(2017) 10 DEL CK 0214

In the Delhi High Court

Case No : Civil Suit (OS) No. 162, 164, 211 Of 2017, Miscellaneous Application No. 4331, 4935, 4339, 4953, 5734, 5786, 5860, 5867, 6569, 7874, 7875, 7918, 8049, 9545, 9547 Of 2017

Asad Mueed APPELLANT

Vs

Bank Of India & Ors RESPONDENT

Date of Decision : 25-10-2017

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 405, 420, 468, 477A

Citation : (2017) 10 DEL CK 0214

Hon'ble Judges : S.P.Garg, J

Bench : Single Bench

Advocate : Parag P.Tripathi, Simran Mehta, Saket Sikri, Rishabh Kapur, Jyoti Sagar, Sudhir Nandrajog, Shreyans Singhvi, Ekta Mehta, Kailash Vasdev, Bobby Lao, Arvind K.Nigam, Satinder S.Bawa, Mikhil Sharda, Harish Malhotra, Pawan Upadhyay, Rajesh Chhetri, Saravjeet Pratap Singh, Krishna Kanodia

Judgement

S.P.Garg, J

IA No.4331/2017 (u/O 39 R-1&2 CPC) in CS(OS) 162/2017

1. CS(OS) 162/2017 has been filed by Asad Mueed (hereinafter referred to as â??plaintiffâ??) primarily against Hammad Ahmed (hereinafter

referred to as â??Second defendantâ??) and Hamid Ahmed (hereinafter referred to as â??Third defendantâ??) for their removal from the position

of trustees of Hamdard Laboratories (India) (hereinafter referred to as â??HLIâ??).

2. Averments in the plaint are that Abdul Mueed, father of the plaintiff and the defendant No.4 being the eldest son of the founder was the first Chief

Mutawalli of HLI; he assumed the office of Chief Mutawalli in 1974 and held it till his demise in March, 2015.

3. In 2006, the second defendant who was in-charge of the Marketing and Sales Department of HLI was ousted due to his involvement in various acts

of defalcation of organizational monies. Various civil and criminal proceedings were initiated against him. In 1998, the second defendant as head of

Marketing & Sales of HLI appointed Eden Enterprises Pvt. Ltd., a non-existent entity as distributor of HLI products. The said entity came into

existence after the appointment of Eden Enterprises Pvt. Ltd. as distributor; it had a share capital of `3,000/- and its promoter was one Shammi

Tandon, second defendantâ??s subordinate. Within a span of few months, HLI products worth crores were given to the said enterprise by the

second defendant being head of Marketing & Sales without payment of sale price. The said enterprise did not pay the price of the goods as a result

wrongful loss of `1.76 crores was caused to HLI. Criminal Complaint Case No.7/1/2012 is pending against the second defendant and others in this

regard, besides CS(OS) 59/2011 for recovery of the siphoned goods / proceeds.

4. It is further averred that in 2000, the second defendant being head of the Marketing and Sales of HLI ordered supply of approximately 10,000 tree

guards for advertising without inviting quotation or tender. The price was fixed by private negotiation by the second defendant. The goods were

approved for payment by the second defendant in his own hand on 19.04.2000 and its payment was made in a single tranche on 31.03.2000 to the tune

of `1.74 crores. On enquiry, it revealed that the advertising agency hired by the second defendant had no advertising rights for the locations mentioned

on the 16 invoices. It resulted in a wrongful loss of `1.74 crores to HLI. Criminal Complaint No.5480/2010 is pending before the concerned Court

against the second defendant for misappropriation, criminal breach of trust, cheating and falsification of accounts and he has been summoned to face

trial; CS(OS) 855/2011 is also pending against the second defendant and others for recovery of the siphoned monies. FIR No. 89/14 is also pending

investigation with Economic Offences Wing of Delhi Police against the second and third defendants.

