

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**F.M.A. No.263 of 2025
With
CAN 1 of 2025**

**Md. Khairul Basar and others
Vs.
Mashiur Rahman and others**

For the appellant	:	Mr. Prabal Mukherjee, Sr. Adv., Mr. Debabrata Mandal Mrs. Riya Ballar Ms. Ditipriya Mandal Mr. Antariksha Karmakar
For the respondent	:	Mr. Piyush Chaturvedi Mr. Arif Ali Mr. Hebzur Rahman
Heard on	:	26.03.2025,
Hearing concluded on	:	23.04.2025
Judgment on	:	01.05.2025

Sabyasachi Bhattacharyya, J.:-

1. The defendant nos. 1 to 4 in a suit for declaration and permanent injunction have preferred the present appeal against an order granting temporary injunction, restraining the said defendants from intermeddling with the affairs of the defendant no.5-Trust or the Educational Institutions

of defendant no.5 and/or from withdrawing any sum from the Schedule-B bank accounts of defendant no.5-Trust unilaterally till disposal of the suit.

- 2.** The defendant no.5 is a Trust formed by a Deed of Trust executed on November 16, 2012. The aims and objectives of the Trust is to establish and administer educational institutions as various centres for education of children belonging to educationally backward community, with the liberty to admit any other student, and for ancillary purposes in furtherance of such primary objective.
- 3.** The office of the Trust was initially located in Birbhum, with the power on the trustees to shift the office to any other place in India or open local office/branch office at any place deemed necessary.
- 4.** The plaintiffs/respondents were subsequently inducted as trustees. After being inducted, the plaintiffs raised certain issues as to mismanagement of the funds of the Trust by the original trustees. Ultimately, by a resolution dated June 1, 2024, the appellants were removed as trustees on the dual ground of not attending the meetings of the Board of Trustees on more than three occasions and criminal activities of forgery and cheating, contrary to and detrimental to the Trust's objectives. The resolution was taken by a two-third majority of the members present at the meeting.
- 5.** Learned senior counsel appearing for the appellants argues that no prior notices of the concerned meetings of the Trust were ever served on the appellants. Although it is alleged by the respondents that notices were served by Whatsapp and E-mail, no such service was actually effected on the appellants.

6. It is argued that the criminal activities of the appellants were alleged in general terms without any specific particulars of such activities and, as such, there was no real premise of such removal.
7. The plaintiffs/respondents included the meeting in which the removal was effected as one of the three meetings which were not attended by the appellants, which could not be done according to the appellants. For taking such a resolution, it is argued that the absence had to be in three *previous* consecutive meetings. Also, the alleged meetings which were not attended by the appellants were spread over years and not consecutive.
8. Apart from challenging the very basis of the removal, it is argued that the plaint does not disclose any clear reason for the removal of the appellants as trustees. Certain money receipts issued by the appellants have been relied on by the plaintiffs/respondents, which were of the year 2016. However, the suit has been filed in the year 2024, that is, about eight years after the date of the said receipts. Moreover, mere receipt of money by the appellants in cash does not necessarily mean that such money was not deposited in the account of the Trust.
9. Learned senior counsel appearing for the appellants further argues that the Trial Court did not have territorial jurisdiction to entertain the suit and to pass the impugned injunction order, since the registered office of the Trust, as mentioned in the original trust deed, and the residence of all the parties are in the Birbhum district. Moreover, the main activities of the Trust are carried out in Birbhum, which is beyond the territorial jurisdiction of the Trial Court.

