

(2009) 04 DEL CK 0085
In the Delhi High Court
Case No : CS (OS) 747 of 2009

Chhaya Shriram and Another

APPELLANT

Vs

Mrs. Santosh D. Shriram and Others

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Trusts Act, 1882 — Section 60, 73, 74

Citation : (2009) 04 DEL CK 0085

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : T.K. Ganju, Divya Kesar and Manmohit Puri, for the Appellant; N.K. Kantawala, for Defendant No. 1, H.L. Tikku and Jasbir S. Bagga, for Defendant No. 2, Rajeev Nayyar and Amit S. Chadha and Kewal S. Ahuja, for Defendant No. 3 and Sudhir Chandra and Kirti Uppal, for Defendant No. 4, for the Respondent

Judgement

Vipin Sanghi, J.

CS(OS) 747/2009

Mr. Sudhir Chandra, Senior Advocate along with Mr. Kirti Uppal have appeared for defendant No. 4. Mr. Uppal has tendered in Court a communication received from defendant No. 4, wherein defendant No. 4 has offered to resign from trusteeship, as and when a new trustee is appointed. Mr. Chandra submits that defendant No. 4 is no longer interested in continuing as a trustee. In fairness to defendant No. 4, it would have been appropriate for the plaintiffs to have approached him before filing the suit in case they were aggrieved by his appointment as a trustee of the Mansarovar Trust. In any event, since defendant No. 4 has stated in his communication as also through his counsels that he would not like to continue as a trustee of the Mansarovar Trust, he is relieved of his obligations as a trustee of the said trust. Accordingly, defendant No. 4 is deleted from the array of defendants. Amended memo of parties may be filed by the plaintiff within two days.

Mr. Ganju states that the prayer made in the suit to seek a restraint against defendant No. 1 from appointing any trustee is not being pressed. He further states that prayer (a) has become infructuous in view of the resignation tendered by Mr. N.K. Anand, defendant No. 4, in Court. These developments call for amendment of the plaint. The plaintiffs are permitted, on their oral request, to amend the plaint to incorporate the resultant changes. Let the amended plaint be filed within two days.

Issue summons to defendant Nos. 1 to 3. Summons are accepted on behalf of defendant No. 1 by Mr. N.K. Kantawala, on behalf of defendant No. 2 by Mr. Jasbir S. Bagga and on behalf of defendant No. 3 by Mr. Kewal S. Ahuja. Written statements along with original documents, if any, may be filed within 30 days. Replication with additional documents, if any, may be filed by the plaintiff within four weeks, thereafter. List the matter before the Joint Registrar on 03.08.2009 for admission/denial of the documents.

List before Court for framing of issues on 24.08.2009.

I.A. No. 5520/2009

This is an application seeking one week's time to file the court fees. Counsel for the plaintiff states that the court fees has already been filed. The Registry is directed to check the same and report with regard to sufficiency of the same. Application stands disposed off.

I.A. No. 5521/2009

1. Issue notice. Counsels for defendant Nos. 1 to 3 accept notice. Reply be filed within four weeks, rejoinder within four weeks thereafter. List on 24.08.2009. This application under Order 39 Rules 1 & 2 CPC had been filed to seek a restraint against the originally impleaded defendant No. 4 from officiating as a trustee and/or dealing with the trust property during the pendency of the suit. Considering the fact that the original defendant No. 4, who was nominated as a trustee by defendant No. 3 has resigned today in Court from his said position, thereby leaving only one trustee in office viz. defendant No. 3, it has become necessary for the Court to consider the appointment of a provisional trustee pending the further hearing of the application, as the trust deed itself states that the total number of trustees shall always remain two. On this aspect, the learned Counsels for the parties have been heard at some length.