5. It is further pleaded that after the death of the plaintiffâ??s father in March, 2015, the second and third defendants mounted pressure upon the

plaintiff and defendant No.4 for withdrawal / compromise of the pending cases. On refusal to do so, they started creating obstructions in the prosecution of the cases and the working of HLI. On 03.11.2016, the second and third defendants purported to terminate the services of

Mr.S.Rajagopalan, AGM (Finance), authorised representative of HLI and a prime witness in criminal cases. The second and third defendants also

terminated the services of Mr.Javed Akhter, Sr.Manager (Legal) who was overseeing the cases on behalf of the management of HLI. The said

defendants had no authority to terminate their services and their action was motivated and malicious.

6. It is further averred that on 02.01.2017 account maintained with defendant No.1 was blocked as a result of which various payments to statutory

bodies and salaries to the employees could not be made. Even the payments to the advocates representing HLI before various Courts were not

released. To avoid embarrassment and distress, the plaintiff deposited ESI dues of `96,204/- from his own pocket on behalf of HLI. These acts of the

second and third defendants are prejudicial to the interests of the organisation. Crucial operations of the organisation have come to stand still. The

second and third defendants have acted mala fide; their removal as trustees of HLI is required.

7. The suit is contested by the second and third defendants. Controverting the allegations of the plaintiff, it is informed that after the death of Chief

Mutawalli Abdul Mueed on 19.03.2015, the second defendant being the senior Mutawalli of HLI in line of succession of the Wakif Mutawalli as per

the Trust Deed being the only living successor (of the Wakif Mutawalli) took over as the Chief Mutawalli of HLI on 20.03.2015 vide office order

dated 20.03.2015. The plaintiff and defendant No.4 who are also the Mutawallis opposed the second defendant assuming the office as Chief

Mutawalli. The defendant No.4 issued an illegal office order dated 23.03.2015 appointing himself as Chief Mutawalli. The plaintiff and defendant No.4

have deliberately and for ulterior purpose adopted positions contrary to the stipulations in the Trust Deed. On 23.03.2015, they wrote a letter to

defendant No.1 not to allow the second defendant to operate the business account of HLI singly as was the practice for decades. They asked

defendant No.1 to allow them to operate the bank account. Both the plaintiff and the defendant No.4 instigated and threatened the employees of HLI

not to acknowledge the second defendant as Chief Mutawalli. They levelled baseless and false allegations against him and his family. The defendant

No.4 claiming himself to be CEO of the organisation was removed by the second defendant due to his open defiance and conduct detrimental to the

organisation vide office order dated 25.03.2015. Defendant No.4, however, declared himself to be in continuation as CEO by an unauthorized order

dated 26.03.2015.

8. It is further informed that after the death of Abdul Mueed on 19.03.2015, the second defendantâ??s son Sajid Ahmed, grandson of late Wakif

Mutawalli has been appointed as fifth Mutawalli by a declaration dated 14.04.2015. The functioning of HLI is being affected due to constant

unauthorized interference by the plaintiff and defendant No.4 and the disputes created by them. The proceedings, both civil and criminal, instituted

against him are motivated and false.

9. Similar are the pleas taken by the third defendant in the written statement. The defendant No.4 is supportive of the plaintiffâ??s claim.

10. CS(OS) 211/2017 has been filed by Hammad Ahmed against Abdul Majeed (defendant No.1); Asad Mueed (defendant No. 2), Hamid Ahmed

(defendant No.3) & Sajid Ahmed (defendant No.4) seeking declaration that the defendant No.1 was no longer Mutawalli of HLI being in breach of

obligations under the Trust Deed dated 28.08.1948 as amended from time to time. Decree for permanent injunction is also sought to restrain defendant

No.1 to continue as Mutawalli of HLI. The suit is contested by the defendants.

11. CS(OS) 164/2017 is a suit filed on behalf of Hamdard National Foundation (plaintiff No.1); Asad Mueed (plaintiff No.2) and Javed Naseem

(plaintiff No.3) against the defendants â?" Bank of India (defendant No.1) and Hammad Ahmed (defendant No.2) to declare letter dated 21.03.2017

issued by defendant No.1 as null and void ab initio. Relief is also sought to restrain defendant No.2 from interfering with the affairs of plaintiff No.1

Society and operation of its bank account. It is also contested by defendant No.2.

