

(2014) 12 CAL CK 0084
In the Calcutta High Court
Case No : CSOS No. 1 of 2012

Om Prakash Mohta

APPELLANT

Vs

Raj Kumar Daga

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 129, 92
Trusts Act, 1882 — Section 46

Citation : (2014) 12 CAL CK 0084

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Jishnu Saha, Sr. Adv., Sakya Sen and Asish Mukherjee, Advocate for the Appellant; Jayanta Kumar Mitra, Sr. Adv., Gautam Chakraborty (Jr.) and Soma Bera, Advocate for the Respondent

Judgement

Soumen Sen, J.—The plaintiffs and the defendants have a common ancestry from Late Bulakidasji Mohta.

2. On 22nd July, 1950, Late Srikunwar Mohta created a charitable trust in the name and style of Mohta Charitable Trust appointing Bhagirathji Mohta since deceased and Om Prakash Mohta since deceased as the first trustees. During her lifetime, Srikunwar Mohta executed a supplementary deed of trust amending some of the provisions of the original trust deed dated 1st May, 1961.

3. The plaintiff No. 1, namely, Om Prakash Mohta since deceased along with four others have filed this originating summons suit for interpretation and/or determination of some questions relating to the original deed of trust and the supplementary deed of trust.

4. Om Prakash during the pendency of this proceeding died on 26th December, 2012.

5. After the execution of the supplementary deed of trust dated 1st May, 1961, Bhagirathji Mohta died on 18th May, 1961. The settlor Srikunwar Mohta was

alive. By a resolution of the trustees dated 2nd June, 1961, Om Prakash Mohta was appointed as a managing trustee. At the said meeting Goura Devi Mohta, wife of Bhagirath Mohta was also appointed as a trustee. Subsequently, by another resolution dated 10th June, 1961, Shree Prakash Mohta and Hari Prakash Mohta, both sons of late Bhagirath Mohta were also appointed as trustees. At the said meeting, the settlor expressed her desire to be relieved from the obligations as a trustee by reason of her advanced age and in view thereof, her resignation was accepted and she was allowed to step down. In such circumstance, on and from 10th June, 1961, Om Prakash Mohta continued to be the managing trustee of the trust and Goura Devi Mohta, Shree Prakash Mohta and Hari Prakash Mohta were appointed as trustees and Om Prakash Mohta chaired the said meeting as the managing trustee of the said trust. Shree Prakash Mohta was also present at the said meeting.

6. On 5th September, 2011, Vrinda Prabhakar Rao and Aditi Singhal daughter of Gyan Prakash Mohta and Mahendra Kumar Mohta were appointed as trustees. The said meeting was chaired by Om Prakash Mohta.

7. The dispute appears to have arisen in respect of the minutes of the meeting dated 6th February, 1999, 29th March, 2001 and 5th September, 2011.

8. The plaintiff alleged that in or around 29th March, 2001, series of fabricated resolutions of the trust were prepared by or at the instance of Shree Prakash Mohta, whereby Om Prakash Mohta was alleged to have been removed from the office of the managing trustee of the trust. It is alleged that none of the said resolutions unlike the earlier resolutions bore the signature of Om Prakash. The plaintiff has referred to various proceedings that are pending between the parties, namely, two suits at City Civil Court and one suit at Alipore Court in which issues were raised with regard to such resolutions as well as the administration of the trust. In one of such proceedings, namely, T.S. No. 678 of 2004 Om Prakash Mohta prayed, inter alia, for a declaration that Mohta Charitable Trust is entitled to be represented by him as its managing trustee and he is entitled to open and operate bank accounts. The plaintiff alleged that all activities of the trust have effectively come to a stand still by reason of the defendants' wrongful and illegal act in holding themselves out as trustees.

9. Under such circumstances, the plaintiffs have filed this originating summons formulating the following questions concerning the interpretation of the trust deeds dated 22nd July, 1950 and 1st May, 1961 and with regard to the management and administration of the trust:-

a) Whether the managing trustee of the trust can be removed from office of managing trustee by any trustee or by any persons purporting to act as trustees of the trust?

b) Whether a representation to the effect that the managing trustee of the trust has resigned or stepped down can be supported in the absence of any written resignation tendered by him to the trust?

c) Whether any existing trustee of the trust could be designated as managing trustee without the existing managing trustee first having vacated his office or having signified in writing duly signed by him the consent to the appointment of such trustee as the managing trustee?

d) Whether a trustee of the trust can be appointed without the express consent of its managing trustee?

e) Whether any appointment purported to be made without the consent of the managing trustee by signing resolutions of the trust can be regarded as valid appointment and can confer on the purported appointees the powers vested in trustees under the deeds dated 22nd July, 1950 and 1st May, 1961?

f) Whether any bank account of the trust can be opened or operated by any trustee without the express approval of the managing trustee?

g) Whether the will of the managing trustee can be overridden by any other trustee or trustees or by any person purporting to act as trustee of the trust?

h) Whether the defendants or any of them are entitled to represent or hold themselves out to be the trustees of the Mohta Charitable Trust or are entitled to attempt to administer the said trust or to open or operate any of its bank accounts?

10. Mr. Jishnu Saha, senior Advocate along with Mr. Sakya Sen, Advocate advanced the argument on behalf of the plaintiffs.

11. The learned senior Counsel has referred to Clauses 6 and 9 of the original deed of trust and submitted that the resignation of a trustee can only be effected in writing subject to his liability for accounting or otherwise if any. It is submitted that Clause 5(d) of the Original Trust gives power to the first trustees to co-opt two or more trustees. The resolutions on which the defendants have relied upon to show that Om Prakash Mohta had resigned would not show that such resignation was made in writing by Om Prakash Mohta. The deed of trust does not contemplate any other manner or mode of resignation except in writing. Accordingly, the purported resolutions relied upon the defendants in order to show that Om Prakash Mohta had, in fact, resigned as trustee is not enforceable.

