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

\+ FAO(OS) 114/2024

OPERATION ASHA A REGISTERED SOCIETY THROUGH ITS PRESIDENT MR RAKESH K KHURANA .....Appellant

Through: Mr.Sanjeev Sindhwani, Sr.Advocate with Ms.Radhika Bishwajit Dubey, Mr.Bishwajit Dubey, Mr.Karan Khetani and Mr.Kritarth Upadhyay, Advocates.

versus

DR SHELLY BATRA & ORS. .....Respondents

Through: Mr.Jai Anant Dehadrai with Mr.Siddharth Sharma and Mr.MD Tasnimul Hassan, Advocates for R-1 & 2.
Mr.Shivanshu Bhardwaj with Mr.Mridual Gaur, Advocates for R-3 & 4.
Mr.Dushyant Manocha with Mr.Brian Moses, Advocates for R-10.

% Date of Decision: 21st August, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

C.M.No.47690/2024

1. Keeping in view the averments in the application, the delay in filing the present appeal is condoned.

2. Accordingly, the application stands disposed of.

C.M.No.47689/2024

3. Exemption allowed, subject to all just exceptions.

4. Accordingly, the application stands disposed of.

FAO(OS) 114/2024 & C.M.No.47688/2024

5. Present appeal has been filed challenging the judgment dated 03rd May, 2024, passed by the learned Single Judge in I.A. No. 5009/2020 in CS(OS) No.153/2020 wherein an application under Section 92 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') seeking leave to institute the subject suit, filed by the Respondents Nos.1&2 herein (Plaintiffs therein) was allowed.

6. Learned senior counsel for the Appellant states that the Appellant is not-for-profit society registered under the Societies Registration Act, 1860 and provides treatment, education and prevention of tuberculosis and other diseases. He states that the Respondents Nos.1 & 2, former President and Board Member of the Appellant society respectively, have instituted the subject suit falsely alleging mismanagement and defalcation of funds of the Appellant-society. He states that this allegation was never raised in the past fifteen years, during which time, Respondent No.1 was herself signing the financial statements of the Appellant-society.

7. He submits that the impugned judgment is contrary to settled law as the Appellant is a registered society and neither an express nor constructive trust. He states that the learned Single Judge has erred in holding that any entity receiving donations for a public purpose is automatically to be equated to a constructive trust. He submits that the said finding has the effect of necessarily implying that all institutions working for charitable purposes and receiving donations are charitable trusts. He emphasises that

there has never been any entrustment of any property/office upon the Appellant. In support of his submissions, he relies upon the judgments in ***Young Mens Christian Association of Ernakulam and Others vs. National Council YMCAS of India 2018 SCC OnLine Del 9909*** and ***'Abhay' A Society Registered under the Travancore-Cochin Literary & Ors. vs. J.A. Raheem 2005 SCC OnLine Ker 234***.

8. Learned senior counsel for the Appellant further contends that the plaint filed by the respondents agitates a private grievance and is devoted to a personal cause. In support of his contention, he refers to and relies upon prayers (a) & (b) of the plaint. He submits that as the dominant purpose of the subject suit is vindication of personal rights, leave under Section 92 CPC should not have been granted. In support of his submission, he relies upon the judgment of the Supreme Court in ***Swami Paramatmanand Saraswati vs. Ramji Tripathi & Anr. (1974) 2 SCC 695***.

9. *Per contra*, learned counsel for Respondent Nos.1 & 2, who appears on advance notice, contends that the Appellant is a constructive trust inasmuch as there has been a specific entrustment, by virtue of Article 11.2.1 of the Article of Association.

10. He emphasises that under the Chairmanship of Mr.(Retd.) Justice R.V. Easwar, three Audit Reports dated 26th August, 2020, 03rd October, 2020 and 09th December, 2020 have suggested the action that needs to be taken to overcome the challenges being faced by the society. He further emphasises that the Interim Forensic Audit Report prepared by M/s Grewal & Singh, Chartered Accountant has found that there has been siphoning of funds to the organisation(s) controlled by Mr.Sandeep Ahuja (erstwhile CEO of Appellant and Board Member) and his brother-in-law, Mr.Ashok

Kalra. Since considerable emphasis has been laid by learned counsel for the respondents on the Interim Forensic Audit Report (pages 810 to 812 of the paper book), the same are reproduced hereinbelow:-

"B. OBSERVATION REPORT OF OPERATION ASHA

1. MOVEMENT AND LAYERING OF FUNDS AS GRANTS AND TRANSFERS TO OTHER ORGANIZATIONS

A. During the course of review, it was discovered that large chunks of monies belonging to Operation Asha were donated from the society to other Organizations namely, Age Care and Asha Kalp

B. A study of the Tally Accounts of OpAsha reveals that the following monies have been transferred to Age Care from FY 2015-16 to 2019-20:

**It is reiterated that the following transfers of amounts from the accounts of the Operation Asha into the accounts of Age Care is limited to the accounting information which was available with us, and the true and correct assessment of the transfer may differ from the following.*

Detail of transfers from Operation Asha to Age Care (under the Directorship of Mr. Sandoep Ahuja & his brother-in-law, Mr. Ashok Kalra)

Date of Transactions	*Amount ₹*	*Recipient*
04.4.2015	5,00,000	Agecare
06.5.2015	5,00,000	Agecare
06.6.2015	4,00,000	Agecare
13.07.2015	4,00,000	Agecare
04.08.2015	4,50,000	Agecare
05.08.2015	4,50,000	Agecare
09.09.2015	4,00,000	Agecare
07.10.2015	4,00,000	Agecare
05.11.2015	4,50,000	Agecare
10.12.2015	4,50,000	Agecare
11.01.2016	4,50,000	Agecare
10.02.2016	4,50,000	Agecare
11.04.2016	4,50,000	Agecare
06.05.2016	3,50,000	Agecare
02.06.2016	3,50,000	Agecare
05.07.2016	3,50,000	Agecare
12.06.2017	1,00,000	Agecare
10.07.2017	1,00,000	Agecare
04.08.2017	1,00,000	Agecare
05.09.2017	1,00,000	Agecare
12.10.2017	1,00,000	Agecare
05.11.2017	1,00,000	Agecare

01.12.2017	*1,00,000*	*Agecare*
06.01.2018	*1,00,000*	*Agecare*
02.02.2018	*1,00,000*	*Agecare*
01.03.2018	*1,00,000*	*Agecare*
05.04.2018	*1,00,000*	*Agecare*
07.05.2018	*1,60,000*	*Agecare*
06.06.2018	*1,00,000*	*Agecare*
02.07.2018	*90,000*	*Agecare*
02.08.2018	*90,000*	*Agecare*
01.09.2018	*90,000*	*Agecare*
09.10.2018	*1,10,000*	*Agecare*
12.10.2018	*90,000*	*Agecare*
02.11.2018	*1,10,000*	*Agecare*
24.01.2019	*1,10,000*	*Agecare*
24.01.2019	*1,10,000*	*Agecare*
19.02.2019	*1,10,000*	*Agecare*
02.03.2019	*1,10,000*	*Agecare*
25.03.2019	*1,10,000*	*Agecare*
02.05.2019	*80,000*	*Agecare*
01.06.2019	*80,000*	*Agecare*
01.07.2019	*80,000*	*Agecare*
03.08.2019	*80,000*	*Agecare*
03.09.2019	*80,000*	*Agecare*
05.10.2019	*80,000*	*Agecare*
09.10.2019	*78,400*	*Agecare*
02.11.2019	*1,35,000*	*Agecare*
04.12.2019	*1,65,000*	*Agecare*
04.01.2020	*1,50,000*	*Agecare*
04.02.2020	*1,50,000*	*Agecare*
03.03.2020	*1,50,000*	*Agecare*
TOTAL AMOUNT	*₹ 1,05,98,400/- (USD 142,030 approx.)*	

C. A study of the Tally Accounts of OpAsha reveals that the following monies have been transferred to Asha Kalp from 2015-16 to 2019-20:

"It is reiterated that the following transfers of amounts from the accounts of the Operation Asha into the accounts of Asha Kalp is limited to the accounting information which was available with the client, and the true and correct assessment of the transfer may exceed the following;

Detail of transfers from Operation Asha to Asha Kalp:

Date of Transactions	*Amount (₹)*	*Name of Recipient*
07.06.2015	*1,00,000*	*Asha Kalp*

07.07.2015	*3,00,000*	*Asha Kalp*
10.07.2015	*3,00,000*	*Asha Kalp*
31.07.2015	*3,00,000*	*Asha Kalp*
11.08.2015	*3,00,000*	*Asha Kalp*
12.10.2015	*3,00,000*	*Asha Kalp*
12.04.2016	*1,00,000*	*Asha Kalp*
12.04.2016	*1,00,000*	*Asha Kalp*
06.05.2016	*5,50,000*	*Asha Kalp*
02.06.2016	*5,50,000*	*Asha Kalp*
05.07.2016	*5,50,000*	*Asha Kalp*
17.02.2020	*5,00,000*	*Asha Kalp*
TOTAL AMOUNT	*Rs.39,50,000 (USD 52,935 approx)*	

D. On further scrutiny it has been observed that Age Care is an organization controlled by Mr. Sandeep Ahuja and his brother-in-law Mr. Ashok Kalra. Hence the transaction between OpAsha and Age Care qualify as Related Party Transactions.........".