12. I have heard the learned Senior Counsel for the parties and have examined the file. Learned Senior Counsel for the plaintiff â?" Asad Mueed

[CS(OS) 162/2017] urged that second and third defendants â?" trustees of HLI cannot be permitted to continue as such as they suffer from several

disqualifications enumerated in clause 6 of the Trust Deed. They have spent money belonging to HLI for purposes other than provided in the Deed in

violation of clause 6(4). During their term as trustees, HLI has suffered losses and is likely to suffer further losses, a disqualification enumerated in

clause 6(6).

13. It is further urged that since November, 2016 disputes between the trustees of HLI have precipitated as they (second and third defendants)

attempted to terminate the services of S.Rajagopalan and Javed Akhter to get rid of them. S.Rajagopalan was a direct witness in the various

prosecutions pending against the two and Javed Akhter, a legal officer was managing the said proceedings. They intended to replace S.Rajagopalan

with Sajid Ahmed â?" second defendantâ??s son as authorized representative of HLI in the said prosecution. An application has been filed by Sajid

Ahmed for substitution in place of S.Rajagopalan in the Complaint Case No.5480/1/2010. Their termination was unauthorized and was revoked by the

defendant No.4 on 05.11.2016. The said employees continue to render their duties, mark their attendance and are paid salaries processed by the

finance department.

14. It is further urged that allegations / averments in the plaint disclose prima facie, case of breach of trust, misappropriation, cheating and falsification

of accounts by the second and third defendants. In Complaint Case No.5480/1/2010, the second defendant has been summoned by the Court

concerned; FIR No. 89/2014 under Sections 405, 420, 468, 477A & 120B IPC has been registered against them by EOW on 11.03.2014. The civil and

criminal proceedings were instituted against the second and third defendants prior to the vacancy arose in the office of Chief Mutawalli of HLI.

Learned Senior Counsel elaborated as to how and under what circumstances Shammi Tandon â?" second defendantâ??s subordinate formed the

company by the name of EPIC Foods Private Limited and how the second defendant being head of Marketing and Sales and a trustee was inducted

on to the Board of Directors along with Rakesh Kumar Arora and Arun Kumar Dua. He informed that on 14.08.1998 Eden Enterprises Pvt. Ltd. had

not even come into existence and came to be incorporated with a share capital of `3,000/- on 14.10.1998. It was able to exploit the valuable

distributorship agreement awarded by the second defendant causing a wrongful loss of `1.76 crores to HLI. Similarly, in 2000 the second defendant

caused wrongful loss of `1.74 crores to HLI whereby order for supply of approximately 10,000 tree guards was made for advertising without inviting tender or quotations. It is further urged that the second and third defendants have disobeyed the orders passed by this Court regarding release of

salaries and statutory dues etc.

15. It is urged that none of the parties has sought a declaration claiming himself to be the Chief Mutawalli of HLI. The second defendant has no

control over HLI or its employee and it is being managed by its CEO and rightful Chief Mutawalli, defendant No.4. Taking shelter of the instant suit,

the second defendant seeks declaration as Chief Mutawalli to alter the status quo. It is further pointed out that under the marketing leadership of the

second defendant net profits of HLI were `35.71 crores which have now gone to `236.88 crore in 2015 â?" 2016 under the charge of defendant No.4

as CEO since 2012. It was due to the fact that the second defendant was not permitted to interfere in the management of HLI.