- 10.** It is submitted that the appellants removed the names of the plaintiffs/respondents as signatories to the bank accounts of the Trust due to misappropriation of funds and illegal activities of the plaintiffs/respondents. Thus, it is argued that no case for grant of injunction was made out in the court below.
- 11.** Learned senior counsel appearing for the plaintiffs/respondents, on the other hand, argues that despite several notices being served, the appellants chose to abstain from the meetings of the Trust on more than three consecutive occasions. In the concerned resolution of the meeting where the appellants were removed, detailed reasons were given for such removal.
- 12.** The antecedent meetings, resolutions of which were also placed before the Trial Court, also go on to give the particulars of such illegal activities of the appellants. The appellants invaded the office of one of the plaintiffs with their henchmen, leading to a complaint being lodged with the police, which gave rise to an F.I.R. That apart, the funds of the trust were being rampantly mismanaged and misappropriated by the appellants.
- 13.** It is contended that in terms of the clauses of the original trust deed, in a meeting dated April 26, 2014, a resolution was adopted that the working office of the Trust would be established at Flat E1, Gias Manzil at 7/3A Miajan Ostagar Lane, Kolkata 700 017, under the Karaya Police Station, which falls within the territorial jurisdiction of the Trial Court.
- 14.** Learned senior counsel relies on the resolutions of the Board of Trustees dated February 7, 2024 and December 23, 2022, which go on to show that the members of the Board discussed several illegal activities, detrimental to the interest of the Trust, being perpetrated by the appellants.

- 15.** The E-mail of the Educational Institute established by the Trust was hijacked by the appellants. The appellants illegally claimed affiliation in respect of a D.Pharma course on the basis of forged and fabricated documents. The appellants also changed the signatories to the bank account of the Trust by removing the plaintiffs/respondents and exclusively arrogating to themselves the function of operating the bank account by retaining themselves as the sole signatories. Thus, the impugned order was justified.
- 16.** Upon hearing learned counsel, this Court proceeds to decide the issue of territorial jurisdiction first, since it hits at the root of the Trial Court's order. We find from Clause 1(b) of the original trust deed dated November 16, 2012, by which the trust was formed, that the registered office of the Trust was located in the District Birbhum. However, the unnumbered second sub-clause of Clause (b) provides that the trustees shall have the power to shift the office to any other place in India, or open local office/branch office at any place deemed necessary. Pursuant to such Clause, by a valid resolution dated April 26, 2014 (which is also annexed to the stay application), the working office of the trust was established at Kolkata, within the territorial jurisdiction of the Trial Court.
- 17.** Moreover, the resolution dated June 1, 2024, whereby the appellants were removed as trustees, was taken at the Kolkata office. Thus, the primary elements of the bundle of facts which comprise the cause of action for the suit pertain to the jurisdiction of the Trial Court. As such, the objection as to territorial jurisdiction has to be turned down.

- 18.** Regarding the alleged non-receipt of notices of the prior meetings by the appellants, we find that no objection was raised at any point of time in the subsequent meetings of the Trust by the appellants regarding the non-receipt of the earlier notices, nor did they appear in any of those.
- 19.** The resolution for removal clearly indicates the specific dates when notice was given regarding the meetings of the Trust but those were not attended by the appellants.
- 20.** We also find from the said resolution and the resolutions of the preceding meetings that those detail the different criminal activities of forgery and cheating allegedly perpetrated by the appellants in respect of the accounts of the Trust. Allegedly, forged resolutions of a meeting of the Board of Trustees and a meeting of the governing body of the College were submitted by the appellants and there were several instances of defalcation and siphoning of the amounts available in the bank account of the Trust at the behest of the appellants. The resolutions of the previous meetings also indicate that the question of misappropriation of the Trust's funds was raised in previous meetings. It was alleged in the said meetings that the appellants were not submitting detailed accounts of revenue and expenses with proper vouchers, bills and receipts in terms of the resolutions of the trustees taken in the meetings of the Trust. It was also resolved in the meeting dated April 26, 2014 that a thorough internal audit of all the revenue and expenditures of the Trust were to be undertaken and submitted before the Board of Trustees.
- 21.** Unlawful activities of the appellants in relying on forged documents for seeking affiliation of a D.Pharma course for the educational institutions run

by the Trust were also alleged in several resolutions. In the earlier resolutions, copies of which are annexed to the stay application and were produced in the trial court, we find that specific allegations regarding hijacking of the e-mail of the college established by the Trust by the appellants were levelled. The appellants allegedly barged into the office of one of the respondents and threatened him, leading to an F.I.R. being registered.