12. It is submitted that Clause 4 of the amended deed which relates to appointment of new trustee must be read as supplementing the provision for appointment contained in clause 5 of the original deed and not as substituting the same. Accordingly, all questions concerning appointment of trustees would be governed by clauses 5(a) to (d) of the original deed read with clauses 4 and 5 of the amended deed. In any event, a meaningful reading of clause 4 of the amended deed itself makes it clear that the appointment of a new Trustee could be made during the lifetime of the settlor and even thereafter by her son Bhagirath Mohta or by his eldest son Om Prakash Mohta, and only thereafter by the Trustees for the time being. Any other interpretation of the said clause would render the words "or by his eldest son Om Prakash Mohta" otiose. It is now

settled law that Courts may imply terms which are necessary in order to repair an intrinsic failure of expression in the contract, in other words, which would implement the presumed intention and give business efficacy to the contract. The learned senior Counsel has referred to the following decisions in support of the aforesaid submission:-

- i) Navnital and Co. and Others Vs. Kishanchand and Co., ;
- ii) Umedsingh Hamirasingh and Others Vs. The Marsden Mills, Limited and Others, ;
- iii) Gulabchand Gambhirmal Vs. Kudilal Govindram and Another, ;
- iv) Koduri Krishnarao Vs. State of Andhra Pradesh, Hyderabad, ;
- v) The Nadiad Borough Municipality Vs. The Nadiad Electric Co. Ltd., ;
- vi) Deviprasad Khandelwal and Sons Vs. Union of India,

13. It is argued that every deed or document must be considered with reference to its object and the whole of its terms and, accordingly, the whole context must be considered in order to gather and understand the intention of the parties, even though the immediate object of enquiry would be to ascertain the meaning of an isolated clause. In this regard reference is made to the following decisions:-

- i) Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, ;
- ii) Bank of India and Another Vs. K. Mohandas and Others, ;
- iii) Commissioner of Income Tax, Kolkata Vs. Hoogly Mills Co. Ltd.,

14. It is argued that it is settled law that no part or term of a contract should be considered to be a meaningless surplusage. Ordinary and natural interpretation should be made except where the same would lead to an absurdity. The following decisions have been relied upon by the petitioner in support of the aforesaid contention:-

- i) National Agricultural Co-op. Marketing Federation India Ltd. Vs. Gains Trading Ltd.,
- ii) Krishna Beharilal Vs. Gulabchand and Others,

15. In a meeting of the trustees held on 6th February, 1999, Om Prakash Mohta informed that as one of the trustees of the Trust he had invoked his powers under clause 5(d) of the original deed and clause 4 of supplement deed to co-opt two trustees, namely, Gyan Prakash Mohta and Mahendra Kumar Mohta as trustees in writing. The said minutes was signed by Om Prakash Mohta as Managing Trustee.

16. On 5th September, 2011, all the trustees of the trust with the consent of Om Prakash Mohta as Managing Trustee appointed two further trustees. The minutes

was signed by Om Prakash Mohta as Managing Trustee.

17. A rival claim has, however, been set up by Shree Prakash Mohta and his group on the basis of an alleged meeting held on 29th March, 2001, which purportedly shows that Shree Prakash Mohta appointed himself as managing trustee and further appointed one Madav Prakash Mohta, one Suman Mohta and one Raj Kumar Daga as trustees. There is another meeting alleged to have been held on 17th April, 2002 whereby a resolution was allegedly passed for opening of new bank account at Allahabad Bank, Chandni Branch to be operated by signature of any of the two of the newly appointed three trustees and Shree Prakash Mohta.

18. In the context of the aforesaid rival claim being made on the basis of the purported minutes dated 29th March, 2001, several questions have been framed and the opinion of this Hon'ble Court has been sought primarily concerning the appointment, resignation and rights of managing trustee and other trustees.

19. The mode and method of appointment of a trustee is governed by clause 5 of the original deed of trust read with clause 4 of the amended deed. The appointment of Om Prakash Mohta as Managing Trustee on 2nd June, 1961 by the Settlor conferring to Om Prakash Mohta all powers of Managing Trustee that were vested in Bhagirath Mohta is admitted. The trust was functioning in or about 6th February, 1999 with the minimum number of two trustees. On that date, in terms of clause 5(d) of the original deed of trust, Om Prakash Mohta, being a first trustee and having the power to co-opt two trustees, exercised the power and appointed two trustees. This appointment is challenged by the defendants on the ground of lack of authority and power of Om Prakash to appoint any such trustees without the consent of the other trustees.

20. It is submitted that the summons is taken out to invite this Court to give an opinion as to whether oral resignation or resignation by any other means except in writing is contemplated in the original deed of trust or in the supplementary deed of trust. In fact, Clause 4 of the supplementary deed of trust requires that the appointment of a new trustee shall be made in writing and in absence of any letter showing that the defendants were appointed as trustees on the basis of alleged fabricated minutes whether such appointment could be treated as valid and whether the original deed of trust or the supplementary deed of trust contemplate appointment of a trustee in any other manner other than that has been specified in Clause 4 of the Supplementary Deed of Trust. On the question of maintainability of the suit, the learned Counsel has referred to Rule 1(g) and Rule 17 of the Original Side Rules to submit that if in deciding an issue as to the appointment of the defendants as trustees or the resignation of the plaintiff No. 1, the Court is not precluded from holding a trial to decide such issue. The said Rule 1(g) and Rule 17 reads:-

"R. 1(g). The determination of any question arising in the administration of the estate or trust.

R. 17. When O.S. May be supported by evidence. On the hearing of the summons, where the parties thereto do not agree to the correctness of the facts set forth in the affidavit, the Judge may order the summons to be supported by such evidence as he may think necessary; and may give such directions as he may think just for the trial of any questions arising thereout. The Judge may make amendment in the affidavit and summons as may seem to him to be necessary to make them accord with the existing state of facts, so as properly to raise the questions in issue between the parties."

21. The learned Counsel has referred to a decision in Dinar Rashid Wadia and Another Vs. Kersy Eruch Lalkala and Others, and submitted that the learned single Judge of the Bombay High Court in an originating summons permitted the parties to adduce oral and documentary evidence to establish the existence and non-existence of the Will in order to answer the issues raised in the originating summons with regard to the administration of a trust property in which the defendants have set up a defence that by reason of the Will, the plaintiffs cannot claim to be beneficiaries under the said deed of trust.

22. Mr. Jayanta Kumar Mitra, learned senior Counsel with Mr. Goutam Chakrabarty (junior) has submitted that the large part of the issues raised in this originating summons suit has now become academic and lost their relevance. It is submitted that Om Prakash Mohta, the alleged Managing Trustee, has expired on 26th December, 2012. It will appear from the questions posed for determination of this Hon'ble Court that save and except Question No. (h) all the queries are pertaining to the office of the Managing Trustee, and are based upon the assertions of Om Prakash Mohta, claiming to be the Managing Trustee of the Trust. It is submitted that on the death of Om Prakash Mohta, all such queries have become academic and may not require any adjudication by or opinion of this Hon'ble Court. The plaintiff No. 1 is dead. Accordingly, Query No. (a) to (g) have lost their relevance and become otiose. In such circumstances, it is submitted that the instant Originating Summons Suit ought not to be tried by this Hon'ble Court.