16. Learned Senior Counsel would urge that since the parties are Hanafi Muslims, they are governed by the Hanafi Law of inheritance. The Trust

Deed creates a special line of succession for the management of HLI by giving preference to sons and their sons over females and their heirs; it is a

distinct and deliberate departure from the ordinary Muslim Law of succession. This conscious departure from Muslim Personal law is justifiable on the

ground that succession to the office of Wakif Mutawalli / Chief Mutawalli is in the nature of succession to a hereditary office and not succession to a

personal property. Relying upon â??The Secretary of State for India in Council vs. Syed Ahmed Badsha Sahib Bahadurâ??, (1921 The Law Weekly

128) Mad. (DB), Senior Counsel emphasized that in the absence of evidence to the contrary, succession to a single hereditary office, which cannot be

enjoyed by several heirs in common, must devolve by the rule of lineal primogeniture i.e. the son of the eldest son is entitled to succeed in preference

to a junior son. Reliance was also placed on â??A.Arputham vs. Minor A.V. Yagappa, by Mother & Guardian Elizabeth Mary (1964) ILR 2 Mad. 865

(DB)â?? to buttress this contention. Abdul Majeed â?" defendant No.4 being the senior most male descendant of the Wakif Mutawalli is entitled to

succeed as Chief Mutawalli, in the line of succession of his grandfather i.e. Wakif Mutawalli in preference to the younger son Hammad Ahmed (the

second defendant). Moreover, due to various allegations of criminality and misfeasance attributable to the second defendant and his contemptuous behaviour in the proceedings, he cannot be allowed to continue even as ordinary Mutawalli of the HLI. The defendant No.4, on facts and law has a

much stronger entitlement to the office of Chief Mutawalli than the second defendant; the balance of convenience lies in favour of the plaintiff and

defendant No.4.

17. It is urged on behalf of the second and third defendants that in terms of the various clauses of the Trust Deed, the senior most male descendant in

the line of succession (of Wakif Mutawalli) is to become the Chief Mutawalli. The manner and method of appointing the Chief Mutawalli has been set

out and manifested by the Wakif Mutawalli and it has been so accepted by this Court in a judgment pronounced on 23.12.2011. The rules of

succession and appointment of Mutawallis and Chief Mutawalli have been detailed in the Trust Deed and it is binding upon the successors of the

founders. Relying upon â??Faqruddin vs. Tajuddinâ??, 2008 (8) SCC 12, learned Senior Counsel urged that the principles of primogeniture are not

applicable to Muslims. HLI is a private institution and is to be managed by the descendants and only legal heirs as per clauses of the Trust Deed.

18. It was urged that after the death of Abdul Mueed, his sons Asad Mueed (the plaintiff) and Abdul Majeed (defendant No.4) started creating

hurdles in the functioning of the organisation. The plaintiff illegally claimed that Abdul Majeed (defendant No.4) had become the Chief Mutawalli of

HLI and ex-officio president of HNF. They both started making false, baseless and illegal communications with the banks and other authorities. The

meeting of Majlis-E-Awan was called on 16.03.2017. However, the plaintiff and defendant No.4 did not opt to attend. A resolution was passed to

terminate the memberships of Abdul Majeed, Asad Mueed and Rakesh Nayyar. Services of S.Rajagopalan and Javed Akhter were legally terminated

on 03.11.2016 and the said terminations have not been challenged by them so far.

19. Learned Senior Counsel for the plaintiff contended that the issue as to who is entitled to be Chief Mutawalli after the death of Abdul Mueed on

19.03.2015 cannot be decided / considered at this stage. It requires evidence to be adduced by the parties to substantiate their claims. It was so

observed by this Court in orders dated 16.05.2017 and 26.05.2017.

20. During the course of arguments, it was pointed out to the learned counsel for

the parties that the real controversy between the parties was as to

who should be Chief Mutawalli after the death of previous Chief Mutawalli Abdul Mueed on 19.03.2015. In FAO(OS) 211/2017, 209/2017 &

208/2011, the Division Bench of this Court noted :

â??Learned counsel for the parties state that the issue relating to Chief Mutawalli is of considerable importance as it affects the

functioning of the aforesaid institutions /organisations. Counsel for the parties state that they will make a request for early adjudication of

the said issue. We hope and trust the matter would be decided expeditiously. We also record that the matter is already listed before the

single Judge on 30th August, 2017.â??

