

(2007) 08 DEL CK 0089

In the Delhi High Court

Case No : IAs No's. 4048 and 5715 of 2007 in C.S. (OS) No. 974 of 1994

Krishna Gupta

APPELLANT

Vs

All India Women's Conference and Others

RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

All India Womens Conference Constitution — Article 9
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 7 Rule 11, 92
Societies Registration Act, 1860 — Section 5

Citation : (2007) 08 DEL CK 0089

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

Bench : Single Bench

Advocate : Lily Thomas and A.K. Panigrahi, for the Appellant; Atul Y. Chitale and A. Chitale for Defendant No. 1, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This order shall dispose of an application under Order 7 Rule 11 CPC filed on behalf of defendant No. 1 for rejection of the plaint inter alia on the ground that the suit filed by the three plaintiffs u/s 92 of the Code of Civil Procedure, 1908 cannot continue at the instance of sole plaintiff No. 3 after plaintiffs No. 1 & 2 were permitted to withdraw from the suit vide order passed by this Court on 25.01.2006.

2. In order to decide this application it shall be necessary to give a brief background of the case which is as follows:

Defendant No. 1 namely "All India Women's Conference" in short ("AIWC") is a society registered under the Societies Registration Act, 1860. AIWC was founded in the year 1930 to actively work in the general progress, upliftment and welfare of women and children. A piece of land at Bhagwan Dass Road, New Delhi measuring 3 acres was acquired by defendant No. 1 Society from the Central Government through a perpetual Lease Deed dated 22.10.1962 at a nominal price. The land was given to the Society by the Central Government for setting

up a memorial to Sarojini Naidu and Margret Cousins. Huge construction now stands on this property, part of which is stated to have been rented out to Agha Khan Foundation, City Bank, Canara Bank and M/s Dalal Consultants and Engineers Pvt. Ltd. AIWC has about 500 branches with more than one lac members spread throughout the country. Its headquarter is located at 6, Bhagwan Dass Road, New Delhi.

3. AIWC constituted a Trust in the year 1975 with the object of carrying out the construction of a multi-storeyed building on the land allotted to AIWC; to establish, manage and maintain and provide in the said building [i] an Auditorium for Women's meetings, seminars, discussions and educational and cultural programmes; [ii] libraries, reading rooms, information centres and study circles for women and children; [iii] an international hostel for the young women; and [iv] to provide requisite facilities, amenities and conveniences in connection therewith. Under Clause (5) the Trustees were to get and collect the income and rent of the said building and the income rent interest and dividend of the Trust Fund from time to time and to pay therefrom all costs, charges and expenses relating to management, preservation, upkeep and maintenance of the building mentioned above.

Defendants No. 2 and 3 namely Shobhana Ranade and Dr. Aparna Basu were the former Hon. President and former Hon. Vice President respectively; defendant No. 4 Dr. Kalavathi Tripathi was the former Hon. Treasurer of AIWC whereas defendant No. 5 Dr. Lakshmi Raghuramiah (deceased) was the Managing Trustee of the AIWC Trust.

4. plaintiffs No. 1 and 2 namely Sarla Shah and Usha Bhowmik respectively are the two members of defendant No. 1 Society from Maharashtra Branch. plaintiff No. 3 (Krishna Gupta) claims herself to be a member of Delhi Branch. The plaintiffs had filed an application in this Court seeking leave of the Court to institute a suit u/s 92 CPC against the defendants alleging inter alia that there was mis-management of the income of the Trust, rent realized was not credited to the Trust Account, claiming the following reliefs:

(i) to declare that by virtue of Section 5 of the Societies Registration Act, 1860 the AIWC Estate, income arising therefrom and donations received shall vest in the trustees as provided in the Trust Deed of 1975 read with Article IX of the AIWC Constitution & they alone are competent to execute the lease and other deeds for the use and occupation of AIWC Estate;

(ii) to declare that the trustees alone are entitled to receive the rents, arrears, payments and income arising from AIWC Estate;

(iii) to pass such other further orders as this Hon. Court may deem fit and proper;

5. The permission, as required, to institute the suit u/s 92 of the CPC was granted to the plaintiffs vide order passed by this Court on 08.05.1994. This permission was granted to them ex-parte. After the service on the defendants,

an application was moved by them for recall of grant of leave to file the suit u/s 92 CPC and for dismissal of the suit. This application of the defendants was allowed by the Learned Single Judge vide order dated 20.01.1995 and leave to institute the suit was revoked holding that the reliefs claimed in the suit did not fall u/s 92 CPC.