23. It is submitted that during the lifetime of Om Prakash Mohta, the following Suits were instituted by and between the parties in which the issues of the appointment of the Managing Trustee and other Trustees of the said Trust are directly involved:-

(a) Title Suit No. 819 of 2003 in the City Civil Court at Calcutta claiming, inter alia, decree of declaration that the defendants had no right to open new bank accounts or to operate the existing bank accounts to the exclusion of the plaintiffs without passing resolution in the meeting of the Trust; decree of declaration that Om Prakash Mohta is the legally appointed Managing Trustee of Mohta Charitable Trust and the plaintiff Nos. 2 and 3, being his sons were duly appointed as the other Trustees of the Trust; for declaration that Om Prakash Mohta, as the Managing Trustee was alone entitled to function as such in terms of the Deed of Trust and he alone has the right to open and operate new bank

account and for other reliefs.

(b) T.S. No. 678 of 2004 in the City Civil Court filed by the plaintiff Nos. 1, 2 and 3 herein, inter alia, for declaration that Mohta Charitable Trust is entitled to be represented by Om Prakash Mohta as its Managing Trustee, and consequently to open bank account on behalf of the Trust; for declaration that defendant banks are legally and contractually obliged to permit Om Prakash Mohta as the Managing Trustee to operate the said bank account and for other reliefs.

(c) C.S. No. 441 of 2002 in this Hon'ble Court, being a suit under Section 92 of the Code of Civil Procedure filed by the widow, daughter and son of Late Hari Prakash Mohta, one of the Trustees, against all the Trustees, including the plaintiff Nos. 1, 2 and 3 herein for various reliefs, including removal of the defendants herein from the Trusteeship of the said Trust; for appointment of the plaintiffs as Trustees; for divesting the Trust properties from the defendants and vesting the same in the plaintiffs; for framing of a scheme for administration of the said Trust; for injunction and other reliefs. In this Suit, on an application made by the plaintiffs an interim order appointing Special Officer was passed. On 2nd January, 2003, the Special Officer has filed a Report.

Though the Title Suit No. 819 of 2003 was dismissed for default on 21st December, 2009, an application for restoration of such Suit is pending in the City Civil Court at Calcutta.

24. It is, thus, submitted that the very issue with regard to the justification and legality of Om Prakash Mohta to act as a Managing Trustee and appointment of his sons as trustees of the said trust are pending adjudication in three different proceedings in three different courts. The controversy involved in these suits would show that it relates to a claim made by Om Prakash Mohta as a Managing Trustee which is being disputed by the other trustees. The factum and genuineness of the meetings relied upon by the plaintiffs in such proceeding are also being disputed pending adjudication in such civil suits. All such disputes are required to be resolved in the pending civil suits on the basis of evidence to be adduced by the respective parties. Consequently, the Originating Summons Suit cannot be decided except on oral evidence. The learned senior Counsel has referred to the minutes of the meetings of the Board of Trustees dated 6th February, 1999 and 5th September, 2011 on the basis whereof the plaintiff Nos. 2, 3, 4 and 5 were trying to justify their appointment as trustees and Om Prakash was also justifying his continuance as Managing Trustee. It is submitted that significantly these minutes were not signed by the other trustees, whereas the undisputed minutes were signed by all the trustees. The defendants have relied upon the minutes of the meetings of the trustees dated 29th March, 2001, 17th April, 2002, 6th November, 2002, 24th March, 2003 and 11th June, 2003 and submitted that the plaintiffs are challenging the factum and validity of the said minutes and it has been admitted in the Originating Summons Suit that in view of existence of such minutes they were constrained to file Title Suit No. 819 of 2003. The learned senior Counsel has also relied upon the observations of the

Special Officer in one of the pending proceedings in which the Special Officer appears to have stated that the account has been opened by one Sri Prakash Mohta with proper documents and authority from the other trustees, namely, Om Prakash Mohta, Madhav Prakash Mohta, Sumon Mohta and Raj Kumar Daga. The observations of the Special Officer were also relied upon to show that the originals of the so-called disputed minutes were produced by the Special Officer at the time of inventory and the assertion of the plaintiffs that such minutes are fabricated and the originals are never produced is incorrect.

25. In view of the pendency of the issues before three different courts it is submitted that this Court may decline to adjudicate on such issues or give any opinion on such disputed question of facts. It is argued that under Rule 10 of Chapter XIII, the Court is not bound to determine any question of construction where in its opinion it ought not to be determined on Originating Summons. The Originating Summons Suit is intended to be a proceeding summary in nature as held to be so in *State Bank of India Vs. Mohuragang Gulma Tea Estate and Another*, and *Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another*, .

26. It is submitted that Om Prakash did not have power to appoint additional trustees singly and, accordingly, the resolution dated 6th February, 1999 is without authority and jurisdiction. The power to co-opt additional trustees by Om Prakash Mohta under Clause 5(d) of the Original indenture of Trust stood superceded by Clause 4 of the modified Deed of Trust dated 1st May, 1961. As stated above, the Settlor amended the Original Trust Deed by Registered Deed dated 1st May, 1961. The recital to amended Deed specifically mentioned that alteration was with regard to provisions for appointment of trustees. Under such clause, Om Prakash Mohta's right to singly co-opt trustees under clause 5(d) of Original Trust Deed dated 22nd July, 1950 ceased after the death of Bhagirath Mohta. After Bhagirath Mohta died on 18th May, 1961, Om Prakash lost his right to co-opt two or more trustees under clause 5(d) of the Original Trust Deed dated 22nd July, 1950. It is submitted that when by Clause 4 of the subsequent Deed, the Settlor made a specific provision that after the demise of Bhagirath Mohta, appointment of a new trustee should be by all the trustees for the time being, by necessary implication the power to co-opt trustees by the first trustee under clause 5(d) under the Original Deed was taken away. Hence, the purported appointment of Gyan Prakash and Mahendra Kumar by Om Prakash alone as the Managing Trustee in the alleged meeting dated 6th February, 1999 is contrary to the provision of the said Original Indenture of Trust as modified by the Deed of modification, and is therefore illegal, ineffective and null and void, even assuming that such a meeting of the Board of Trustees was held on 6th February, 1999.