21. Both the parties have placed reliance upon the Wakf /Trust Deed to substantiate their respective contentions. It is urged by the learned Senior

Counsel for the plaintiff that the second defendant cannot become Chief Mutawalli due to disabilities / conditions enumerated in clause 6, 6(2), 6(4) &

6(6) of the Trust Deed. Various criminal / civil proceedings are pending against him regarding siphoning of huge amount of the Trust. Termination of

S.Rajagopalan and Javed Akhter were motivated as the second defendant wanted to get rid of them. It is relevant to note S.Rajagopalan was a

witness in the criminal proceedings and was taking care of various cases registered against the second defendant. Besides this, the office must

devolve upon defendant No.4 by the rule of lineal primogeniture.

22. Controverting the arguments, it was urged that the clauses of the Trust Deed are specific and unambiguous. The second defendant being a senior-

most male descendant in the line of succession of the Wakif Mutawalli and being nominated by the Wakif Mutawalli as his successor became entitled

to be the Chief Mutawalli in terms of clause 3 of the Deed. The second defendant assumed the office of Chief Mutawalli on 20.03.2015,

23. It is not in dispute that Wakf/Trust Deed dated 28.08.1948 was executed; Hakim Hazi Abdul Hameed became the sole Wakif Mutawalli of HLI.

In 1964 â?" 65, the Wakif Mutawalli appointed his both sons Abdul Mueed (the plaintiffâ??s father) and Hammad Ahmed (the second defendant) as

Mutawallis. The Wakif Mutawalli in terms of the Trust Deed appointed his elder son Abdul Mueed as Chief Mutawalli of HLI during his life time. In

1973, the Wakif Mutawalli carried out modification in the Wakf Deed and introduced clause 42-A which reads as under :

â??42-A : Mr.Abdul Mueed and Mr.Hammad Ahmed, sons of Wakif-Mutawalli Hakim Abdul Hameed, are nominated as his successors

under the terms of this Deed. They are the two other Mutawallis of this Wakf appointed by the Wakif-Mutawalli. They will act as Chief

Mutawallis and Mutawallis respectively. They will be paid salaries for services rendered to the Wakf as fixed by the Wakif-Mutawalli. This

shall be charged to the profit and loss account of the Wakf. The salaries of other Mutawallis will be fixed by Wakif-Mutwalli/ Chief

Mutawalli. The salary of subsequent Chief Mutawalli will be fixed by Majlis-e-Ayan.â??

24. It is also not in dispute that in 1995 the Wakif Mutawalli appointed his two grandsons one each from the family of his sons namely Abdul Majeed

and Hammad Ahmed as Mutawallis in HLI. In 1999, the Wakif Mutawalli died leaving behind four mutawallis and in terms of the Trust Deed, Abdul

Mueed the eldest son of the Wakif Mutawalli became the Chief Mutawalli. Abdul Mueed has since expired on 19.03.2015. The second defendant,

undisputedly is the senior-most amongst the male descendants of the Wakif Mutawalli.

Clause (3) of the Wakf Deed reads :

â??The First Chief Mutawalli will be appointed by Wakif Mutawalli, thereafter the seniormost male descendant in line of succession (of

Wakif Mutawalli) and then holding an office of Mutawalli will be the Chief Mutawalli. After the Wakif- Mutawalli, the division of rights and

duties among the Mutawallis shall be made by the Chief Mutawalli for efficient working of the Wakf and the Majlis-e-Ayan shall have no

right to disturb this division or render it difficult for the Chief Mutawalli or any of the Mutawallis to perform his or their duties to mange the

Wakf satisfactorily and with proper freedom of action.

The Chief Mutawalli will be the Sadar (President) of the Majlis-e-Ayan and the descendant second in seniority to the Chief Mutawalli will

be its Nazir (Secretary).â??