- 22.** It is an undisputed position that the plaintiffs were removed as signatories to the bank account of the Trust by the appellants, thereby taking upon themselves the entire operation of the bank account, which is patently contrary to the provisions of the Trust as well as detrimental to the smooth functioning of the Trust in consonance with its objectives.
- 23.** We find from the allegations made in the plaint and the injunction application that all the above complaints against the appellants are fully mentioned therein.
- 24.** On May 30, 2024, it is alleged in Clause -1 of paragraph 28 of the injunction application, the plaintiffs learnt that the defendants/appellants had changed the bank signatories of the accounts of the Trust with the UCO Bank, Lohapur branch as well as the Indian Bank, Sankobazar branch, the current account numbers of which have also been stated in the said paragraph.
- 25.** In view of such details having been furnished in the plaint and injunction application as well as taking into consideration the police complaint lodged against the appellants, we find sufficient *prima facie* justification to

apprehend misappropriation of the funds of the trust and illegal activities on the part of the appellants, which were detrimental to the Trust.

- 26.** The learned Trial Judge adverted to the submissions of both parties and the materials on record and accordingly came to the conclusion that a *prima facie* case for grant of injunction had been made out.
- 27.** The question as to whether the appellants were actually absent despite notice in more than three consecutive meetings of the Trust and as to whether the removal meeting itself could be construed to be one of the instances of such absence for the purpose of removal of the appellants are required to be gone into by evidence on trial in the suit itself. The allegation of the appellants that proper notice of the meetings were not served cannot be decided conclusively at the threshold at the injunction stage.
- 28.** However, we find sufficient materials disclosed in the plaint and injunction application and the documents produced in the trial court as well as before this court to raise apprehension as to criminal activities detrimental to the Trust being undertaken by the appellants as well as a *prima facie* case having been made out as to the absence of the appellants in at least three consecutive meetings of the Board.
- 29.** Clause 8 of the original trust deed relates to vacancies. Sub-clause (c) thereof provides that when a Trustee is absent from three consecutive meetings of the Board, unless the Board records condoning such absence in the minutes of the meetings of the Board of Trustees, that too for substantial cause, a vacancy will be created insofar as the said Trustee is concerned.

- 30.** Sub-clause (f) of Clause 8 provides that when a Trustee acts or does anything detrimental to the Trust, as may be decided by the Board, such member may be removed by the Board of Trustees by a majority of the total number of trustees and by a two-third majority of the members present at the meeting, which was *prima facie* done in the present case.
- 31.** In the impugned order, the learned Trial Judge elaborately adverted to all such allegations and discussed the relevant provisions of law. Upon recording such detailed observations and the narrative as to the arguments and counter arguments of the parties, the learned Trial Judge found that the interest of the Trust, the fate of the students who have already taken admission in different courses offered by the Trusts and the students who are pursuing studies in the Trust's institution are required to be protected till the suit is decided finally and that *prima facie* the plaintiffs have been able to prove that there is possibility that the defendants may hold themselves out as sole trustees and intermeddle with the affairs of the defendant no.5-Trust or its educational institutions and withdraw money from the bank accounts of the Trust. There was sufficient *prima facie* justification for arriving at such conclusion.
- 32.** Hence, we do not find any scope of interference with the impugned order.
- 33.** In view of the above observations, FMA No.263 of 2025 is dismissed on contest, thereby affirming the impugned order dated January 20, 2025, passed by the learned Civil Judge (Senior Division), Second Court at Alipore, District South 24 Parganas, in Title Suit No.745 of 2024.
- 34.** Consequentially, CAN No.1 of 2025 is also dismissed.
- 35.** There will be no order as to costs.

- 36.** It is, however, made clear that the merits of the issues raised in the suit have not been conclusively decided by us and the learned Trial Judge shall proceed to decide the suit independently and adjudicate on all issues involved therein on their own merits, without being unduly influenced by any of the observations made in this order and/or the order impugned herein.
- 37.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)