27. It is submitted that the most important aspect of the Originating Summons Proceeding is the minutes of Trust dated 29th March, 2001 and that appears to be the main challenge of the entire case. On 29th March, 2001 both Om Prakash

Mohta and Shree Prakash Mohta held meeting and appointed the additional trustees named hereinbefore. On that day, Om Prakash Mohta also appointed Shree Prakash Mohta as Managing Trustee. The said trust resolution was signed by both Om Prakash Mohta and Shree Prakash Mohta.

28. In the original minutes of the meeting dated 29th March, 2001 would show that Om Prakash Mohta himself was present with Shree Prakash Mohta when the resolution was taken and the original minutes was signed by both Om Prakash and Shree Prakash. The original minutes are claimed to have been made over to the Special Officer by Shree Prakash in C.S. No. 441 of 2002. It is submitted that the Special Officer duly signed and authenticated the Minute Book. The said Trust Resolution was later seen by Madhav Prakash Mohta and he was satisfied about the authenticity and, accordingly, accepted the appointment of Trusteeship. Since the original minutes of the said meeting dated 29th March, 2001 was signed by Om Prakash Mohta himself, as contended by the defendants and as borne out from the original records, the resignation of Om Prakash Mohta as the Managing Trustee was complete, and no formal resignation by Om Prakash Mohta was required or called for. Om Prakash Mohta did not have any power to appoint any trustee on 5th September, 2011 as because Om Prakash Mohta by resolution dated 29th March, 2001 had reconstituted the trust by appointing and inducted fresh blood, namely, Madhav Prakash Mohta, Smt. Suman Mohta and Rajkumar Daga as the additional trustees since Om Prakash expressed his inability to function as Managing Trustee due to ill health and old age. Shree Prakash Mohta, an existing trustee, was appointed as Managing Trustee. Before 5th September, 2011 there were already five trustees in the trust and, accordingly, in view of Clause 5(c) of the Original Trust Deed which restricts the upper limit of trustees to five, Om Prakash could not be in any event, have appointed two more trustees. Om Prakash Mohta had set up such so-called Trust Resolution dated 5th September, 2011 to nullify, if possible, his action starting from 29th March, 2001.

29. It is submitted that it had been the practice between the parties either in the case of appointment of a new trustee or resignation of a trustee to record such fact in the minutes. When the minutes itself record the resignation or appointment of a trustee, there is no requirement to write a separate letter of resignation. All that is required to be done in such circumstances, is that the factum of such resignation or appointment shall be in writing. The appointment of a new trustee or the resignation of the plaintiffs as the managing trustee or as trustee is evidenced from the minutes of the meetings disclosed in this proceeding. It is submitted that in an originating summons, the jurisdiction of this Court is extremely limited.

30. Though Rule 17 of Chapter XIII gives discretion to the Judge hearing an Originating Summons Suit to direct the Summons to be supported by evidence as he may think necessary and for the trial of any question arising thereout, it is submitted that in a summary proceeding of the nature of Originating Summons Suit, such evidence must necessarily be peripheral in nature, and said Rule does

not contemplate lengthy evidence by parties requiring extensive cross-examination on hotly disputed facts. It is submitted that by Originating Summons Suit, a litigant comes to the Court for determination of any question arising in the administration of the Trust as mentioned in Rule 1(g). The said Rule makes it clear that such determination must be without administration of the Trust. The plaintiffs in the instant Originating Summons have prayed for determination of the question framed therein. However, determination of such question will necessarily have the effect of inviting the Court to enter into disputed questions of fact with regard to the appointment of the Trustees/Managing Trustee, genuineness of the minutes of the meeting of the Board of Trustees, the correctness of the contents of the Board minutes, including the physical and mental condition of Om Prakash Mohta when he expressed his unwillingness to continue as the Managing Trustee and to appoint new Trustees, and various other factual issues, which are not fit to be determined in Originating Summons Suit, particularly when comprehensive Civil Suits, including a suit under Section 92 of the Code of Civil Procedure, are pending on the very same questions. It is submitted that the Hon'ble Division Bench of this Hon'ble Court in *State Bank of India Vs. Mohuragang Gulma Tea Estate and Another*, has observed that it would neither be proper nor expedient to do so.

31. The single Bench Judgment of the Bombay High Court would be of no avail to the plaintiffs in the instant case. The Bombay High Court in various Judgment has also opined that an Originating Summons is not the proper procedure to be adopted when the disputed facts are of such complexity as to involve a considerable amount of oral evidence *Vithaldas Cursonadas Vs. Dulsukhbhai Vadilal*, . In examining the scope of proceedings in originating summons, reference has been made to (1969) 71 Bom LR 764 where the Bombay High Court adopted the same view. In the said Bombay decision relied upon by the plaintiffs reference has been made to two other decisions, namely, *Homi P. Ranina and Others Vs. Eruch B. Desai and Others*, and *Rama Aziz Parpia and Others Vs. Balkrishna K. Mehta and Others*, , both of which emphasized on the dictum that originating summons cannot be pressed into service for resolution of conflict of interest or for adjudication of rights and liabilities.

32. It is, thus, submitted that the above observations of Bombay High Court in its earlier decisions appear to have laid down the correct law which is in consonance with the view of the Calcutta High Court. The decision of the Bombay High Court cited by the plaintiffs in the instant case appears to have been decided in the peculiar facts of the Case, and has deviated from the view of that Court in all its earlier decisions. In fact, in Para 7 of the judgment at page 161 (of AIR), the Court records that to establish the existence of the Will "the evidence that will have to be adduced will not be of a complex nature". It is submitted that the Judgment proceeded on the basis that disputes between the parties are primarily for construction and interpretation of the document, which the Court is capable of doing, and further determine the rights of the respective parties on the basis of that document. Furthermore, in respect of Bombay

Originating Summons, no civil suits were pending on the same issues as in the instant case.

33. In any event, the Division Bench Judgment of this Hon"ble Court is now holding the field, and in consonance with such Judgment, this Hon"ble Court will be pleased not to entertain the instant Originating Summons Suit, particularly when Civil Suits are pending on the same issues.