25. The first Chief Mutawalli was to be appointed by the Wakif Mutawalli. Thereafter the senior-most male descendant in the line of succession (of

Wakif Mutawalli) and then holding the office of Mutawalli was to be the Chief

Mutawalli.

26. This Court had occasion to analyse various clauses of the Trust Deed in CS(OS) Nos.116/1972 to 119/1972 decided on 23.12.2011 to hold that the

plaintiffs therein were not â??Wakfsâ?? under the Wakf Act.

27. Paras 47, 57 & 61 read as under :

â??47. Clause-1 spelt-out that there would be at least a minimum of one and maximum of 5 Mutawallis, including Wakif Mutawalli and the

Chief Mutawalli. The senior most among the male descendants and the Wakif Mutawalli were to hold the office of Mutawalli. After the

Wakif Mutawalli ceased to be a Mutawalli, every Chief Mutawalli had the same rights and powers of administration of the Wakf and the

power of making regulations. The Wakif Mutawalli had the power to decide the remuneration of the Chief Mutawalli and other Mutawalli.

After he ceased to be a Wakif Mutawalli, the Chief Mutawalli enjoyed that right; in the case of the remuneration of Chief Mutawalli, it was

to be by the Majlis-e-Ayan.

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57. The scheme of management in the Deed in the present case, i.e Ex. PW-1/2 undoubtedly suggests that the right to administer the wakf

devolved by succession, or inheritance; in the first instance, the original plaintiff was constituted as the wakif mutawalli; the line of

succession to the organization was clearly demarcated. On the death of the wakif mutawalli -or of the Mutawalli(s) appointed by him- the

successors were his male descendants, then living, in order of seniority. They had the right to be appointed as Mutawalli of the Wakf. The

succession to Mutawalliship was to continue in the male line from generation to generation. In the contingency of no male successor in the

direct line of succession existing being fit to act as Mutawalli of the Wakf, anyone from the male descendants of the female issue was

constituted the rightful claimant to succession could be appointed as Mutawalli. Clause 6 set out the disabilities and disqualifications which

rendered a candidate to Mutawalliship ineligible. The plaintiffs argue, and the Wakf Board resist- that the manner of succession is a pointer

to the arrangement not being a wakf, but other species of trust.

All authorities are agreed â?" right from the decision in Nawab Zain Yavar Jung, onwards, that a mutuwalli is only a superintendent or

manager of the wakf properties; they do not vest in him, in the manner known to other branches of law, such as in the case of Hindu

endowments, or in the case of trusts. The question therefore, is whether any stipulation in the dedication or the deed, that a class of heirs or

specific category of people, either by description, or family ties, as successors to the wakif mutuwalli, would militate against the

arrangement being a wakf.

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61. In the light of the above discussion, it is held that provision in the Deed PW-1/2, for the benefit of the heirs of the wakif Mutuwalli, or

the original settlers, does not ipso facto militate against the arrangement being a wakf.â??

28. At the time of disposal of interim applications, only prima facie view of the matter is to be taken. On perusal of the various clauses of the Trust

Deed, it can be inferred, at this stage, that the senior-most male descendant in the line of succession (of Wakif Mutawalli) is prima facie entitled to be

appointed as Chief Mutawalli. It is not in dispute that presently the second defendant is the senior most male descendant in the line of succession of

Wakif Mutawalli. It is fairly admitted by the defendants that the second defendant would remain Chief Mutawalli during his life time and after that, it

can devolve upon the plaintiff in terms of the clauses of the Trust Deed. Clause 3 is very specific and categorical in this regard. It cannot be

interpreted that the male descendant in the line of succession would be that of the Chief Mutawalli to be appointed as Chief Mutawalli. This

interpretation will lead to the conclusion that the office of Chief Mutawalli would always remain in the family of the plaintiff to the exclusion of the

second defendant and his family members for all the time to come.