11. Having heard learned counsel for the parties, this Court is of the view that it is necessary to first outline the conditions that are required to be satisfied in order to invoke Section 92 CPC. The Supreme Court in ***Ashok Kumar Gupta & Anr. vs. Sitalaxmi Sahuwala Medical Trust & Ors. (2020) 4 SCC 321*** has succinctly stated the conditions that have to be fulfilled prior to invoking Section 92 CPC as under:-

(i) The Trust in question is created for public purposes of a charitable or religious nature;

(ii) There is a breach of trust or a direction of Court is necessary in the administration of such a Trust; and

(iii) The relief claimed is one or other of the reliefs as enumerated in the said section.

12. Admittedly, the Appellant-society is of a charitable nature as it has been formed primarily for serving the under-privileged sections of the society, in particular, patients suffering from tuberculosis. In this context,

Clause 4.1 of the appellant's Memorandum of Association is reproduced hereinbelow:-

> *'4.<u>AIMS AND OBJECTS</u>*
>
> *4.1 MAIN OBJECTIVES OF THE SOCIETY ARE GIVEN BELOW.*
>
> *4.1.1. To develop, establish, maintain and provide health and all other related services, and to help, aid, assist, arrange, contribute, co-ordinate, organize maintain and carry on activities connected with concerns of health quality of life, nursing facilities, socio-economic aspects, general welfare and problems of the society with special emphasis on provision of services for the underprivileged sections of the society as per Govt. rule.*
>
> *4.1.2 To develop, establish, maintain and provide microcredit/ microfinance and all other related services, and to help, aid, assist, arrange, contribute, co-ordinate, organize maintain and carry on activities connected with concerns of microcredit and micro finance, socio-economic aspects, general welfare and problems of the society with special emphasis on provision of services for the underprivileged sections of the society as per Govt. rule.*
>
> *4.1.3 To establish hospitals, medical schools and colleges, nursing schools and colleges, dispensaries, laboratories research institutions and other educational institutions as per Govt. rule.*
>
> *4.1.4 To purchase or otherwise deal in medicines and equipment required for maintenance of health, hygiene and microcredit/microfinance.*
>
> *4.1.5 To aid, promote, establish, maintain, run and encourage alternative systems of medicine and establish training and research centers for this purpose as Govt. rule.*
>
> *4.1.6 To aid, promote, establish, maintain, run and encourage microcredit/microfinance as per Govt. rule.*
>
> *4.1.7 To open centers and institutes for diagnostic, curative, therapeutic and research of medical sciences as per Govt. rule.*
>
> *4.18 To provide free medicines to the poor."*

13. The Memorandum of Association further stipulates that all the incomes, earnings, movable or immovable properties of the society shall be solely utilized and applied towards the promotion of its aims and objectives only as set forth in the Memorandum of Association and no profits thereof shall be paid or transferred directly or indirectly by way of dividends, bonus or profits in any manner whatsoever to the present or past members or to any

person claiming through any one or more of the present or the past members. The Memorandum of Association also states that no member of the society shall have any profits, whatsoever by virtue of his membership, the names, addresses, occupations and signatures of the present members of the Executive Committee to whom the management and affairs of the society are entrusted, as required under Section 2 of the Societies Registration Act, 1860 (Punjab Amendment Act of 1957).

14. Article 11.2.1 of the Article of Association specifically stipulates that all the properties, movable, immovable and other kinds of assets shall stand vested in the Committee.

15. Keeping in view the aforesaid as well as the fact that the Appellant has been set-up with the primary objective of providing medical relief to patients, who otherwise cannot afford such treatment, this Court is in agreement with the view of the learned Single Judge that all the donations, gifts etc. made to the Appellant-society are property entrusted to it, by reason of which the society acquires the character of a 'constructive trust'.

16. In the above context, it would also be necessary to refer to the judgment of Supreme Court in ***Shiromani Gurudwara Prabandhak Committee vs. Som Nath Dass 2000 (4) SCC 146***, wherein it has been held that an "endowment" is, when the donor parts with his property for it to be used for a public purpose and its entrustment is to a person or group of persons for carrying out the objective of such entrustment. It was held that once an endowment is made, it is final and irrevocable and it is onerous duty of the persons entrusted with such endowment to carry out the objectives of this entrustment. It was further held once an endowment, it never reverts even to the donor. The Supreme Court has also considered that

"endowment" means property or pecuniary means bestowed as a permanent fund, as endowment of a college, hospital or library, and is understood in common parlance as a fund yielding income for support of an institution. Having regard to the aforesaid, it is clear that donations, gifts etc. which were being received by the Appellant, and being vested in the committee, from various institutions would be endowment for public purpose.

17. Though the learned senior counsel for the Appellant is correct in contending that prayer (b) of the plaint agitates a personal/private grievance, yet this Court is of the view that the reliefs sought in prayers (d) and (e) of the plaint fall within the reliefs mentioned in sub section (1) of Section 92 CPC.

18. Consequently, this Court is of the view that the impugned order calls for no interference. Accordingly, the present appeal along with the application is dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

AUGUST 21, 2024
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