



2025:DHC:3772-DB



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

Date of decision: 14.05.2025

+ **FAO(OS) 99/2024
AJAY KUMAR SHARMA**

.....Appellant

Through: **Mr.J. Sai Deepak, Sr. Adv.
along with Mr.Avneet Singh
Sikka, Adv**

versus

VIVEK BHARAT RAM & ORS.

.....Respondents

Through: **Mr.Yogender Misra,
Mr.Gurtejpal Singh, Mr.Jai
Dogra & Mr.Shantanu Dwivedi,
Advs**

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR**

NAVIN CHAWLA, J. (ORAL)

CM APPL. 39880/2024

1. This application has been filed seeking condonation of delay of 46 days in re-filing of the appeal.
2. For the reasons stated in the application, the same is allowed and the delay is condoned.

FAO(OS) 99/2024 & CM APPL. 39878/2024 - STAY

3. The present appeal has been filed by the appellant, challenging the Order dated 25.04.2024 passed by the learned Single Judge of this Court in CS(OS) 108/2022, titled ***Vivek Bharatram & Anr. v. Ajay***



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Kumar Sharma & Anr. and I.As 3135/2022, 3654/2023, 6773/2023 and 12168/2023 filed therein.

4. The above suit has been filed by the respondent nos. 1 and 2 herein under Section 92 of the Code of Civil Procedure, 1908 (in short, 'CPC'), seeking removal of the appellant as the Managing Trustee of the respondent no. 3 – Shriram Education Trust. The learned Single Judge, in the Impugned Order, recording the *prima facie* opinion that certain clauses of the Trust Deed may require to be amended and some Trustees need to be appointed, so as to create proper quorum for proper functioning of the Trust. The learned Single Judge allowed the learned counsels for the parties to consult their respective clients for making suggestions on this aspect to the Court on the next date of hearing.

5. The learned Single Judge also *prima facie* found that there may be a need for conducting an independent audit of the funds and accounts of the Trust. Again, with regard to this aspect as well, the learned Single Judge allowed the parties to obtain instructions and make submissions on the next date of hearing.

6. As the Impugned Order, in effect, only asked the counsels to seek instructions from their respective parties and to make further suggestions and submissions on few aspects that were pointed out by the learned Single Judge, we enquired from the learned senior counsel for the appellant as to how this appeal is maintainable.

7. He submits that as the Impugned Order is passed on an application under Order XXXIX Rules 1 and 2 of the CPC filed by the



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respondent nos. 1 and 2 herein, being I.A. No. 3135/2022, therefore, in terms of Order XLIII Rule 1(r) of the CPC, an appeal against the same shall be maintainable. He submits that even otherwise, the Impugned Order is a '*judgment*', therefore, Section 10 of the Delhi High Court Act, 1996 is also invoked.

8. He further submits that the Impugned Order, insofar as it states that certain clauses of the Trust Deed may require a change, is beyond the scope of the application filed by respondent nos. 1 and 2 under Order XXXIX Rules 1 and 2 of the CPC. He submits that, therefore, no order in this regard can be passed. In support of his submission, he places reliance on the judgment of the Supreme Court in ***Akella Lalitha v. Konda Hanumantha Rao***, 2022 SCC OnLine SC 928. He further submits that this would amount to re-writing of the Trust Deed by a Court in a civil suit, which is not permissible.

9. On the other hand, the learned counsel for the respondent nos. 1 and 2 submits that this appeal is not maintainable, inasmuch as the Impugned Order does not decide any of the applications that were pending adjudication before the learned Single Judge, but merely expresses certain views and calls upon the counsels to take instructions from the parties and make further submissions on the same. It merely records the *prima facie* opinion of the learned Single Judge on certain aspects, which the learned Single Judge felt the parties ought to consider in order to resolve their disputes. He submits that there are no restraints or directions issued in pursuance of such *prima facie* opinion of the learned Single Judge and, therefore, it is



neither in the form of an injunction nor is it appealable.

10. We have considered the submissions made by the learned counsels for the parties.

11. As would be evident from a bare reading of the Impugned Order, it does not contain any injunction or direction to either of the parties to do or restrain from doing anything. It merely records the *prima facie* opinion of the learned Single Judge on how the disputes between the parties can be resolved. In fact, time was granted to the learned counsels for the parties to seek instructions in this regard. We may quote the relevant paragraphs of the Impugned Order as under:

“12. At the juncture, on the aspect of amending the relevant clauses of the Trust Deed and the Supplementary Trust Deed, as also for appointment of independent trustees, ld. Counsels for the parties wish to consult their respective clients for making suggestions to the Court on the next date of hearing.

13. The Court is also of the opinion that an independent audit ought to be conducted of the funds and accounts of the Trust to establish whether the allegations made by both parties against each other are substantiated or not. The parties may also obtain instructions in this regard and make submissions on the next date of hearing.”

(emphasis supplied)

12. Therefore, in our opinion, this is not an order which has been passed under Order XXXIX Rules 1 and 2 of the CPC, and as such, the present appeal is not maintainable under Order XLIII Rule 1(r) of the CPC. It is also not a ‘judgment’ as explained by the Supreme Court in *Shah Babulal Khimji v. Jayaben D. Kania and Anr.*, (1981)



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4 SCC 8.

13. The appeal is clearly misconceived and is accordingly, dismissed with costs quantified at Rs. 50,000/-, to be deposited by the appellant with the '*DHCBA Cost*' (A/c No. 15530110179338) within a period of two weeks from today.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 14, 2025/rv/SJ

Click here to check corrigendum, if any