the learned Trial Court erred in law by not adjudicating upon the issue as to whether or not Mr. V.K. Samuel was authorized under law to withdraw the above suit and also whether or not withdrawal of the suit at the instance of Mr. V.K. Samuel was vitiated by misrepresentation, fraud and false statement.

14. For strengthening his arguments, learned counsel appearing on behalf of the petitioner relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***Dadu Dayal Mahasabha v. Sukhdev Arya, (1990) 1 SCC 189***; and referred paragraphs no. 7 and 8 of the said judgment. He also relied upon the judgment in the case of ***A.V. Papayya Sastry v. Govt. of A.P., (2007) 4 SCC 221*** and referred paragraphs no. 21 to 33 of the same.



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On the issue of the scope of the revision petition, he relied upon the judgments of *Hamza Haji v. State of Kerala*, (2006) 7 SCC 416 and *United India Insurance Co. Ltd. v. Rajendra Singh*, (2000) 3 SCC 581.

15. Therefore, in view of the foregoing submissions, it is prayed that the impugned orders may be set aside and the instant petition be allowed.

16. No one appeared on behalf of the respondents to argue the matter, therefore, this Court has taken the objections of the respondents from the material available on record.

17. Heard learned counsel appearing on behalf of the petitioner and perused the contents made in the instant petition.

18. The instant petition has been moved by learned counsel appearing on behalf of the petitioner stating that the plaintiff before the learned Trial Court had moved an application under Section 151 of the CPC read with Section 340 of the Cr.P.C. dated 30th January, 2017 through its new AR namely Mr. Mohit Heinz Hitter contesting therein that the power of attorney issued in favour of Mr. V.K. Samuel has been revoked *vide* the minutes of meeting dated 6th September, 2013. Therefore, Mr. V.K. Samuel is not authorized to pursue the matter or withdraw the suit on behalf of the Association.

19. It has been submitted that the learned Trial Court erred to take into consideration the entire arguments and contents made in the application which was only to establish that the suit was fraudulently withdrawn by Mr. V.K. Samuel, who was earlier authorized by the Association.

20. It has been further contended that the above said fact was informed to



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the learned Trial Court by the new person, i.e., Mr. Mohit Heinz Hitter who had now been authorized and is also elected as the Secretary of the Association by way of filing the application dated 30th January, 2017. Moreover, the application which was moved by Mr. V.K. Samuel, who was earlier authorized for purpose of withdrawing the suit has not made out any grounds for withdrawal and he has also mentioned that he is authorized by some other person which is indicated in the paragraphs no. 2 and 3 of the application dated 28th February, 2017.

21. At this stage, it is pertinent for this Court to peruse the impugned order dated 21st September, 2017 *vide* which the petitioner's application under Section 151 of the CPC read with Section 340 of the Cr.P.C. was dismissed. The relevant portion of the same is as under:

“18. It is noticed that Rev. Mohit Heinz Hitter was appointed as honorary secretary of Delhi Diocesan Council vide letter dated 22 July 2014 till the next Diocesan Council and admittedly that took place on 24 September 2016. Even otherwise, the plaintiff in CS no. 7211/16 was Delhi Diocesan Trust Association and not Delhi Diocesan Council. The applicant has not been able to show any board resolution in favour of Rev. Mohit Heinz Hitter passed by Delhi Diocesan Trust Association. I find force in the submissions of defendant that plaintiff, being an institution registered under Companies Act can authorize any person to sign, verify and Institute any application only by way of resolution passed in legally constituted board meeting and no such resolution has been passed in favour of Rev. Mohit Heinz Hitter to file the present application or to represent the plaintiff Delhi Diocesan Trust Association. The applicant has been unable to show that Rev. Mohit Heinz Hitter is the secretary of the Delhi Diocesan Trust



Association being plaintiff in the said suit. Thus there is no merit in the contention of the applicant that even in absence of board resolution Rev. Mohit Heinz Hitter can file the present application under Order XXIX Rule 1 CPC

