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(2026) 02 DEL CK 1682

In the Delhi High Court

Case No : RFA(OS) No. 89 Of 2015

Amar N Gugnani — APPELLANT

Vs

Naresh Kumar Gugnani(Since Deceased Thr Lrs)Sunita Gugnani & Ors — RESPONDENT

Date of Decision : 12-02-2026

Acts Referred:
Code of Civil Procedure, 1908 — Section 96, 151, Order 7 Rule 11, Order 7 Rule 14, Order 12 Rule 6
Indian Trusts Act, 1882 — Section 81, 82, 94
Benami Transactions (Prohibition) Act, 1988 — Section 4(1), 4(3)(b), 7

Citation : (2026) 02 DEL CK 1682

Hon'ble Judges : Vivek Chaudhary, J;Renu Bhatnagar, J

Bench : Division Bench

Advocate : Manish Kumar, Rehan Bhasin, Aparajita Jha, Pravir Kumar Jain, Arjav Jain

Final Decision : Allowed

Judgement

1. The present appeal has been preferred by the Appellant under Section 96 of the Code of Civil Procedure, 1908 read with Section 10 of the Delhi High Court Rules, assailing the Judgment and Decree dated 30.07.2015, passed by learned Single Judge, (hereinafter referred to as "Impugned Order"), whereby the Suit of the Appellant was dismissed being barred by the provisions of Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as "the Benami Act").

2. Briefly stated facts are that the Appellant, presently a resident of United States of America (USA), instituted a Civil Suit being CS (OS) No. 478 of 2004 seeking, inter alia, reliefs of declaration, eviction, recovery of damages, rendition of accounts and permanent and mandatory injunctions in respect of property bearing No. 33, Uday Park, New Delhi (hereinafter referred to as "the suit property").

3. It is the case of the Appellant that he left India in the year 1962 for higher

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studies and thereafter pursued his education and career in the USA. During the course of his stay abroad, he remitted substantial funds to India and entrusted the same to his father, late Shri Jai Gopal Gugnani, for being held and utilized for the benefit of the Appellant. Subsequent thereto, on the suggestion of his father, the Appellant decided to purchase a plot of land in New Delhi for construction of a residential house. Acting on this advice, and as the Appellant was based abroad and unable to manage his affairs in India, it was agreed that the plot would be acquired in the name of his father, who would hold the same for and on behalf of the Appellant. Pursuant thereto, a perpetual lease deed dated 09.05.1973 in respect of the suit property measuring approximately 425. 25 sq. mts., was executed by the Delhi Development Authority in favour of the Appellant's father and was registered on 21.08.1974.The Appellant categorically pleaded in his plaint that the entire consideration for purchase of the plot, as also the funds for construction raised thereon, were provided by him. After completion of construction, the property was let out and was managed by the Appellant's father, for and on behalf of the Appellant.

4. Thereafter, disputes arose with the tenant on account of non-payment of rent and legal proceedings for eviction were initiated. In June 1990, the Appellant's father suffered a stroke and he subsequently passed away on 28.04.1992.

5. After the demise of his father, as the Appellant was residing in the USA, he executed a Power of Attorney in favour of his younger brother (the Respondent, since deceased), authorising him to pursue eviction proceedings and manage the property. Disputes thereafter arose between the Appellant and his younger brother regarding management of the suit property and rendition of accounts. The Appellant revoked the Power of Attorney and, upon failure of the Respondent to comply with the demands raised in the legal notice dated 05.05.2003, instituted the subject suit in the year 2004.

6. Upon service of summons, the Respondent filed a written statement denying the Appellant's claim and raised a preliminary objection that the suit was barred under the provisions of the Benami Act. The Appellant filed replication controverting the said objection.

7. On completion of pleadings, the learned Single Judge, by order dated 11.08.2008, framed issues, including Issue No. 1 as to whether the suit was barred by the provisions of the Benami Act, and placed the onus of the said issue upon his younger brother, the respondent.

