

(2011) 06 UK CK 0043

In the Uttarakhand High Court

Case No : Writ Petition No"s. 2193, 2194 of 2001 (M/S) and Civil Revision No. 394 of 2001

Sanjay Singh and Another

APPELLANT

Vs

Abhai Singh and Another

RESPONDENT

Date of Decision : 14-06-2011

Acts Referred:

Arbitration Act, 1940 — Section 20
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Societies Registration Act, 1860 — Section 13B

Citation : (2011) 06 UK CK 0043

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—The dispute relates to the management of an educational institution and other properties by a Society. The brief facts is, that in the year 1975, a partnership came into existence between Smt. Krishna Kumari, Sanjay Singh, Abhai Singh and Smt. Indu Bala Singh who became the partners. The management of the properties of the school vested in this partnership firm w.e.f. 2nd November, 1975. The profits was to be distributed in the following manner:

Abhai Singh

34%

Smt. Krishna Kumari

30%

Smt. InduBala Singh

25%

Sanjay Singh

11%

2. In the year 1978, Abhai Singh, one of the partners in association with another partner Smt. Indu Bala Singh got a society registered in the name of N.S. Educational Society and the management of the educational institution and its properties were transferred to this society. This led to a dispute and the remaining partners filed an application u/s 20 of the Arbitration Act, 1940 for appointment of an Arbitrator. An Arbitrator was appointed but in an appeal before the High Court, a retired Judge of the Allahabad High Court was nominated as the Arbitrator. The said Arbitrator gave an award on 13th June, 1987. Certain reliefs were refused and one of the reliefs granted was injuncting N.S. Educational Society to manage the institution known as Col. Brown Cambridge School or to use movable and immovable property of the original partnership. The Arbitrator held that Abhai Singh was in fact in possession of the institution and managing the same as the Principal and possession of the society was of an abstract nature. The Arbitrator held that the educational institution can only be managed by the original partners of the firm known as Col. Brown Cambridge School. This award was subsequently made a rule of the Court and SLP before the Supreme Court was also dismissed. Consequently, the award obtained finality and became binding inter se between the parties.

3. It transpires that the four partners thereafter entered into a memorandum of understanding on 27th July, 1988 for managing the educational institution of the society known as Col. Brown Cambridge School. In this memorandum, it was agreed that the original four partners would be the permanent members and nominated members would be nominated by the permanent members. These nominated members would function for a period of two years. It was agreed that the four members would jointly nominate a 5th member who would be the President of the Society. The four members agreed to appoint Shri S.S. Negi, Advocate of Dehradun as the President of the Society. The Society started administering the affairs of its society and the educational institution. On 17th January, 1991, Shri S.S. Negi died and, thereafter, the four permanent members could not agree to appoint any person as the President of the Society.

4. It transpires that Abhai Singh and Indu Bala Singh started operating the bank account of the society. In the meanwhile, Abhai Singh and Indu Bala Singh nominated Prem Harihar Lal as the President of the Society. This action of the said persons led to the filing of Suit No. 444 of 1994 praying for a declaration that the meeting of 17th June, 1994 by which Prem Harihar Lal was appointed as the President was ineffective and the same be treated as cancelled. In this suit, an application for temporary injunction was filed which was rejected, against which, F.A.F.O. No. 249 of 1995 was filed before the High Court at Allahabad and an interim order dated 15th March, 1995 was passed directing the parties to maintain the status quo as it existed prior to the institution of the suit. Eventually, the said appeal was transmitted back to the Civil Court on account of an enhancement of pecuniary jurisdiction which appeal was subsequently dismissed by the impugned order dated 13/12/1995 against which Writ Petition No. 37560 of 1995 was filed before the Allahabad High Court wherein an interim

order dated 21/12/1995 was passed directing that parties to maintain status quo till further orders of the Court which interim order dated 21/12/1995 is still operating between the parties.

5. While the appeal was pending before the Civil Court, Dehradun, the Petitioner moved an application u/s 13-B of the Societies Registration Act for the dissolution of N.S. Educational Society on the ground that the membership of the society had been reduced to less than seven and that the society has ceased to function for more than three years. This application was registered as Misc. Case No. 127 of 1995. This application was rejected by the common order dated 13/12/1995 by the court below on the ground that there existed more than seven members of the Society. The Petitioner, being aggrieved, has filed Writ Petition No. 37664 of 1995. Upon the creation of the State of Uttarakhand, the matter was transferred to this High Court where it was renumbered as Writ Petition No. 2193 and 2194 of 2001 (M/S) respectively.