2. The case of the plaintiffs is that Mrs. Santosh D. Shriram, defendant No. 1, and Mrs. Urmila Dongre, defendant No. 2, authored the trust deed dated 17.06.1985 appointing Sh. Lallan Prasad Gupta and Sh. Subodh Varma as the initial trustees. 10 beneficiaries were named in the trust. It is submitted by Mr. Ganju, learned senior Counsel for the plaintiffs, that of the 10, the first 9 beneficiaries, who are beneficiaries to the extent of 60% of the income of the trust, belong to the Charat Ram Group, whereas beneficiary No. 10, Mr. N.R. Dongre, is the other beneficiary to the extent of 40% of the income of the trust.

The plaintiffs claim that the beneficial interest of the beneficiaries falling within the Charat Ram Group was transferred by separate agreements of 29.04.2008 in favour of plaintiff No. 2 i.e. Usha International Limited to the extent of 54%. The remaining 6% continues to vest in plaintiff No. 1. I may at this stage itself notice the submission of Mr. Chadha, senior Counsel appearing for defendant No. 3 that the assignment of the beneficial interest in favour of plaintiff No. 2 has not been accepted by the trust on account of non-payment of the stamp duty on the assignment. However, this dispute is not relevant for the present purpose, as Mr. Chadha does not deny that 60% of the beneficial interest of the trust vests with members/entities of the Charat Ram Group.

3. Chapter VI of the trust deed deals with the aspect of constitution, duties, responsibilities and rights of the trustees. Clauses 1 & 2 of Chapter VI being relevant are reproduced below:

1. If at any time, any Trustee or Trustees of these presents dies or desire to retire or refuses or become incapable to act as the Trustee hereof, then in every such case, the appointment of Trustees in their respective places shall be in the following manner:

i) In case Shri Lallan Prasad Gupta ceases to be a Trustee in any manner whatsoever, Mr. Santosh D. Shriram, Settlor shall appoint a Trustee in his place.

In case Mrs. Santosh D. Shriram is not willing or is/becomes incapable to appoint a Trustee as above or in the event of her death, the eldest of her male legal heirs, if willing, shall be the Trustee in place of Shri Lallan Prasad Gupta.

In case such eldest male legal heir is not willing, or is/becomes incapable to act as Trustee then the next eldest male legal heir, if willing, shall become the Trustee and so on.

ii) In case Shri Subodh Varma, ceases to be a Trustee in any manner whatsoever, Mrs. Urmila Dongre, Settlor shall appoint a Trustee in his place.

In case Mr. Urmila Dongre is not willing or is/becomes incapable to appoint a Trustee as above or in the event of her death, her eldest of her male legal heirs, if willing, shall be the Trustee in place of Shri Subodh Varma.

In case such eldest male legal heir is not willing, or is/becomes incapable to act as Trustee then the next eldest legal heir, if willing shall become the Trustee and so on. In case there is no surviving legal heir or the last surviving legal heir is not willing, or is/becomes incapable to act as Trustee then any other person so nominated by the said Mrs. Urmila Dongre, in writing, shall be the Trustee in place of Shri Sobodh Varma.

Provided However that upon every such appointment of a new Trustee or new Trustees, the Trust Fund shall be so transferred to become vested in the new Trustee or Trustees jointly with the surviving or continuing Trustees or Trustee or solely as the case may require and every such newly appointed Trustee or

Trustees before as well as after such vesting of the Trust Fund shall act or assist in the execution of the Trust and powers of these presents as fully and effectually as if he had been constituted as Trustee.

2. The total number of Trustee as aforesaid shall always remain two.

4. Upon the retirement of Mr. Lallan Prasad Gupta as a trustee in the year 2001, Mrs. Santosh D. Shriram nominated her son-in-law Mr. Sanjeev S. Das as one of the trustees of the Mansarovar Trust. On 23.03.2009 Mr. Sanjeev S. Das passed away. Within five days, i.e. on 28.03.2009 a communication was issued on the letter head of Mansarovar Trust by the "authorized official" addressed to plaintiff No. 2 stating that on the demise of Mr. Sanjeev S. Das, Mr. N.K. Anand, who was originally arrayed as defendant No. 4, has been appointed as a trustee w.e.f. 24.03.2009. A circular to this effect was also issued "To All Concerned" also signed by the same "authorized official" on the same date.