29. I find no substance in the arguments that the succession to the office of Chief Mutawalli must devolve by the rule of lineal primogeniture. The

citation Faqruddin vs. Tajuddin (supra) in clear terms rules out the principle of primogeniture to be applicable to Muslims. Moreover, when the parties

are governed by the express clauses in the Trust Deed, succession is to take place as per the intention of the founder of the Trust. The Trust Deed, as observed above, creates a line of succession which is distinct and deliberate departure from the ordinary Muslim Law of succession.

30. The citation â??The Secretary of State for India in Council vs. Syed Ahmed Badsha Sahib Bahadurâ?? (supra) is not applicable to the facts and

circumstances of the case. In the said proceedings construction of the relevant provisions of the Will executed in Tamil by Arulanandasami who died

on 20.04.1954 leaving behind him his two sons Y.A.Arogyasami and A.Arputham was at issue. The former succeeded to the management of the A

schedule properties and on his death in 1961 a dispute arose as to whether his minor son Yagappa was entitled to manage the properties or his brother

Arputham should do so. Contents of the Will freely translated were :

My elder son and after â??himâ?? the senior-most male member amongst the heirs in â??hisâ?? line, from generation to generation, shall

manage the A schedule properties without subjecting them to any alienation and perform the charities properly.

(emphasis given)

31. In the Will, the testator had clearly and unequivocally desired that his elder son and â??after himâ?? the senior-most male member amongst the

heirs in â??hisâ?? line was to manage A schedule properties. Apparently, the testator wanted his elder son and after â??himâ?? the senior-most

male member amongst the heirs of â??hisâ?? son to be the beneficiary. In the instant case, clause 3 of the Deed, on the face of it, clearly prescribes

that after the death of Chief Mutawalli, senior-most male member descendant in the line of succession (of Wakif Mutawalli) is to become the Chief

Mutawalli. The Trust Deed does not mention if the senior-most male descendant in the line of succession of the previous â??Chief Mutawalliâ?? is to

become the Chief Mutawalli. The words â??of Wakif Mutawalliâ? are of utmost importance and cannot be rendered redundant. Moreover, it is only

a prima facie view and parties will be at liberty to produce credible evidence to substantiate their respective plea during trial.

32. Learned Senior Counsel for the plaintiff emphasized that due to disabilities enumerated in clause 6 of the Deed, the second defendant is not

capable to be appointed as Chief Mutawalli. This contention cannot be taken care of at this stage. Various civil and criminal proceedings are pending

between both the parties. Till date, the second defendant has not been held guilty for siphoning of the money belonging to the Trust and no decree for

its recovery has been passed. The second defendant has also placed on record the list of various cases pending between the parties, in the written

statement; some cases have been dismissed as withdrawn; some are pending between the parties. Mere pendency of the criminal proceedings without

any verdict of the Court so far cannot debar the second defendant to be appointed as â??Chief Mutawalliâ??. It is relevant to note that the criminal

cases are pending since long and the second defendant continued to be â??Mutawalliâ?? even during the life time of previous Chief Mutawalli. The

plaintiff at no stage filed any suit for his removal as â??Mutawalliâ??.

33. Regarding termination of services of S.Rajagopalan and Javed Akhter, it is on record that they have not challenged their termination so far. The

plaintiff who is interested that both S.Rajagopalan and Javed Akhter should continue with their services, cannot, in the present proceedings plead their

case. If they have any grievance or their termination is illegal or in violation of the contract, they will be at liberty to avail the legal remedy.

34. In the present proceedings, relief sought by the plaintiff is for removal of the second and third defendants as Trustees which cannot be granted at

this stage without affording an opportunity to the parties to prove their respective cases by leading firm and cogent evidence.

35. Learned Counsel for the second and third defendants have fairly informed that second and third defendants have never declined to clear the

statutory dues, salary bills of employees and the bills raised by the various advocates representing the organisation. Due to delay in verification of the

bills submitted by the learned advocates, dues could not be cleared in time. Certain payments have already been made during the pendency of the case

in terms of various orders of this Court. Counsel ensured that all the statutory dues, salaries of the employees and bills of the advocates would be

cleared.