19. Delhi Diocesan Trust Association is a company registered under the Companies Act and in the facts of the case Rev. Mohit Heinz Hitter is a stranger to the said company which has its own distinct entity arte is regulated by provisions of Companies Act. The Special Fewer of Attorney was executed in favour of Mr.V.K.Samuel by Rt. Rev. Sunil Kumar Singh in favour of whom the Committee of Management of Delhi Diocesan Trust Association had executed General Power of Attorney dated 7.07.2009 which authorized him to appoint further attorney by and on his behalf and on behalf of Delhi Diocesan Trust Association and in the meeting of committee of management held on 8.01.2010 at the office of Delhi Diocesan Trust Association, it was resolved to give Special Power of Attorney to Mr. V.K. Samuel to act in the name and on behalf of Delhi Diocesan Trust Association. Clause 7 of the Special Power of Attorney specifically covenants that SPA in favour of Mr. V.K. Samuel can be revoked at any time by the Rt. Rev. Sunil Kumar Singh. The applicant has not been able to show or produce any such document executed by Rt. Rev. Sunil Kumar Singh for revoking the SPA executed by him in favour of Mr. V.K. Samuel.

20. The applicant in the present application and also in the application which was filed allegedly on behalf of plaintiff during the pendency of the suit under section 151 CPC and under section 340 Cr.PC supported by affidavit of Rev. Mohit Heinz Hitter. The said application was filed by submitting that the authority in favour of Mr V.K. Samuel stand withdrawn and therefore he should not be allowed to withdraw CS no. 7211/16. However neither the present application nor the earlier application is supported by any document to show that Rev. Mohit Heinz Hitter is the authorized signatory or secretary of



Delhi Diocesan Trust Association. Rather no document has been filed to show any connection of Rev. Mohit Heinz Hitter with Delhi Diocesan Trust Association and in the absence of the same the previous application filed by him under section 151 CPC and under section 340 Cr.PC is equally non-maintainable.

21 The applicant has filed various communications made by him to Mr VK Samuel or to various banks under his signature In support of his submission that he is secretary of Delhi Diocesan Trust Association. However on perusal of the same, it is noticed that all these correspondences describe him as Secretary, DOC and not as Secretary, DDTA. Delhi Diocesan Trust Association is a company duly registered under the provisions of Companies Act which has its own independent existence and is a corporate entity governed by Companies Act and in absence of revocation of SPA executed in favour of the Mr. V.K.Samuel by Rt. Rev. Sunil Kumar Singh, the withdrawal of the suit bearing no.7211/16 by Mr VK Samuel cannot be said to have been withdrawn by fake representation or by impersonation.

22. In view of these observations, there is no merit in the present application and the present application is accordingly dismissed. File be consigned to record room."

22. Upon perusal of the above excerpts of the impugned order, it is made out that the petitioner contended before the learned Trial Court that the suit was fraudulently withdrawn by Mr. V.K. Samuel, a former power of attorney holder, through impersonation and in conspiracy with the defendant/respondent no. 1 herein. The suit, originally filed by the petitioner seeking possession of the suit property, was instituted through Mr. V.K. Samuel, who was removed from the petitioner organization in the year 2015.



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Despite the petitioner's deposit of deficient court fees on 28th January, 2017, a *Vakalatnama* was filed by Mr. V.K. Samuel on the same day, allegedly in his capacity as the AR. Upon discovering this change, the applicant, through Mr. Mohit Heinz Hitter, filed an application under Section 151 CPC read with Section 340 Cr.P.C., expressing concern over a potential fraudulent withdrawal of the suit and requesting that no adverse orders be passed. This application was taken up on 8th February, 2017, and notice was issued to Mr. V.K. Samuel, however, on 17th April, 2017, it was discovered that the suit had been withdrawn on 1st March, 2017.

23. The petitioner argued that the withdrawal was fraudulent and sought restoration of the suit along with interim orders. In response, Mr. V.K. Samuel claimed that he had the authority to withdraw the suit, as the power of attorney executed in his favour had never been revoked. He asserted that the application was filed by a person with no legal authority, as Mr. Mohit Heinz Hitter's appointment as the petitioner's secretary expired on 24th September, 2017. Furthermore, the respondent no. 1/defendant submitted that the learned Trial Court became *functus officio* after the suit's withdrawal and that the application in question was not maintainable under Section 151 CPC.

24. After reviewing the records and hearing arguments, the learned Trial Court observed that Mr. Mohit Heinz Hitter's appointment as honorary secretary of the Delhi Diocesan Council had indeed expired, and no board resolution had been presented to show his authority to act on behalf of the petitioner Association. Additionally, it was noted that the power of attorney,



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executed in favour of Mr. V.K. Samuel, had never been legally revoked. The learned Trial Court found no merit in the petitioner's contention of impersonation or fraudulent withdrawal of the suit and dismissed the application accordingly.