5. It is the submission of the plaintiffs that the appointment of Mr. N.K. Anand, the erstwhile defendant No. 4, as a trustee on the demise of Mr. Sanjeev S. Das was contrary to the terms of the trust deed as also contrary to the law. It is argued that a perusal of Clause 1 of Chapter VI, as extracted above, as well as Clause 4 of the trust deed would show that the trust was created primarily for two sets of beneficiaries, namely, those belonging to the Shriram Group and the Dongre family. The authors of the trust are two ladies who belong to the Shriram Group and the Dongre family, respectively. The fact that Sh. Lallan Prasad Gupta was a trustee nominated by Mrs. Santosh D. Shriram and that Mr. Subodh Varma was nominated by Mrs. Urmila Dongre, is also evident from the fact that on the demise, retirement or refusal to act by Mr. Lallan Prasad Gupta and Mr. Subodh Varma, it was Mrs. Santosh D. Shriram and Mrs. Urmila Dongre, respectively, who were entitled to nominate the new trustee.

6. Mr. Ganju, learned senior Counsel for the plaintiffs has placed reliance on Sections 60, 73 & 74 of the Indian Trusts Act, 1882 (Trusts Act). Section 60 states that the beneficiary has a right, subject to the provisions of the instrument of trust, to ensure that the trust property is properly protected and held and administered by proper persons and by a proper number of such persons. Mr. Ganju submits that the plaintiffs are interested in ensuring appointment of a proper trustee, since the plaintiffs are beneficiaries to the extent of 60% of the trust's income.

7. Sections 73 & 74 read as follows:

73. Appointment of new trustees on death, etc. - Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from Subs. by the A.O. 1950 for "the Provinces" [India], or leaves Subs. by the A.O. 1950 for "the Provinces" [India] for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal civil court of original jurisdiction, unfit or personally incapable to act

in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by-

- (a) the person nominated for that purpose by the instrument of trust (if any), or
- (b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this Section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Appointment by court - Wherever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee u/s 73, the beneficiary may, without instituting a suit, apply by petition to a principal civil court of original jurisdiction for the appointment of a trustee or a new trustee, and the court may appoint a trustee or a new trustee accordingly.

Rule for selecting new trustees - In appointing new trustees, the court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wished of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

8. It is argued that Section 73 also recognizes the right of the person nominated for that purpose in the trust deed to appoint a trustee to fill the vacancy caused, inter alia, on account of the demise of an existing trustee. He submits that the intention of the authors/settlers from the aforesaid Clause 1 of Chapter VI is clear that upon the demise/refusal to act/retirement of a trustee nominated by one of the settlers, it would be the right of the same settler to nominate a fresh trustee. He submits that, in any event, u/s 73(b) Mrs. Santosh D. Shriram, being one of the authors/settlers of the trust is entitled to appoint the new trustee. He submits that defendant No. 3, the other surviving trustee appointed by Mrs. Urmila Dongre had no right to appoint a new trustee under the trust deed and

that authority is vested in defendant No. 1.

9. By reference to Section 74 he submits that the Court is empowered, upon an application being made by the beneficiaries, to appoint a new trustee. While appointing a new trustee the considerations that the Court would keep in mind are the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust and the wishes of the person who is empowered to appoint new trustees. The Court would also consider the question whether the appointment will promote or impede the execution of the trust, and where there are more beneficiaries than one, the Court would also take into consideration the interests of all such beneficiaries.

10. Counsel for the defendant No. 1 has produced in Court an affidavit of defendant No. 1 Mrs. Santosh D. Shriram, wherein, she has stated that in exercise of her discretion under Chapter VI of Clause 1 of the Mansarovar trust, she appoints Mr. Siddharth Shriram as the trustee of the Mansarovar trust in place of deceased trustee Mr. Sanjeev Saran Das.

