**(2010) 01 DEL CK 0126**

**In the Delhi High Court**

**Case No :** CS (OS) 1478 of 2007

Lt. Gen C.K. Kapur (Retd.) and Others APPELLANT

Vs

Guruji Ka Ashram and Others RESPONDENT

**Date of Decision :** 06-01-2010

**Acts Referred:**

**Citation :** (2010) 01 DEL CK 0126

**Hon'ble Judges :** S. Ravindra Bhat, J

**Bench :** Single Bench

**Advocate :** Pinky Anand and Aakanksha Munjhal, for the Appellant; Sanjay Jain Amresh Mathur and Ruchi Jain, for the Respondent

# Judgement

S. Ravindra Bhat, J.

I.A. No. 9803/2009

1. The plaintiffs in this trust suit u/s 92 seek various reliefs, including the proper management of the first defendant Trust. By an order of this Court, the permission to sue, u/s 92, was granted. The record also discloses that by two orders dated 09.01.2008 and 10.04.2008, certain interim directions were made whereby the plaintiffs'' willingness and readiness to spend amounts for construction of a nursing college in Punjab and also bear the salaries of employees working in the Trust, besides certain other day-to-day expenses, was recorded.

2. By the present application, the plaintiffs seek appointment of a Receiver, contending that the facts unveiled are on account of the expenditure disclosed to a Chartered Accountant (who visited the defendants'' Trust and inspected the books of accounts) reveal disturbing facts. It is submitted that the Trust had paid Rs. 82,68,740/- to M/s. M.R. Buildcom Private Limited for the construction of late Guru Nirmal Ji''s Samadhi. The plaintiffs submit that the amount claimed by the builder was excessive and that the Trust willingly paid it. The Chartered Accountant''s objection to this course appears in the inspection note/report,

which states that the award of the contract was not preceded by competitive bidding and the Contractor had charged Value-Added Tax (VAT) at 12.5% on the total billed amount, which was excessive. According to the Chartered Account, the Contractor was entitled to deduction of 20% for labour charges and, therefore, the VAT amount should have been lower. The principal objection on this head of expenditure appears to be that the amount paid by the Trust was excessive and disproportionate, having regard to the area of construction.

3. The second ground on which the Receiver''s appointment is sought is the amounts spent by the Trust towards construction of nursing college at Dugri, Punjab; the amount spent here was approximately Rs. 10,00,000/-. The plaintiffs'' contention on this score is that the construction was proceeded without any approval by authorities and, therefore, it is unauthorized and illegal. The third ground on which the Receiver''s appointment is sought is that as against the previous year''s (2007-08) expenditure, of Rs. 8,00,000/-, towards langar and other festivals, the later year''s expenditure is disclosed to be in excess of Rs. 30,00,000/-. The plaintiffs argue that this is without any justification and points to waste and bad management on the part of the Trustees. It is also argued that there has been no accounting of the cash received from the devotees.

4. Learned Counsel for the plaintiffs submit that having regard to the well-settled principles that the Court should take into consideration while deciding whether or not appointment of Receiver is called for, the facts of the case as made out are sufficient for an order appointing a Receiver. She relies upon decision of the Bombay High Court in Institute Indo-Portuguese and Others Vs. Theotonio Borges and Others, ; Kothari Plantations and Industries Ltd. v. Dakshinpat Satra and Ors. AIR 1973 Gau 74 and Srinivasa Rao v. Baburao and Anr. AIR 1970 Mys 141.

5. The defendants contest the application and argue that each instance of alleged wasteful expenditure is based on mis-statements of facts. It is contended that the construction cost paid to the Contractor, i.e. Rs. 82,68,740/- was not in respect of the building of the Samadhi alone; it also pertained to developing and improvement of the surrounding areas. The defendants submit that the total area, which was developed and built, was in excess of 1900 square feet. They rely upon the tender estimates furnished by the Contractor and submit that the final bills were paid after the construction was duly completed. As far as the construction of nursing college is concerned, the defendants rely upon the previous order of this Court whereby the plaintiffs'' consent for the construction at the site in Punjab was recorded when it was stated that the construction cost would be undertaken by them (the plaintiffs). It is argued besides, that the plaintiffs'' conduct renders the application liable to be dismissed because they (the plaintiffs) did not fulfill the commitment of depositing the amounts towards day-to-day expenses and salaries of Trust''s employees or even deposit the imprest amount of Rs. 50,000/- by this Court''s order.