6. Aggrieved against the order of the Learned Single Judge, the plaintiffs filed an appeal before the Division Bench which was allowed vide order dated 22.09.1996 whereby the order of the Learned Single Judge granting leave to institute the suit u/s 92 CPC was restored. Aggrieved therefrom the defendants filed a SLP before the Supreme Court which was dismissed vide order passed by the Hon'ble Apex Court on 22.09.2004.

7. From the above it is apparent that the parties had agitated the question of grant of leave to the plaintiffs to institute the suit u/s 92 of the Code of Civil Procedure, 1908 right up to the Apex Court. The order granting leave to the plaintiffs passed by this Court was upheld up to the Apex Court and it seems that the parties had spent about 10 years since the institution of the suit in litigating only on the point of grant of leave to the plaintiffs to institute the suit u/s 92 CPC.

8. After the order granting leave became final, two of the plaintiffs being plaintiffs No. 1 & 2 withdrew themselves from the array of the plaintiffs leaving plaintiff No. 3 Krishna Gupta as the sole plaintiff to continue with the proceedings of the present suit. plaintiffs No. 1 and 2 were allowed to withdraw from the suit vide order passed by this Court on 25.01.2006 on an application being IA No. 3163/2005 filed on their behalf. Paras 3 to 6 of their said application are relevant and are extracted below:

3. That in the interregnum the All India Women's Conference i.e. the Defendant No. 1 has had several elections and the Governing Body has also undergone change of personnel from time to time. Similarly, the Executive Committee of the Defendant No. 1 has also changed from time to time.

In the circumstances, the reliefs sought for in the suit, with passage of time against the then Committee Members has virtually become infructuous and is of no effect whatsoever.

In that view of the matter, the applicants, by separate letters addressed to their respective Advocate, requested for withdrawal of the suit in so far as the applicants/plaintiffs No. 1 and 2 herein are concerned. Copies of the said correspondents dated 24.12.2004 addressed by the plaintiff No. 1 and dated 27.01.2005 addressed by the plaintiff No. 2 are annexed hereto and marked as ANNEXURES PA-1(Colly) to this application.

4. That despite such requests the Advocate has not yet withdrawn the suit and also despite various requests has not yet effected the change of Vakaltnama.

In the circumstances, the applicants herein are constrained to file the instant application under the provisions of Order XXIII Rule 1 of the Code of Civil

Procedure, 1908 inter-alia praying for leave to withdraw the suit in so far as the applicants are concerned.

It is, therefore, prayed accordingly.

5. Until or unless orders as prayed for are passed, the plaintiffs No. 1 & 2 herein/ Applicants shall suffer an irreparable loss and injury.

6. That this application is bona fide and made in the interest of justice.

9. After plaintiffs No. 1 & 2 had withdrawn themselves from the present suit, defendant No. 1 has filed the instant application seeking rejection of the suit mainly on the ground that the suit at the instance of only one plaintiff cannot continue in view of provisions contained in Section 92 of CPC which require presence of two or more persons in a suit to be filed u/s 92. Mr. Chitale appearing for defendant No. 1 had placed reliance on a judgment of the Hon'ble Supreme Court in *Narain Lal and Others Vs. Sunder Lal (Dead) and Others*, wherein it was held as under:

We hold that an authority to sue given to several persons without more is a joint authority and must be acted upon by all jointly, and a suit by some of them only is not competent. AS Sir George Rankin said in *Musammat Ali Begam v. Badr-ul-Islam Ali Khan* 5, "where the consent is writing of the Advocate-General or Collector is given to a suit by three persons as plaintiffs, the suit cannot be validly instituted by two only. The suit as instituted must conform to the consent." One the representative suit is validly instituted, it is subject to all the incidents of such a suit; the subsequent death of a plaintiff will not render the suit incompetent, see *Raja Anand Rao v. Ramdas Daduram*⁶, and an appeal by some of the plaintiffs impleading the remaining plaintiff as a respondent is not incompetent because all did not join as appellants, see *Musammat Ali Begam v. Badr-ul-Islam Ali Khan*.

10. On the strength of the above judgment, Mr. Chitale had argued that the permission to sue granted to three plaintiffs was a joint permission and the same cannot be acted upon at the instance of sole surviving plaintiff being plaintiff No. 3 herein. The contention of Mr. Chitale was that the suit filed u/s 92 of CPC cannot continue only at the instance of one plaintiff.