36. In the light of above discussion, IA No.4331/2017 fails and is dismissed.

37. Observations in the order shall have no impact on merits of the case.

IA No.8049/2017 (u/O 1 R-10 CPC) in CS(OS) 162/2017

38. Sajid Ahmed, the second defendantâ??s son, has moved the instant application for impleadment in the present proceedings. It is contested by the

non-applicants / plaintiff.

39. The applicant claims that he was appointed as Mutawalli in terms of the Clauses of the Wakf / Trust Deed on 14.04.2015. His presence is

necessary for the proper adjudication of disputes between the parties.

40. On perusal of the pleadings, it reveals that no specific relief has been sought by the plaintiff against the applicant. The primary dispute between the

parties is as to who should be Chief Mutawalli after the death of previous Chief Mutawalli - Abdul Mueed on 19.03.2015. The plaintiff has denied if

the applicant has been appointed as Mutawalli in terms of the Clauses of the Trust Deed. The plaintiffâ??s claim is being contested by the second

and third defendants the other Mutawallis; the second defendant has even claimed himself to be the Chief Mutawalli.

41. Since the plaintiff is dominus litus and no relief has been sought against the applicant, his presence is not required in the present case for

adjudication of the disputes between the parties; the applicant is neither a necessary nor a proper party.

42. The IA is dismissed being unmerited.

IA Nos. 4953/2017 (u/S 151 CPC filed by the second defendant) & 5734/2017 (u/S 151 CPC) in CS(OS) 162/2017

43. It is informed that the services of Javed Akhter and S.Rajagopalan have been terminated on 03.11.2016. The plaintiff pleads that their termination

is illegal and they continue to be the employees of the organisation; they attend the organisation and their presence is marked.

44. Perusal of the file reveals that pursuant to the orders dated 12.04.2017, salaries have been ordered to be given to both these employees.

45. Since these employees are not parties to the present proceedings; at the plaintiffâ??s request, the contesting defendants cannot be ordered to pay

their salaries. If the said employees have any grievance regarding termination of their services unauthorizedly or illegally, they are at liberty to avail the

legal remedies to claim their permissible dues (if any).

46. The IAs stand disposed of with the directions that till today, salaries of both these employees shall be paid without prejudice, in terms of the order

dated 12.04.2017.

IA No.5860/2017 (u/O 39 R-1&2 CPC) in CS(OS) 211/2017

47. In view of observations above, the defendants No.1 & 2 are directed to hand over the password of the domain name www.hamdard.com,

www.hamdard.in and www.hamdardindia.com and its e-mail server password to the plaintiff. They shall also disclose and handover the ERP

(Enterprise Resource Planning) Admin Control Password.

48. The IA stands disposed of.

IA No. 7918/17 (u/S 151 CPC) in CS(OS) 211/2017

49. In view of above observations and order dated 16.05.2016 of this Court, defendants No.1 & 2 are directed to release the EPF vouchers.

50. The IA stands disposed of.

CS(OS) 162/2017 & IA Nos. 4935/17 [u/S 2(b) Cont.of Court Act], 5867/17 (u/O 39 R-2A), 7874/2017 (u/S 151 CPC), 7875/17 (u/S 151

CPC), 9545/17 (u/O 39 R-2) & 9547/17 (u/O 39 R-2 and 2A CPC), CS(OS) 164/2017 & IA 4339/2017 (u/O 39 R-1&2 CPC), 5786/17

(u/O 7 R-14 CPC) and 6569/2017 (u/O 39 R-1&2 CPC) & CS(OS) 211/2017

51. Pleadings in the suits shall be completed. Written statement / response shall be filed within four weeks.

52. Replication / rejoinder shall be filed within two weeks thereafter.

53. List before the Joint Registrar on 24th November, 2017 for completion of pleadings, filing of documents and affidavits of admission / denial of the

documents.

54. List before this Court on 11th January, 2018 for framing of issues and for disposal of pending IAs.