8. During cross-examination of the Appellant, questions were raised regarding his financial capacity at the time of acquisition of the suit property. The Appellant sought to rely upon certain documents in support thereof. As the documents were not already on record, objections were raised, and the Appellant thereafter filed an application under Order VII Rule 14 CPC seeking leave to place the documents on record. The Appellant also filed an application under Section 151 CPC seeking amendment of the list of witnesses, as one of the witnesses had

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expired and his replacement by the architect involved in construction was sought.

9. Both such applications were dismissed by the learned Joint Registrar by Orders dated 29.05.2015. Aggrieved thereby, the Appellant preferred Chamber Appeals being OA Nos. 265–266 of 2015.

10. The said Chamber Appeals were listed before the learned Single Judge on 20.07.2015, on which date the matter was posted to be heard on the issue of maintainability. Thereafter, while hearing the parties on the issue of maintainability, by way of the Impugned Order, the learned Single Judge dismissed the suit as barred under the Benami Act, holding that the transaction in question was a benami transaction and did not fall within the exception under Section 4(3)(b) of the Benami Act. Aggrieved thereof, the Appellant has preferred the present appeal.

11. We have heard the learned counsel for the parties and perused the record.

12. From the record, it is evident that while hearing the Chamber Appeals, the learned Single Judge expressly put the Appellant to notice that Issue No. 1 relating to maintainability would be heard as a legal issue. The learned Single Judge thereafter proceeded to exercise jurisdiction akin to Order VII Rule 11 CPC and dismissed the suit on the ground of statutory bar. The relevant order passed by the learned Single Judge reads as under:-

"List on 30th July, 2015. Counsel for the plaintiff is put to notice that the issue no. l which is framed in this case is a completely legal issue and once the issue is a legal issue with respect to bar to the suit, then, either under Order 7 Rule 11 of Code of Civil Procedure, 1908 (CPC) or Order 12 Rule 6 CPC the suit may no longer to be continued. Plaintiff, of course, with respect to arguments of maintainability of the suit will be heard on the next date of hearing and when these OAs be also listed for hearing."

13. While exercising the power akin to Order VII Rule 11, by claiming the issue one to be a legal issue, the principal reasoning adopted by the learned Single Judge is that the suit was barred under Section 4(1) of the Benami Act, and that such bar was apparent from the Appellant's own pleadings. The plaint unequivocally admitted that the suit property has been purchased in the name of the father with consideration allegedly provided by the Appellant, and that the father was merely a benamidar while the Appellant claimed to be the real owner. On this admitted position, the Court held that the transaction squarely fell within the definition of a benami transaction and the issue was a pure question of law, capable of being decided as a preliminary issue without evidence.

14. The learned Single Judge further placing reliance on J.M. Kohli vs. Madan Mohan Sahni & Anr. 2012 SCC OnLine Del 2620, held that the Appellant could not take shelter under the exception in Section 4(3)(b) by labelling the father as a trustee or fiduciary. It was observed that ordinary benami transactions inherently involve an element of trust or confidence between the parties, and permitting

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such a plea would defeat the very object of the Benami Act, especially in view of Section 7 repealing Sections 81, 82 and 94 of the Indian Trusts Act, 1882.

15. The primary objection raised by the learned counsel for the appellant is that the learned Single Judge erred in dismissing the suit, despite the fact that the suit had proceeded to trial and issues had already been framed. The question whether the transaction was barred by benami or fell within the exception under Section 4(3)(b) of the Benami Act involved mixed questions of law and fact, requiring adjudication on the basis of the evidence led. The impugned dismissal, therefore, amounts to deciding a contested issue of fact prematurely and has resulted in denial of a fair opportunity to the Appellant to establish the pleaded fiduciary relationship by leading evidence.

16. While placing reliance on Marcel Martins v. M. Printer, (2012) 5 SCC 342, he submitted that fiduciary relationships fall within the protection of Section 4(3)(b) and are not barred by the Benami Act. The distinction drawn by the learned Single Judge on the basis of "compulsion" is unsupported by the language of the statute, which does not require compulsion or breach of trust as a pre-condition for the applicability of the exception.