6. During the pendency of the proceedings, the trial court proceeded ex-parte against the Defendant and subsequently when the Defendant came to know about the ex-parte proceedings, filed an application for its recall which was allowed by the trial court by an order dated 26/08/2000 against which the Civil Revision No. 478 of 2000 was filed before the Allahabad High Court and upon its transfer it was re-numbered as Civil Revision No. 394 of 2001 in which an interim order was passed staying further proceedings before the trial court.

7. During the pendency of the proceedings, Abhai Singh died on 11th August, 2003, Krishna Kumari died on 8th December, 2007 and Sanjay Singh died on 12th December, 2009. Three out of the four partners have died during the pendency of the litigation and the President Prem Harihar Lal nominated as the President of the Society also died in September, 2005. The death of Abhai Singh who was operating the account and which led to the filing of the first Suit No. 346 of 1994 led the Petitioner to file Misc. Application before this Court in which after due consideration, an order dated 16/09/2003 was passed directing that the A.D.M. (Finance), Dehradun will operate the account to the extent of distribution of salary and day-to-day expenses of the institution and that the A.D.M. shall operate the account on the demand made by the Incharge accounts of the institution. This interim order is still subsisting. It has been stated that necessary substitution has already been carried out in these petitions but it is not known as to whether appropriate substitution applications were filed before the trial court or not.

8. Be that as it may. In the light of the subsequent events which has developed during the pendency of these proceedings, the Court has heard Shri W.H. Khan, the learned Senior Advocate assisted by Shri Ramji Srivastava and Shri P.H. Khan, the learned Advocates for the Petitioners and Shri Sharad Sharma, the learned Senior Advocate assisted by Shri Anirudha Joshi, the learned Counsel for the contesting Respondents. After hearing the learned Counsel for the parties at some length, the Court is of the opinion that no useful purpose would be served

in deciding the injunction application on merits or deciding the question as to whether the order passed by the lower appellate court on the application u/s 13-B of the Societies Registration Act was based on findings of fact or not nor would it be worthwhile to decide the revision as to whether the application under order 9 Rule 13 was passed correctly or not.

9. The Court is of the opinion that since an injunction order dated 21/12/1995 and 16/09/2003 passed by the High Court is still operating between the parties, the Court is of the opinion that the injunction orders dated 21/12/1995 and 16/09/2003 should continue to operate till the disposal of the two suits. Consequently, the writ petition No. 2193 of 2001 is disposed of accordingly.

10. With regard to the validity of the order dated 13/12/1995 of the Court below rejecting the application of the Petitioner u/s 13-B of the Societies Registration Act, this Court is of the opinion that much water has flown during the pendency of the proceedings and many of the original members have died. The number of the members of the society have now drastically changed. Consequently, on this ground the order of the court below dated 13/12/1995 in so far as it relates to the rejection of the application of the Petitioner filed u/s 13-B of the Societies Registration Act is set aside. The Court below, namely, the District Judge where the Misc. Application was registered as Case No. 127 of 1995 would be heard de novo after considering the new facts which have come into existence during the pendency of these proceedings. The parties would file appropriate application bringing the relevant facts on record. Consequently to that extent writ petition No. 2194 of 2001 is allowed.

11. This leads to the third petition, namely, Civil Revision No. 394 of 2001 which is against the order passed on the application under Order 9 Rule 13 of the CPC. The court is of the opinion that the suit should be heard on merits and should not proceed ex-parte on a technicality. Consequently, the Court is of the opinion that the order of the Court below does not require any interference. The Civil Revision is consequently dismissed.

12. In the light of the aforesaid, the Court directs both the parties to appear before the trial court in Suit Nos. 346/94 and 444/94 on 1st July, 2011 along with a certified copy of the order of this Court. The Suit Nos. 346 of 1994 and 444 of 1994 will be connected and would be decided together. In the event the substitution applications have not been filed, it would be open to the parties to file the substitution application and or such other amendment applications on that date itself. The trial court will proceed and dispose of the application in accordance with law. It is further directed that in the event the lis survives, the trial court would proceed and decide the matter on a priority basis within one year from 1st July, 2011 onward.

13. In so far as Case No. 127 of 1995 is concerned, the parties are directed to appear before the Court concerned on 4th July, 2011 and necessary applications bringing on record the relevant facts would be filed on that date and or file such

substitution and amendment applications as required which would be disposed of by the Court concerned in accordance with law. If the lis survives, the Court concerned is directed to dispose of the application u/s 13-B of the Societies Registration Act after hearing the parties within three months from 4th July, 2011.

14. In the circumstances of the case, the parties shall bear their own cost.

15. Certified copy of the orders shall be made available to the parties on payment of usual charges on or before 24th June, 2011.