34. Mr. Jishnu Saha, the learned senior Counsel appearing on behalf of the plaintiffs submitted that the general meaning of "co-opt" is to absorb, adopt and admit etc. The Cambridge Dictionary says co-opt is to make someone a member through the choice of the present members. Oxford Dictionary (10th Edn.) defines "co-opt" as "appointment to membership of a committee or other body by invitation of the existing members."

35. It is submitted that there is no distinction, in the context of a trust, between the power to co-opt and the power to appoint. By reason of clause 5(d), a first trustee was entitled to co-opt two trustees and the exercise of such power was validly done by Om Prakash Mohta in conjunction with the power to appoint under clause 4 of the supplement deed. The appointment of the two trustees made by Om Prakash Mohta as Managing Trustees and first trustee on 6th February, 1999 was as such not irregular.

36. The supplement Trust Deed in clause no. 2 read with clause 6 of the supplement deed shows that only express and specific provisions of the original deed were repealed. Save and except the provisions which stand deleted as enumerated in clause 2 of the amended deed the original trust deed remains in full force and effect. The said clause 2 does not mention the deletion of clause 5(d). As such the contention that clause 5(d) has been repealed is wholly without basis.

37. The rule of interpretation of contracts is very clear and provides that the first part if unambiguous shall prevail over the later part in case of any ambiguity. There is no doubt that Om Prakash Mohta had been conferred absolute power to appoint new trustees by reason of the 1st part of clause 4. As such the inconsistency or ambiguity, if any, created by the 2nd part should yield to the unambiguous interpretation of the 1st part. In Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, , the Hon"ble Supreme Court has observed:-

"If there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa."

38. Notwithstanding the attempted construction of clause 4 the Amended Trust Deed by the respondent, in view of the fact that all the powers of Bhagirath Mohta stood vested in Om Prakash Mohta by virtue of the undisputed Minutes dated 2nd June, 1961 signed by the settlor "full powers" of Bhagirath Mohta in

any event stood vested in Om Prakash Mohta. As such Bhagirath Mohta was even otherwise empowered alone to appoint new trustees.

39. Om Prakash Mohta as Managing Trustee had continued operation of the original bank account even after 29th March, 2001 until such time the same was suspended by the bankers on the basis of a letter from Shree Prakash Mohta pursuant to purported minutes of the Trust dated 6th November, 2002 signed by the respondents. Moreover, litigations instituted by the said respondent prior to the fabricated minutes of 29th March, 2001 praying that the respondent be declared as a Trustee of the Trust was contested by Om Prakash Mohta, which goes to show beyond doubt that Om Prakash Mohta had never signed the alleged minutes dated 29th March, 2001.

40. The purported minutes and the translated copy thereof do not bear the signature of either Om Prakash Mohta or Shree Prakash Mohta.

41. The falsehood of the existence of minutes dated 29th March, 2001 would be evident from the fact that the respondent No. 2 had filed a suit being T.S. No. 2100 of 1999 praying for a decree of declaration that the respondent No. 2 was entitled to be appointed a trustee of Mohta Charitable Trust. The case of the respondent No. 2 is that he was allegedly appointed trustee in the purported meeting held on 29th March, 2001 renders the T.S. No. 2100 of 1999 infructuous.

42. That the minute dated March 29, 2001 is fabricated is also evident from the fact that though the respondent No. 2 was allegedly appointed trustee and Shree Prakash Mohta was allegedly made the Managing Trustee in the purported meeting held on 29th March, 2001, the respondent No. 2 instituted the suit being T.S. No. 1845 of 2001 against the trust describing Om Prakash Mohta as Managing Trustee of the Trust in the cause title of the plaint and also made an averment in paragraph no. 2 of the plaint that at least till the institution of TS No. 1845 of 2001 the respondent No. 2 was not appointed a trustee.

43. There is, thus, no question of any reliance being placed on the said alleged minutes of 29th March, 2001 for any purpose whatsoever. The non-production of the original of the purported minutes despite orders of Court is bound to result in an adverse inference that the said document does not exist. The learned Counsel has relied upon the decision in Punit Rai Vs. Dinesh Chaudhary, .

44. The reliance placed by the respondent on the report of the special officer appointed in a suit initiated by third parties to suggest that the said minute book was produced before the special officer does not demonstrate that the minute book inspected by the special officer contained the original minutes of the alleged meeting of 29th March, 2001 or that any alleged minute dated 29th March, 2001 therein had the same contents as the minutes being relied upon by the respondents.

45. It is submitted that if necessary the Hon''ble Court can take evidence on this limited issue as provided in Rule 17 of Chapter XIII of the Original Side Rule

which is as follows:-

"17. When OS may be supported by evidence. On hearing of the summons, where the parties thereto do not agree to the correctness of the facts set forth in the affidavit, the Judge may order the summons to be supported by such evidence as he may think necessary; and may give such directions as he may think just for the trial of any questions arising thereout. The Judge may make amendment in the affidavit and summons as may seem to him to be necessary to make them accord with the existing state of facts, so as properly to raise the questions in issue between the parties."

46. It has also been held in *Dinar Rashid Wadia and Another Vs. Kersy Eruch Lalkala and Others*, by the Hon^{ble} Bombay High Court that-

"I find substance in the argument canvassed on behalf of the plaintiffs. To my mind, to resolve the controversy in the Originating Summons as filled the moot question is about the existence or non-existence of the alleged Will dated Nov. 18, 1924. To establish this fact, both the parties will be at liberty to adduce oral and documentary evidence. Obviously, to establish that fact, the evidence that will have to be adduced will not be of a complex nature."

47. The plaintiffs have also relied upon *Mazda Theatre Ltd. Vs. Gordhandas Tribhuvandas* reported at ILR 1959 Bom 1429 at Para 2, 3), *Homi P. Ranina and Others Vs. Eruch B. Desai and Others*, and *Gokul Chand De and Others Vs. Gopi Nath Dey and Others*, in support of the aforesaid proposition.

48. It is submitted that it is now well-settled that rules do not forbid question of fact being determined in originating summons. In that context, judgment delivered by Pratt, J. in *Vithaldas Cursondas Vs. Dulsukhbhai Vadilal*, is extremely relevant. In considering the rules, it has been observed by Pratt, J.:-

"It is contended that these authorities do not apply as the Bombay Rules are wider. There is some force in this contention for our rules go further than the English rules and allow a partner to take put an originating summons and the procedure approximates more nearly to that of a regular suit for the, rules contemplate pleadings. A plaint is required by Rule 218 and a written statement is permitted by Rule 221. The rules do not forbid questions of fact being determined in an originating summons and I am not prepared to hold that this form of action is always inappropriate whenever there is a question of fact in dispute."