25. Therefore, the issue before this Court is whether Mr. V.K. Samuel has committed any fraud or has taken any order or any judgment by the learned Trial Court in a fraudulent manner or filed any fabricated documents in order to obtain an order the learned Trial Court.

26. Secondly, whether the petitioner had made sufficient grounds to seek directions under Section 151 of the CPC read with Section 340 Cr.P.C. or not as Mr. Mohit Heinz Hitter may be the authorized person for further adjudication of the matter but on the date when the application for withdrawal was filed by the petitioner through Mr. V.K. Samuel, it was an understanding under the law that he is still entitled for filing the said application as the power of attorney, which was issued in his favour, was not cancelled and the same facts have been noted by the learned Court below while deciding the said application.

27. Here, it is appropriate to refer to the decision of the Hon'ble Supreme Court in *Amar Nath v. Gian Chand*, (2022) 11 SCC 460, wherein it was observed that merely writing of a word 'cancelled' on the original power of attorney does not mean that the power of attorney had been cancelled till notice was given to the concerned power of attorney holder and that the cancellation also requires registration in case the power of attorney was also a registered one. The Hon'ble Supreme Court held that to revoke the



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authority, a power of attorney must be cancelled and it must be brought to the notice of the agent and the third party, otherwise such cancellation could not be said to be made out. The relevant extracts of the said judgment is as under:

“..11. The trial court did not accept the plaintiff's case that the second defendant was not his power of attorney at the time of the sale. It relied upon DX, letter dated 2-6-1987 written by the plaintiff. The trial court did not attach any weight to the alleged cancellation of the power of attorney especially when the second defendant was having a certified copy of the special power of attorney, which was a registered power of attorney. The cancellation also required registration. Ext. PW 5-A dated 2-7-1987 by which the second defendant agreed to pay Rs 30,000 to the plaintiff is relied upon and it was inexplicable as to why it was executed, if on 2-2-1987, the special power of attorney given to the second defendant was cancelled. The power of attorney was found subsisting. The mere writing of a word “cancelled” on the original power of attorney (P-2) did not mean that the power of attorney had been cancelled, till notice was given to the second defendant. The first defendant was not bound by any agreement between the plaintiff and the second defendant. As per Section 18-A, sale deed should accompany true copy of the power of attorney and the original is not required. P-1, agreement binds the plaintiff and the second defendant having been proved by the scribe and witnesses. P-1 and P-2 must be read together. The plaintiff agreed with the second defendant to sell the land for consideration not less than Rs 55,000. No ground was given to set aside the sale. The sale was found effected for Rs 30,000 and was not a void transaction.

83. *We need not pronounce on the question whether the power*



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of attorney being registered, it could be cancelled only by a registered power of attorney. This we say as even in the absence of a registered cancellation of the power of attorney, there must be cancellation and it must further be brought to the notice of the third party at any rate as already noticed. Such a cancellation is not made out...”

28. Taking into account the aforesaid discussions, this Court is of the considered view that the reasoning provided by the learned Trial Court is sound and supported by both facts and law.

29. The learned Trial Court rightly observed that there was no concrete evidence on record to demonstrate that the power of attorney granted to Mr. V.K. Samuel had been legally revoked.

30. Further, the petitioner's failure to provide any document or resolution to substantiate the claim of revocation critically weakens its case. As the learned Trial Court noted, mere assertions by the petitioner that the authority of Mr. V.K. Samuel had been withdrawn do not hold weight in the absence of legal proof such as passing of a board resolution by the Association in terms of the provisions of the Companies Act, 1956/2013. Furthermore, Mr. Mohit Heinz Hitter, who sought to restore the suit and take action against Mr. V.K. Samuel, was unable to show any valid authority to act on behalf of the plaintiff Association, as his position as honorary secretary had already expired.