11. Mr. Chadha, learned Counsel appearing for defendant No. 3, has firstly submitted that the prayer made in the interim application has become infructuous with the resignation of Mr. N.K. Anand, since the only substantive prayer made by the plaintiff was to restrain Mr. N.K. Anand from officiating as a trustee. He further submits that the power to nominate a new trustee under Clause 1 of Chapter VI of the trust deed, upon the initial trustee Mr. Lallan Prasad Gupta retiring from the trust, was a one time power which stood exhausted upon the appointment of Mr. Sanjeev S. Das. He submits that defendant No. 1 was, therefore, not entitled to nominate any further trustees. By placing reliance on Section 73 as extracted above, he submits that the surviving trustee, namely, defendant No. 3 was, therefore, competent to fill up the vacancy. He further submits that on account of resignation of Mr. N.K. Anand, even if the Court is inclined to appoint another trustee, the nominee of defendant No. 1 should not be appointed, and that the Court may appoint any other independent person to act as a trustee. He submits that there is no allegation against defendant No. 3 in his 25 years as one of the trustees of the Mansarovar Trust of acting against the interest of any of the beneficiaries. He submits that there are no two groups of beneficiaries as has been sought to be made out by the plaintiffs. Each trustee is obliged to protect the interest of all the beneficiaries.

12. Mr. Tiku, Senior Advocate, who appears on behalf of defendant No. 2 has also supported the submissions made by Mr. Chadha.

13. Having heard the submissions made by learned Counsels I am prima-facie of the view that there is merit in the submissions of Mr. Ganju. The two settlers, namely, defendant Nos. 1 & 2 each contributed in equal amount of Rs. 5001/- as the corpus of the trust. Both the settlers are ladies belonging to the Charat Ram Group and the Dongre family, respectively. The trustees are to hold and possess the trust's fund. They are to collect all the dividends, interests, rent etc. and all

other income of the trust's fund and to meet all expenses, including all outgoing. Thereafter, they are to divide and distribute the income of the trust amongst the beneficiaries enlisted in Clause 1(c) of Chapter VI of the trust deed. It is not disputed that from out of the corpus of the trust valuable intellectual property had been acquired by the Mansarovar Trust, which, in turn, is being exploited by it to generate income for the benefit of the beneficiaries. The settlers consciously provided for appointment of two trustees initially and also provided that there would be only two trustees and no more. It prima facie, appears from Clause 1 of Chapter VI of the trust deed that Sh. Lallan Prasad Gupta was the nominee of Mrs. Santosh D. Shriram, as upon his ceasing to be a trustee for any reason whatsoever, Mrs. Santosh D. Shriram was entitled to appoint a trustee in his place. Similarly, it appears that Sh. Subodh Varma was the trustee nominated by Mrs. Urmila Dongre since, upon Mr. Subodh Varma ceasing to be a trustee for any reason whatsoever, the trust deed provides that Mrs. Urmila Dongre shall appoint a trustee in his place. Clause 1 not only sets out the mechanism of filling up the vacancy caused on the vacation of his office by one of the two trustees, it further provides that in case one of the two settlers is not willing to, or becomes incapable of appointing a trustee, or dies, the eldest male legal heir of the concerned settler, if willing, shall be the trustee in place of the original nominated trustee. The settlers provided the mechanism to meet even further eventualities, in the event of the eldest male legal heir not being willing or becoming incapable to act as a trustee.

14. It, prima facie, appears that the intention of the settlers was to keep to themselves and to their respective branches the power to appoint trustees in the eventuality of the existing trustee nominated by each of them ceasing to be a trustee.

15. Though the trust deed does not talk of two different groups, considering the fact that Mr. Chadha did not dispute the position that of the 10 beneficiaries the first 9 belong to the Charat Ram Group, and the 10th to the Dongre family, respectively, prima facie, at this stage, I am inclined to accept the submission of Mr. Ganju that the intention of the settlers was to have one trustee nominated from each branch/group so as to ensure the transparent and uncontroversial management of the trust for the benefit of all the beneficiaries belonging to the two groups. Prima facie it seems only logical and reasonable that the interest of the beneficiaries is equitably represented in the management of the trust.

