

(2008) 01 DEL CK 0103

In the Delhi High Court

Case No : CS (OS) No. 2054 of 2007 and is No's. 11982/07 and 840/08

Dr. Balbir Singh, Secretary Sir Chhotu Ram Educational Trust APPELLANT

Vs

Charan Singh, Vice Chairman Sir Chhotu Ram Educational Trust and Others RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0103

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : J.P. Dhanda, for the Appellant; K.C. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The above two applications have been filed by plaintiff seeking interim stay.

2. plaintiff filed this suit as a Secretary of Sir Chhotu Ram Educational Trust (for short, "the Trust") against the Vice Chairman and two of the Trustees alleging that the defendants were trying to destabilize the smooth functioning of the Trust and a prayer was made that permanent injunction be granted against the defendants and their agents, representatives not to create hindrance in the administration of the Trust by holding meeting for "no confidence motion" against the present body of the institution i.e. Chairman and Secretary of the Trust on 16th October 2007. On 16th October 2007, when the suit was presented before this Court, this Court granted an ex parte order that the meeting scheduled for 16th October 2007, may be held but no further action in pursuant to the Resolution adopted be taken. The defendants filed written statement and reply to the application. It is submitted that the meeting of 10 trustees of the Trust had taken place on 16th October 2007 and in this meeting "No Confidence Motion" was passed against the Chairman and Secretary Dr. Balbir Singh, of the institution, and it was resolved that both of them shall cease to hold official position in the Trust and institutions which come under the jurisdiction of the

trust and the Vice Chairman of the Trust was requested to look after the work of chairman till a new chairman was appointed.

3. In the written statement filed by the defendants, a stand is taken that the suit itself is not maintainable since no leave of the Court was sought as required u/s 92 of CPC. It is further stated that there was wide scale misappropriation and bungling of funds done by the plaintiff. The plaintiff had opened a parallel account of the trust in the bank and lacs of rupees of the students were deposited in this account and thereafter huge amounts have been misappropriated. It is further stated that the 7 trustees have power to call an emergent meeting and trustees have power to pass a resolution fitting the situation, so as to see that the Trust property and funds are secured and properly managed. It is also submitted that the plaintiff had no right to continue in the Trust as Secretary after the "No Confidence Motion". The plaintiff, under the garb of ex parte interim injunction, has an intention of misappropriating the funds of the Trust.

4. A perusal of Trust Deed of the Trust would show that Dr. Balbir Singh is one of the Trustees out of 18 Trustees named in the Trust and Ch. Birender Singh and Ch. Abhay Ram Dhaiya have been named as founder trustees. The post of Chairman and the Secretary are honorary posts in the Trust and the Chairman and Secretary are to be nominated/elected by the Board of Trustees. It is apparent from the documents that defendant Dr. Yoganand Shastri, one of the Trustees, was given power to nominate the Chairman, Secretary and other office bearers. In accordance with this authorization, Dr. Yoganand Shastri had nominated plaintiff as the Secretary, and Mr. Hoshiyar Singh as Vice Chairman. He also appointed other office bearers to run the Trust. After this nomination, certain disputes crept in about the nomination of the Trustees and their functions and letters were written to Dr. Yoganand Shastri to modify his order. There was discontent among the Trustees and 9 trustees issued a letter to Dr. Yoganand Shastri drawing his attention to the fact that the Trust was not being run in a proper manner by the Board appointed by him and the Board Members were acting in a whimsical manner and an amount of Rs. 38 lac, which was with Ch. Hoshiyar Singh, had not been deposited with the Trust. Another amount of Rs. 70,000/- received from sale of bus had also not been deposited with the Trust. Nine computers were stolen from the D.B. School, pursuant to that an FIR was registered. However, Ch. Hoshiyar Singh Chairman, told the police that he would himself settle the matter. The vehicle of the Trust was being run daily about hundreds of km without any reason or work of the Trust and the Trust was being run without any procedure. These members opined that an emergent meeting should be held. Accordingly an emergent meeting was called to discuss the deadlock and to enable the smooth functioning of the Educational Trust. This meeting was called on 16th October 2007 at 12 Noon, which gave rise to the filing of the instant suit.

5. Section 92 of the CPC provides that no suit can be filed qua a Trust created for

public purposes, of a charitable or religious nature, without first obtaining leave of the Court. Such a suit can be filed either by the Advocate General or two or more persons having interest in the Trust. Such a suit can be filed for the subject matters as enumerated in the Section. There is no dispute that the present suit has been filed only by one person and that too without leave of the Court. I consider that the present suit itself is not maintainable and, Therefore, application under Order 39 Rule 1 and 2 CPC is also not maintainable. The suit, in view of Section 92 CPC could have been filed by one of the Trustees. At least two or more persons are required to file and institute a suit in respect of a public Trust with the leave of the Court.

6. Even otherwise, I consider that it is the prerogative of the Trust to run the Trust in an efficient, honest and proper manner. If the majority of Trustees feel that the Trust is not being run in a proper manner and the funds are being misappropriated, the Trustees can always exercise their right to manage the Trust and recall such persons and hand over the management to other set of persons.

7. In view of my foregoing discussion, the instant suit as well as the applications are hereby dismissed.