31. This Court is of the view that for adjudication of the application under Section 340 of the Cr.P.C., it is a settled law that the applicant must *prima facie* establish that a fraud has been committed by the person/institution



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against whom the application under 340 of the Cr.P.C. is filed. In light of the same, it is held that the petitioner has not been able to make out a case of perjury against Mr. V.K. Samuel under Section 340 of the Cr.P.C. as it failed to establish the act of fraud alleged to be committed by the respondent no. 2 herein on *prima facie* basis. It is observed by this Court that the learned Trial Court while passing the impugned order dated 21st September, 2017 has discussed in detail about the facts as well as the law pertaining to the adjudication of the pleadings under Section 340 of Cr.P.C.

32. The law concerning the revocation of a power of attorney is clear. The Hon'ble Supreme Court has held that a power of attorney must be expressly cancelled to revoke an agent's authority. It must also be brought to the attention of both the agent and third parties involved in the matter, failing which the revocation is not legally effective.

33. The record available before this Court reveals that it is an admitted fact which has not been denied by the learned counsel for the petitioner during the arguments that the power of attorney which was issued in favour of Mr. V.K. Samuel has not been cancelled by the petitioner Association even though the said revocation has been recorded in the minutes of meeting of the ***Diocese of Delhi (the Church of North India)***. After plain reading of the minutes of meetings, it is made out that the non-authorization of the said person is only for the limited period as it has been specifically noted therein that "*after due discussion it was further resolved that Mr. V.K. Samuel and Mr. George Tomes will not hence forth represent the Diocese in any matter till the said matter is resolved..*".



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34. In the instant case, the petitioner failed to notify the Court or Mr. V.K. Samuel about any such cancellation by way substantiating their assertions with any material evidence, nor was there any resolution passed by the plaintiff Association to this effect. As a result, Mr. V.K. Samuel continued to have valid authority to act on behalf of the plaintiff Association as on the date of filing of the application under Order XXIII Rule 1 of the CPC, seeking withdrawal of the suit, and his actions, including the withdrawal of the suit, were legally justified in the absence of any evidence to prove otherwise.

35. Summarily stated, the Hon'ble Supreme Court has further clarified that the process of cancellation requires formal revocation, which must be communicated to the agent effectively and in the matter at hand, no such formal cancellation was brought on record, and thus, the learned Trial Court rightly found no illegality in Mr. V.K. Samuel's actions and his authority to withdraw the suit remained intact as on the date of filing of the application and passing of the impugned order dated 1st March, 2017.

36. In light of these legal principles and the absence of any evidence to the contrary, this Court finds no error in the conclusions drawn by the learned Trial Court. The application seeking restoration of the suit and action under Section 340 Cr.P.C. was rightly dismissed, as the claims of impersonation and fraud were unsubstantiated. Therefore, the reasoning of the learned Trial Court stands correct and warrants no interference.

37. Furthermore, it is imperative to state here the arguments advanced by learned counsel appearing on behalf of the petitioner that since Mr. Mohit



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Heinz Hitter is secretary, therefore, he was entitled for filing any application for any purpose on behalf of the Association cannot be dealt with as the same is not an issue before this Court for adjudication under Section 115 of the CPC.

38. It is a settled principle of law that while adjudicating a petition under Section 115 of the CPC, this Court has limited powers and can only look into the limited question of jurisdiction of the Trial Court. This Court only has to determine if the order passed by the Court below contains any illegality or irregularity apparent on the face of it and cannot go into the merits of the case.

39. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below.

40. With regard to the facts of the matter in hand, it has been deliberated by way of the aforementioned discussions on facts and law that there are no errors of jurisdiction, and thus, this Court finds no force in the arguments advanced by the petitioner, hence, not inviting any interference of this Court.

41. Therefore, it is held that the petitioner has been unable to make out a case for grant of relief of revision of the impugned orders under Section 115 of the CPC. It is further held that the learned Trial Court has exercised its jurisdiction in accordance with the law and hence, the arguments advanced



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by the petitioner against the impugned orders are rejected.

42. In view of the above facts and circumstances, this Court does not find any merit in the instant revision petition or any illegality or any errors of law made by the learned Trial Court while deciding the application filed under Section 151 read with Section 340 of the Cr.P.C., and in light of the same, the impugned orders dated 1st March, 2017 and 21st September, 2017 passed by the learned ADJ-01, South District, Saket Courts, New Delhi in suit bearing CS No. 7211/2016, are upheld.

43. Accordingly, the instant petition stands dismissed along with pending applications, if any.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 9, 2024
gs/ryp/av

Click here to check corrigendum, if any