49. Without prejudice to the primary contention that the said purported minutes cannot be relied upon, the petitioners state that even assuming though not admitting the contents thereof it does not appear from the said minutes that:

a) Om Prakash Mohta had actually resigned and/or that any resolution was passed accepting the said alleged resignation of Om Prakash Mohta. The case of resignation recorded in the purported minutes is belied from the subsequent conduct evidencing continuation of Om Prakash Mohta as the Managing Trustee

by reason of the bank account being operated by Om Prakash Mohta in his capacity as Managing Trustee even after 2001 and by his active participation in the matters of the Trust as a managing trustee after his alleged resignation. The respondents or some of them continued addressing Om Prakash Mohta as Managing Trustee long after his alleged resignation.

b) Evidently the resignation of Om Prakash Mohta is not apparent from the said purported minutes. The purported minute does not record the express resignation of Om Prakash Mohta either as trustee or as managing trustee. Om Prakash Mohta admitted not having tendered resignation in writing. No such document has been produced or relied upon nor placed. It is submitted that in Kalyan Singh Chouhan Vs. C.P. Joshi, it was held that court cannot travel beyond pleadings and issues cannot be framed unless there are pleadings to raise controversy on particular fact or law. By relying upon the minutes at the most, an inference may be made that Om Prakash Mohta orally resigned. The original and the amended trust deeds not provide for any oral resignation. Moreover, the Indian Trust Act also does not recognize any concept of "oral resignation". Section 46 of the Indian Trust Act provides that:-"Trustee cannot renounce after acceptance.-A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

It is submitted that In State of U.P. Vs. Bansi Dhar and Others, the Hon''ble Supreme Court observed and held that though the Indian Trusts Act is not applicable to public charitable trusts but the principle contained therein apply to the same. As such it cannot be inferred that Om Prakash Mohta orally tendered his resignation at the said alleged meeting of 29th March, 2001.

c) The appointment of new trustees purported to have been made on 29th March, 2001 is contrary to the clause no. 5 of the original trust deed which provides that the maximum number of trustees can be five. By virtue of the appointment of two new trustees on 6th February, 1999 there were already four trustees of the trust. As such the question of appointment of three new trustees at the instance of Shree Prakash Mohta could not arise. Shree Prakash Mohta being a mere trustee, alone did not have the power to appoint new trustees nor could the number of trustees exceed five. Om Prakash Mohta was not present in the said meeting.

50. Accordingly, it is submitted that the originating summons is required to be dismissed and parties should be relegated to suit.

51. Before answering the questions raised in the originating summons it is necessary to discuss the maintainability of the suit.

52. Originating Summons Suits are unique to the Chartered High Courts. The rules framed by the High Court to govern its proceedings in the Original Side are referable to the power vested in the Chartered High Court under Clause 37 of the

Letters Patent. The powers of the High Court to frame the rules have been preserved under the Letters Patent. Section 129 of the Code of Civil Procedure permits High Court to make rules not inconsistent with the Letters Patent. The said rules saves and gives an overriding effect to Letters Patent establishing it to regulate its own procedure in exercise of its original civil jurisdiction. In other words, the Chartered High Courts under Letters Patent have been empowered to regulate its own procedure in exercise of its original civil jurisdiction, as it shall think fit. The Hon"ble Supreme Court in *Iridium India Telecom Ltd. Vs. Motorola Inc.*, held that rules regulating procedure of High Court on its original side need not be consistent with provisions of the Code of Civil Procedure, 1908. The Code of Civil Procedure, 1908 is considered to be a general law laying down the procedure applicable to all civil courts whereas the Letters Patent constitutes a special law under which the High Court derives its power.

53. The Hon"ble Supreme Court in *Iridium* (supra) recognize the special power of the Chartered High Courts in the following words:-

".....to recognize the practical expediency of leaving such High Courts some latitude in the direction of adapting the provisions of the ordinary law to meet their requirements", and that further, "it had been found by experience that these provisions were not in all respects convenient in the case of original proceedings in those Courts". The amendment, therefore, became necessary "to bring the Code into perfect harmony with the provisions of the Letters Patent and to enable the High Courts referred to regulate the exercise of their original civil jurisdiction accordingly.

It appears to us that this was the real reason why a distinction was drawn between the proceedings in original jurisdiction before the Chartered High Courts and those in other Courts. For historical reasons this distinction was maintained right from the time the Letters Patent was issued, and has not been disturbed by the Code of Civil Procedure, 1908, despite the amendments made in the Civil Procedure Code from 1976 to 2002."

54. The Hon"ble Supreme Court held that the legislature has consciously made a distinction between the proceedings in other civil courts and proceedings on the Original Side of Chartered High Courts, a distinction which has continued to be unaffected right up to the last amendment of the Civil Procedure Code. The said judgment also lays down that the Letters Patent and the Rules made thereunder which are recognized and specifically protected by Section 129 are not relegated to a subordinate legislative status. Letters Patent is a special law under which the High Court derives its powers and cannot be excluded by implication is the clear dicta in *Iridium* (supra). Chapter XIII of the Original Side Rules which provides the special procedure by way of a originating summons has its origin and source in English rules of Supreme Court. Although it is undoubtedly a suit in the Original Side but cannot be equated with it since under the rules questions are framed for the purpose of being answered by this Court and the Court in its turn considers as to whether the questions are within the ambit of the rules of the

Original Side and can be conveniently dealt with by way of an originating summons. In the event, the Civil Court finds it otherwise, the Court will relegate the party applying to an ordinary suit. The court in an originating summons is exercising its power of a Court of equity. The purpose of deciding a matter as an originating summons suit is to save time and cost in order to dispense a quick relief to the parties who required the assistance of the Court.

55. According to Mitra's Legal & Commercial Dictionary, 6th Edition defines "Originating Summons" as:-

"An originating summons is a summons by which an action may be commenced otherwise than by writ. [Re Holloway Ex p. Pallister (1964) 2 QB 163].

It is a summons without writ, returnable in the chambers of a judge of the Chancery Division for the determination of particular questions arising in the administration of an estate of trust, without the administration of the whole estate or trust. [Wharton's Law Lexicon].