11. Ms. Lily Thomas appearing for plaintiff No. 3 had repelled the aforementioned contention urged on behalf of defendant No. 1. Her contention was that the institution of the suit and its continuation are two distinct matters. She argued that for institution of the suit u/s 92, presence of two or more persons is required but after the institution of the suit, there is no such requirement of two or more persons in law to continue with such a suit. Ms. Thomas had placed reliance on a Division Bench Judgment of Sind High Court in *Hashim Haroon v. Gounslishah and Ors.* AIR 1942 Sind 137 wherein it was held as under:

...After the suit had been instituted, he had filed a statement to the effect that he did not desire to continue the suit against the appellant, and it was argued

that his consent to join as a plaintiff had been obtained by misrepresentation. The reason for this is apparent from his admission that the appellant had been paying his Rs. 5 per month. There is no reason whatever for supposing that the signature of plaintiff 2 had been obtained on the plaint by any misrepresentation or by any fraud. It is obvious that the appellant had succeeded in getting round plaintiff 2 after the institution of this suit. As the learned Judge pointed out there is nothing in Section 92 which requires that all the plaintiffs to whom sanction had been given for filing the suit should after filing the suit continue actively to prosecute the suit, and we cannot see any substance whatever in this contention of the appellant.

12. This Court has given its anxious consideration to the rival submissions made by the counsel for the parties. This Court is of the considered view that representative suit validly instituted pursuant to permission granted u/s 92 CPC can be continued even at the instance of a sole plaintiff. The requirement of two or more persons as provided for in Section 92 is only for the purpose of initial institution of the suit relevant for granting or not granting permission required u/s 92. Once the representative suit is validly instituted, it is subject to all the incidents of such a suit. The subsequent death of one of the plaintiffs or his deletion from the array of the plaintiffs for any reason would not make the suit incompetent after grant of permission. Suits u/s 92 CPC are filed primarily for challenging the affairs of a public trust for grant of relief as provided in Section 92. After filing of such a suit, the possibility of winning over of some of the plaintiffs by the other side cannot be ruled out. In the present case, the permission to institute the suit was granted when there were three plaintiffs in the case. Later on two out of them withdrew themselves from the contest. This, in my opinion, would not disentitle plaintiff No. 3 to continue with the proceedings of the present suit only because two of the plaintiffs have withdrawn from the contest. After the grant of permission by the Court, the active participation by all the plaintiffs was not required to continue with the proceedings of the present suit. The judgment of the Supreme Court in Narain Lal's case (Supra) is distinguishable on the facts of the present case inasmuch as in Narain Lal's case the Hon'ble Apex Court was seized with the question of validity of a suit instituted by some out of several persons to whom permission to sue was granted by the Advocate General. In that case, the very institution of the suit was questioned as the suit was not filed by all the persons jointly in whose favour permission was granted. This is not the case here. What has been questioned here before this Court is the right of the sole surviving plaintiff to continue with the present suit filed u/s 92 of the Code. In my view, subsequent withdrawal by plaintiffs No. 1 & 2 would not disqualify plaintiff No. 3 from continuing with the proceedings of the present suit. Even the Hon'ble Apex Court has observed in Narain Lal's case (Supra) that once a representative suit is validly instituted, it is subject to all the incidents of such a suit and that the subsequent death of the plaintiff will not render the suit incompetent. Similar view, as taken by the Supreme Court in Narain Lal's case was taken by the

Division Bench of Sind High Court in Hashim Haroon's case (Supra). This adequately lends credence to the view taken by this Court that a suit validly instituted by two or more persons after obtaining requisite permission as required in Section 92 CPC, the said suit can be continued even at the instance of one plaintiff only.

13. Mr. Chitale appearing on behalf of defendant No. 1 had further argued that AIWC Trust which was created for the object of carrying out the construction of a multi-storeyed building at Bhagwan Dass Road, New Delhi was revoked by the Standing Committee at its Annual General Meeting in June, 1997 in terms of Article 33 of the Trust Deed dated 01.09.1975. It was urged by him that since the Trust stood revoked, the cause to continue with the present case even otherwise does not survive. The contention regarding revocation of the Trust cannot be gone into while deciding the instant application seeking rejection of the plaint under Order 7 Rule 11 CPC. The question of validity of revocation shall be examined at appropriate stage of the proceedings.

14. For the foregoing reasons, this Court does not find any merit in the instant application of defendant No. 1 and the same is therefore dismissed but with no order as to costs.

I.A. No. 5715/2007

During arguments on this application, the counsel for the plaintiff had agreed to produce the plaintiff No. 3 Krishna Gupta before the Court on the next date of hearing and in view of said statement made by the plaintiff's counsel, the instant application was not pressed by the counsel for defendant No. 1. The instant application has even otherwise become infructuous in view of statement made by the plaintiff's counsel to produce the plaintiff before the Court on the next date of hearing.

The instant application is disposed of accordingly.