17. He further contended that the interpretation adopted by the learned Single Judge of Sections 4(3)(b) and 7 of the Benami Act is also erroneous. Section 7 and Section 4(3)(b) operate in distinct fields and must be harmoniously construed; to read the repeal as nullifying the statutory exception would render Section 4(3)(b) otiose and defeat the clear legislative intent reflected in the Statement of Objects and Reasons of the Benami Act.

18. The principal question that thus arises for consideration is whether the learned Single Judge was justified in treating the issue as a pure question of law divorced from the factual matrix.

19. A reading of the plaint, as a whole, reveals that the Appellant specifically pleaded the existence of a fiduciary relationship between himself and his father and asserted that the suit property was held by the latter for the benefit of the former. The learned Single Judge extracted portions of the plaint wherein the Appellant described the transaction as "benami". However, whether the fiduciary relationship pleaded was genuine, real and pre-existing, or whether the transaction was merely a benami arrangement clothed as a fiduciary one, could not have been conclusively determined without permitting the parties to lead evidence.

20. At this stage, it becomes imperative to refer to the case of Marcel Martins (supra), which while interpreting the definition of fiduciary relationship and manner of deciding the existence of fiduciary relationship, held as under:

37. We may at this stage refer to a recent decision of this Court in CBSE v. Aditya Bandopadhyay [(2011) 8 SCC 497] , wherein Raveendran, J. speaking for the Court in that case explained the terms "fiduciary" and "fiduciary relationship"

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in the following words : (SCC pp. 524-25, para 39)

"39. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party."

It is manifest that while the expression "fiduciary capacity" may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.

38. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-à-vis the respondent-plaintiffs.

(emphasis added)

21. In view of the aforesaid, the issue as to the applicability of the exception carved out under Section 4(3)(b) of the Benami Act is, therefore, a mixed question of law and fact. Once issues had been framed and the suit had proceeded to trial, the learned Single Judge erred in short-circuiting the adjudicatory process by dismissing the suit on the ground of maintainability, particularly when the onus to prove the bar under the Benami Act had been placed on the Respondent and the parties were in process of leading the evidence.

22. The mere use of the expression "benami" in the plaint could not, by itself, extinguish the statutory exception under Section 4(3)(b), especially when foundational facts constituting a fiduciary relationship were specifically pleaded. The correctness or otherwise of the Appellant's claim that his father held the suit property in a fiduciary capacity, and that the transaction falls within the protective umbrella of Section 4(3)(b), can only be adjudicated upon a full

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appreciation of the pleadings and evidence.

23. Furthermore, the reliance placed on J.M. Kohli is misplaced and clearly distinguishable both on facts and in law. In J.M. Kohli, the suit was rejected at the threshold under Order VII Rule 11 CPC on the basis of plaint averments alone, which disclosed a classic benami transaction resting merely on payment of consideration and a vague plea of familial trust, coupled with an independent bar of limitation apparent from the plaintiff's own pleadings. In the present case, however, issues had already been framed, the onus to establish the statutory bar under the Benami Act was cast upon the respondent, and the suit had progressed to trial. The plaint herein contains specific and categorical pleadings of a pre-existing fiduciary relationship, including entrustment of funds, management of the property for and on behalf of the Appellant, and holding of the property in a fiduciary capacity, matters requiring adjudication on evidence. Unlike J.M. Kohli, where the plea of trust was held to be a mere incident of a benami transaction barred by statute, the present case raises a mixed question of law and fact falling within the ambit of Section 4(3)(b) of the Benami Act, thereby rendering summary dismissal impermissible.

24. In view of the foregoing, the Impugned Order cannot stand and is, accordingly, set aside. The present appeal is allowed. The parties, through their counsels, are directed to appear before the learned Single Judge on 25.02.2026.

25. Accordingly, the present appeal, along with pending applications, stands disposed of.

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