Note: Executors, trustees, creditors, legatees, heirs etc. may take out originating summons, returnable before the Judge sitting in chambers on the Original Side of the High Court at Calcutta for determination of the question set out in Chapter XIII, r. 1 of the Original Side Rules of the High Court."

56. In State Bank of India Vs. Mohuragang Gulma Tea Estate and Another, the Hon"ble Division held as follows:-

"21. In Lewis v. Green reported in 1905 (2) Chn. 340. Warrington J. While dealing with the matter observed:

"Now under those circumstances, the applicant persists in asking me to determine these questions of construction. In asking me to determine these questions of construction. In my opinion I ought not to do so. It seems to me that under such circumstances as those under which this summons was issued, Order LIV (A) is not the appropriate mode of procedure. The result will be this; the Court may, after considerable litigation, involving an argument in a court of first instance, an argument in the court of Appeal, and possibly an argument in the House of Lords, come ultimately to the decision that on the questions of construction raised by this can be given on that. There are other points which have to be given on that. There are other points which have to be decided. They can only be decided by bringing an action and in that action it may turn out that, notwithstanding the applicant is right on the questions of construction, he is ultimately found to be wrong. The respondent will have had to pay all the expense of the litigation on the question of construction, which will be utterly useless. It seems to me that where one finds circumstances such as I find here, the procedure under Order LIV (A) is improper. It is only intended to enable the court to decide questions of construction where the decision of those questions, whichever way it may go, will settle the litigation between the parties".

22. The decision in Lewis & Green was considered by this Court in the case of

Gokul Chand De and Others Vs. Gopi Nath Dey and Others, . In that decision this Court observed:-

"In the present case, the answers given by the learned Judge on the question of construction, have not disposed of the summons and I have left certain questions unanswered. Moreover, in the facts of the present case, the pleas in bar raised by the opposite parties, if sustained, might render the question of construction unnecessary.

On the above grounds, I am of opinion that the Court should not have adopted the procedure by way of an originating summons, but should have relegated the parties to a suit."

28. In that decision while dealing with the observations of Warrington J. in the case of *Lewis v. Green* (supra)-Astbury, J. observed:

"Of course it is impossible to say in the case of any contract that the parties may not litigate after they have determined what the true construction of their contract is, but in the case before Warrington J. the whole point was whether the defendant owed the plaintiff money, which was entirely a question of fact. Warrington, J. said that he was not going to try half the question. In the present case it may, in a sense, be said that there are two disputes between the parties; one whether the notice is a good notice under Clause 13, and, secondly, what rights the defendants have or may have independently of Clause 13 if it be the fact that this water has changed in its quality and is no longer fit for domestic use. As to what second dispute, I do not think I have any concern on this summons at all. The only dispute which I am concerned with, and the only dispute I think to which this summons is relevant, is whether a notice of determination purported to be given under Clause 13 is good or bad. If that is decided the parties will know how they stand. If it is not decided, one of them at all events, may be placed in a position of considerable difficulty and embarrassment. So such for the preliminary point."

29. Astbury, J. further went on to observe:

"I think, on the true construction of this Clause, that the determination by the Local Government Board, or if there be an alternative, by some alternative arbitrator, as to which I determine nothing, is a condition precedent to the right to give a notice, and I think the plaintiffs are-entitled on this summons to a declaration that, on the true construction of this clause, the defendants are not at liberty to determine or put an end to this agreement."

30. The above-noted English decisions, in my view, do not lend any assistance to the contentions raised by the plaintiff as the same are clearly distinguishable on facts. Astbury, J. in *Lecister Corporation's* case categorically recorded that in the event there being a question of fact, the matter ought not to be dealt with by way of an originating summons.

57. In *Sudhir Asher and Another Vs. Vijay Shroff and Others*, the Hon'ble

Division Bench considered the scope of Originating Summons Suit. It is stated:-

"19. Originating summons suits are proceedings which are provided for in Chapter XIII of the Original Side Rules of this Court. They are suits of a peculiar nature. The proceedings are initiated by summons in the form of questions for the determination by the court in respect of certain classes of cases. One of such classes is an application by executors for the determination without an administration of estate of inter alia of questions affecting the rights or interests of persons claiming to be legatees or heirs under a will. (Chapter XIII Rule 1).

20. In each case the court will consider whether, (a) the questions asked, or the relief sought, are such as the court, can under the Rules, deal with on the originating summons, and (b) they are such as the court can conveniently deal with on originating summons. If either of (a) or (b) are decided in the negative sense, the court will relegate the parties to an ordinary suit [(Ormond: The Rules of the Calcutta High Court, 1914 (1940 Edn.))].

21. Ordinarily, originating summons are determined on affidavits and determined in a summary manner and where the matters in respect of which relief is sought cannot be disposed of in a summary manner, the court may refuse to pas any order on the summons, may dismiss the same and refer the parties to a suit in the ordinary course (Rule 18)."

58. In State Bank of India (supra), the Hon"ble Supreme Court considered a large number of decisions on this point and ultimately declined to entertain the said suit having regard to the complexities of the question involved in the said suit. The Hon"ble Division Bench did consider Rule 17 and the said rule does not permit an elaborate evidence to be recorded in the said summary proceeding. The relevant observations of the Division Bench can be found in Paragraphs 36 and 37 which states:-

"36. In my view, it would neither be proper nor expedient to decide the questions, as raised in this proceeding, only on affidavit evidence by way of an originating summons. Originating summons is available to proceedings which are not of an involved nature and on which there would hardly be any scope for any oral evidence. Having regard to the issues raised and the questions posed for consideration, one cannot dispense with the oral evidence. While it is true that the Court has power to have even oral evidence, but in my view, the same ought not to be extended to any suit under Chapter XIII of the Rules of this Court, otherwise the Code of Civil Procedure would have to be given a complete go by. Needless to say however that the Code of Civil Procedure prescribes certain forms of decree which is not available to an originating summons. The intent of the rule makers could never be to give a go by to the procedural aspect under the Code of Civil Procedure. For the purpose of due administration of justice and in a manner peculiar to the Original Side of this Court, these rules have been framed. Even on a plain reading of Rule 6 of Chapter XIII of the Original Side Rules, it is to be presumed that interpretation and construction of deeds and