16. Prima facie, at this stage, I am of the opinion that the right of defendant No. 1 Mrs. Santosh D. Shriram to appoint a fresh trustee upon the demise of Mr. Sanjeev S. Das was intact and that it was not a right which could be exercised only once as contended by the defendants. To me it appears, at this stage, that defendant No. 1 is entitled to appoint the new trustee by virtue of Clause 1 of Chapter VI read with Section 73(a) of the Trusts Act. It appears that if the case is covered by Clause (a) of Section 73, there is no question of invoking Clause (b), unless it is a case of nominated person not being "able and willing to act".

This is clear from the opening words of Clause (b) which reads: "if there be no such person, or no such person...."

17. In any event, defendant No. 1 being an author of the trust was entitled to nominate a fresh trustee upon the demise of Mr. Sanjeev S. Das by virtue of Section 73(b) of the Trusts Act. The right of the author of the trust to nominate the trustee takes priority over the right given to the surviving or continuing trustees to nominate a fresh trustee.

18. I may now deal with the objection of Mr. Chadha that the prayer made in the application does not survive due to the resignation of Mr. N.K. Anand. No doubt the first substantive prayer in the application does not survive, but as pointed out by Mr. Chadha himself the trust deed provides that there have to be two trustees at all times. To explain the apparent tearing hurry shown by the defendant No. 3 in seizing the opportunity to appoint a new trustee without even waiting for the ashes of late Mr. Sanjeev S. Das to cool down, Mr. Chadha emphasized that a "crisis" would have arisen if the new trustee was not immediately appointed. It does not, therefore, lie in the mouth of the defendants to oppose the appointment of a provisional trustee. The plaintiffs have made a residuary prayer in the application for the passing of such other or further orders as the Court deems fit in the facts and circumstances of the case. The Court is not powerless to mould the relief in changed circumstances for the purpose of preserving the rights of the parties. Pertinently, Section 74 of the Trusts Act entitles the beneficiary to apply to the principal civil court of original jurisdiction for appointment of a trustee or a new trustee whenever a vacancy or disqualification accrues and it is impractical to appoint a new trustee u/s 73. For these reasons, I am inclined to proceed to appoint a provisional trustee till further hearing of the application.

19. On the application of the considerations enumerated in Section 74 I am, prima facie, of the view that provisionally the nominee of defendant No. 1, namely, Mr. Siddharth Shriram should be appointed as a trustee. The same is in accord with the wishes of the author of the trust, namely, Mrs. Santosh D. Shriram. It is also in accord with the wishes of Mrs. Santosh D. Shriram, who, prima facie, is empowered to appoint the new trustee. The original nominee of defendant No. 2, Mrs. Urmila Dongre, namely, Mr. Subodh Varma (defendant No. 3) is already functioning as a trustee of the Mansarovar Trust. It is the nominee nominated by defendant No. 1 Mrs. Santosh D. Shriram, namely, Mr. Sanjeev S. Das, who has passed away. The appointment of another nominee of Mrs. Santosh D. Shriram, namely, Mr. Siddharth Shriram will promote the execution of the trust. On the contrary, the appointment of a nominee of either defendant No. 2 or defendant No. 3 would be inequitable, as the plaintiffs, who claim to be beneficiaries to the extent of 60% of the trust's income, may lose their right to a proper trustee. As notice above, there are 10 beneficiaries named in the trust deed of which 9 admittedly belong to the Charat Ram Group and the interest of these beneficiaries and their assigns would be better served if the nominee of

defendant No. 1 is permitted to function as a trustee, rather than the nominee of either defendant Nos. 2 or 3 or any other independent person appointed by the Court.

20. Accordingly, till further orders, I appoint Mr. Siddharth Shriram provisionally as a trustee of the Mansarovar Trust, who shall function along with defendant No. 3, Mr. Subodh Varma, as the trustee of the said trust.

21. Observations made in this order are wholly tentative and shall not influence the disposal of the present application or the suit one way or the another. Dasti.