 

6. The defendants'' submission with regard to the expenditure borne by the Trust in connection with various festivals celebrated in the previous year is that for the preceding years, during the lifetime of Guruji, the expenditure was borne directly by the devotees, who used to donate generously. It is contended that after the disputes arose concerning the management of the Trust, the donations have dwindled and the Trust has been spending the amounts from its funds.

7. Besides the above, the defendants argue that the original objective of the Trust was to create a corpus of Rs. 100 crores, which continues, and at the time of Guruji''s death, the Trust had cash assets of Rs. 40 crores. It is emphasized that this corpus has not been disturbed. It is argued that the defendants have not indulged in any wasteful expenditure of the kind that would necessitate appointment of a Receiver.

8. The Court has considered the submissions as well as the pleadings on the application. As noticed, the request for appointment of Receiver is premised on three main grounds, i.e. the alleged excessive expenditure towards cost of construction of the Samadhi - according to the plaintiffs, the area of construction was 900 square feet and the amount spent, Rs. 82,68,740/-, is disproportionate and excessive. On this, the Court has considered the tender documents submitted by the Contractor. Prima facie they disclose the area submitted by the Contractor as well as the photographs. No doubt, the Samadhi area itself would be in the range of 900 square feet, yet the Trust appears to have undertaken improvement of the surrounding areas. The tender documents disclose that the total area constructed upon is much more than the Samadhi area. Besides, the nature of construction appears to have entailed the kind of expenditure which took place. Having regard to these circumstances and the undisputed fact that the Samadhi and the surrounding areas were developed, as evidenced by the series of photographs relied on by the defendants, the Court is of the opinion that the plaintiffs'' arguments on this score cannot be accepted. As far as construction of nursing college is concerned, that fact was within the knowledge of plaintiffs, who had volunteered to pay the amounts. During the course of submissions, it was argued that the defendants did not obtain necessary sanctions or approvals as a result of which the plaintiffs did not pay the funds. It is not for this Court to fathom what necessitated the plaintiffs'' volte face. The defendants have placed on record letter of the Department of Town and Country Planning, Punjab, dated 26.05.2009 and the copy of an approval issued by the concerned authority of the Government of Punjab, dated 03.06.2009, approving the building plans. Having regard to these, the plaintiffs'' contentions regarding the construction of nursing school are untenable and baseless.

9. The last submission is regarding the alleged excessive expenditure incurred towards festivals etc. The defendants'' explanation here is that during the lifetime of Guruji, who attained Samadhi on 31.05.2007, the Trust did not have to spend large amounts, as in the normal course, the devotees used to donate liberally. It is argued that after the Samadhi of Guruji, such voluntary effort is

 

not forthcoming due to the disputes pending between the factions, which has necessitated the present suit. Facially, the expenses have undoubtedly increased. However, the Court cannot be unmindful of the practical situation in these circumstances. The followers of Guruji appear to be large in number; in the event of their unwillingness to donate like previous years (in his lifetime) the financial burden would inevitably have to be borne by the Trust. This aspect alone is not sufficient for the Court to conclude that there was wasteful expenditure of the kind that would entail appointment of the Receiver.

10. Having regard to the above circumstances, the Court is of the opinion that the application is not justified. I.A. No. 9803/2009 is accordingly dismissed with costs, quantified at Rs. 50,000/, to be paid by the plaintiffs, to the defendants, within four weeks.

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Learned Counsel for the parties request the Court that the file in the digital format may be supplied to both the counsel. The Registry is directed to appropriately furnish electronic file in a DVD to the counsel for plaintiffs and defendants, and also make available similarly the file to the Local Commissioner, to expedite the process of recording evidence.

List before the Local Commissioner on 18.01.2010 at 03.30 pm. List before the Court on.