documents only ought to be taken note of and not each and every suit for mortgage for sale foreclosure or redemption. That obviously was the intent of the rule maker. Otherwise, Rule 10 would not have been engrafted in the Rules which provides that the Court or Judge shall not be bound to determine any such question of construction where in his opinion it ought not to be determined on originating summons. Had the intent of the rule makers been otherwise, Rule 10 would not have found place in the rules under Chapter XIII of the Original Side Rules of this Court. It is in regard to the question of construction that Chapter XIII has been engrafted into the rules of the Original Side but not a substantial question which would finally determine the issue. Assuming everything in favour of the plaintiff-respondent's contention, convenience and expediency prompts this Court to hold that originating summons is very restrictive in its application and cannot be taken recourse to any and every matter even under Rule 6 of Chapter XIII of the Original Side Rules. Apart therefrom the correspondence itself suggests trade usage and Banker's right to charge interest for delayed payment-these are not pure questions of law but of fact which ought not to be raised, agitated and dealt with under an originating summons. On the state of facts, I am of opinion that originating summons under Chapter XIII of the rules of this Court was not the proper mode. In the present case the dispute cannot be adjudicated only upon interpretation by way of and construction of the deed of mortgage or the deed of guarantee. The plea of trade usage and Banker's right to charge interest on interest which are obviously matters of fact ought to be dealt with, and the English decisions cited by Mr. Bachawat in that respect, do not lend any assistance. The view expressed above find support from Daniel's Chancery stated that the object of the order is to enable the Court to decide question of construction where the decision will settle the litigation between the parties-not questions which if decided one way only will do so. It has been further stated that if no question of construction arises, the Court even if it has the jurisdiction, will not give partial relief by making of declaration of rights of the person interested.

37. In the view I have taken as noted above as regards the maintainability of the originating summons in the facts under consideration, I am not expressing any opinion as regards the grant of interlocutory relief by way of an injunction or appointment of Receiver in an originating summons and as such the cases cited on that score need not be dealt with excepting recording that the passages cited from Odger's and Atkin's Pleading as also Daniel's Chancery Practice do not have any bearing in the facts of the case under consideration since the views expressed related to administrative actions and I find some justification in Mr. Sarkar's submission on that score."

59. In a fairly recent decision a Division Bench of the Bombay High Court presided over by the present Chief Justice of the Allahabad High Court Dr. D.Y. Chandrachud in Charu K. Mehta Vs. Lilavati Kirtilal Mehta Medical Trust and Others, held that the procedure of originating summons suit is intended to resolve questions of construction of deeds and documents which do not involve a

complicated enquiry into disputed questions of fact. The facts of the Charu K. Mehta (supra) are similar to this case.

60. While narrating the submissions of the learned Counsels I have indicated that the defendants in the suit have given references of the pending suits and the nature of the reliefs claimed in such suits. The question of fabrication of documents cannot be decided in a summary manner. Moreover, Om Prakash Mohta who claims himself to be the Managing Trustee is no more alive. Even if the plaintiffs are given the benefit of Rule 17 still then in absence of Om Prakash Mohta it would be well-nigh impossible for the plaintiffs to disprove oral resignation in this summary proceeding. I agree with Mr. Jayanta Kr. Mitra, the learned Advocate General that the disputed questions of facts in the proceeding are such which cannot be conveniently decided in this proceeding. The interpretation of the various clauses would not put an end to all the controversies. Whether, in fact, Om Prakash Mohta had resigned or not is a question of fact which requires evidence.

61. The parties have relied upon the following Clauses of the Original Deed as well as Supplementary Deed:-

Clause 5 of the Original Deed of Trust

- (a) None but an adult Hindu may be a Trustee for the Trust declared hereby.
- (b) At least two of the Trustees shall be the descendants of my late father-in-law either through son or daughter.
- (c) The number of Trustees at a time shall not be less than two or more than five.
- (d) I myself the said Bhagirath Mohta and Om Prakash Mohta son of the said Bhagirath Mohta shall be the first trustees with power to me and the said first Trustees to co-opt two more trustees."

Clause 7 of Original Trust Deed

A trustee may resign his office in writing subject to his liability for accounting or otherwise if any.

Clause 9 of Original Trust Deed

The said Bhagirath Mohta during his natural life shall be the first Managing Trustee. If he resigns or in his absence he may appoint another Managing Trustee either among the existing Trustees or another person subject to the restrictions contained in clause 5 above. In all other events the Trustees will appoint one of them as the Managing Trustee.

Provided that the said Bhagirath Mohta shall be entitled to appoint a Managing Trustee in writing attested by two witnesses if he resigns or becomes incapable of acting or for such appointment to take effect after his death.

Clause 13 of the Original Deed of Trust

"Notwithstanding anything contained in these presents during my natural life I shall be entitled to remove an existing trustee and to appoint a new trustee either in substitution or originally or alter modify or repeal any of the provisions of these presents by a registered instrument or the said Bhagirath Mohta may do likewise PROVIDED THAT such addition alteration modification or repeal shall not have the effect of revoking these presents or the Trust that I have already created and is declared by these presents or take away any portion of the Trust Estate or Fund or reduce the minimum number of the Trustees provided herein or affect anything done or any liability incurred in the professed exercise of the powers conferred by these presents."

Clause 2 of the Supplement Deed

"Sub-clause (e) of clause 5, clause 8A, clause 14, clause 15, clause 17 and Schedule "A" to the said declaration of the Trust being rules prescribed under sub-clause (d) of Clause 14 of the said Declaration of the Trust shall be repealed and shall be deemed to have never been part of the said Declaration of Trust."

Clause 4 of Supplement Deed

"The appointment of a new Trustee shall be made in writing whether during my lifetime or thereafter by my son Bhagirath Mohta or by his eldest son Om Prakash Mohta and after the demise of my said son by the Trustees for the time being."

Clause 6 of the Supplement Deed

"Except as modified by these presents the said Declaration of Trust shall continue to remain in full force and have full effect."

62. The reading of the various clauses of the trust deed does not show that the resignation can only be in writing. In the past also one of the trustees resigned due to her ill-health and the said facts were recorded in the minutes. However, since the Court is of the view that the issues raised in this originating summons do not solely rest on the interpretation of the clauses of the original trust deed and supplementary trust deed inasmuch as such interpretation would not resolve all the controversies between the parties, this Court declines to pass any order in the originating summons. Moreover, the issues raised in the originating summons would also come for consideration in the pending suits.

63. In view thereof, the Originating Summons Suit is dismissed. The observations made with regard to the interpretation shall not be considered as final opinion given by this Court.

64. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.