

Sh. Ram Sarup Lugani & Anr vs Nirmal Lugani & Ors on 14 July, 2021

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(OS) 182/2019, I.A. 8273/2021, I.A. 8274/2021 & I.A. 8275/2021
SH. RAM SARUP LUGANI & ANR.

Through: Mr. Tanmaya Mehta, Advocate
with Mr. Aditya Garg, Advocate
plaintiff no.2.

versus

NIRMAL LUGANI & ORS. ...

Through: Mr. Faisal Sherwani, Mr. Aditya
Vikram, Mr. Shikher Deep Aggarwal,
Ms. Neha Agarwal, Advocates
Defendant Nos. 1 to 6.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 14.07.2021 (hearing through Video Conferencing) I.A. 8275/2021 (Ex.) Exemption allowed subject to all just exceptions. The application stands disposed of. I.A. 8273/2021 & I.A. 8274/2021 It is submitted on behalf of the plaintiffs by the learned counsel present that the plaintiff no.1 has since expired on 22.05.2021.

The defendant no.7 is the Trust in question. The matter is indicated to have been re-notified en-bloc for the date 27.08.2021 having not been taken up on 27.04.2021 in terms of order dated Signature Not Verified Digitally Signed By: SUMIT GHAI Signing Date: 15.07.2021 16:17:18 This file is digitally signed by PS to HMJ ANU MALHOTRA.

24.03.2021 in view of the prevailing pandemic and the matter is now taken up on I.A.8273/2021 under Order I Rule 10 of the CPC filed on behalf of the plaintiff seeking to appoint two plaintiffs in view of the demise of the plaintiff no.1 who was the managing trustee of defendant no.7 as well as in view of I.A.8274/2021 filed on behalf of the plaintiffs under Order XXXIX Rules 1 & 2 of the CPC with the following prayers:-

"(i) restrain the defendants from appointing any other Trustee to fill the vacancy caused due to the demise of the Plaintiff no. 1 till the time Plaintiffs' application seeking appointment of an Administrator is considered by this Hon'ble Court;

(ii) restrain the defendant no. 2 from functioning, acting or conducting himself as the Managing Trustee of the Trust till the time Plaintiffs' application seeking appointment of an Administrator is considered by this Hon'ble Court;

(iii) Appoint an administrator to take over the running and management of the Trust as well as the two Schools running under the Trust."

Learned counsel for the defendant nos. 1 to 6 accepts notice of the same.

Initial submissions have been made on behalf of either side and a prayer is made on behalf of the plaintiff pressing the prayers made in I.A.8274/2021 with reliance placed inter alia on the proceedings dated 01.04.2019 in the matter to contend to the effect that even at that stage the plaintiffs had apprehended the removal of plaintiff no.1 as the Managing Trustee of the defendant no.7 with the plaintiff no.1 having held the said position since 1995 qua which there are observations vide paragraph 7 of the said order, which reads to the effect:-

"7. The removal of a Managing Trustee who has continued on Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:15.07.2021 16:17:18 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the said position since 1995 is indeed a major decision and the same cannot be taken up without a specific agenda item to that effect. Plaintiff has made a prima facie case in his favour and the balance of convenience is also in favour of Plaintiff No. 1. It is therefore clarified that till the next date of hearing, the Defendants would not take up any item except for those mentioned at serial No. 1 to 9 in the list of agenda as circulated."

whereafter there were directions vide paragraph 8 to the effect:-

"8. Further, till the next date of hearing, the Defendants are restrained from withdrawing any money indirectly or directly for themselves from the funds of the Defendant No. 7 other schools, under the management and control of Defendant No. 7, in any manner whatsoever."

It has thus been submitted on behalf of the plaintiff that the aspect of the non-removal of the plaintiff no.1 as the managing trustee of defendant no.7 was clearly within the contemplation of the ambit of the order dated 01.04.2019 whereby it was directed to the effect that apart from the items mentioned at serial no.1 to 9 in the list of agenda as circulated, nothing could be taken up by the defendants and thus it has been submitted on behalf of the plaintiff no.2 that the appointment of defendant no.2 as the managing trustee of the defendant no.7 is not in consonance with the spirit of the order dated 01.04.2019 qua which the submissions made on behalf of the defendant nos. 1 to 6, are in refutation of the same submitting inter alia to the effect that the Trust cannot be headless and that an adequate notice had been given to the plaintiff no.2 in relation thereto after the demise of the plaintiff no.1 and the defendant no.2 was thereafter appointed as Managing Trustee on

07.06.2021.

In the circumstances, it is considered appropriate that the response of Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:15.07.2021 16:17:18 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the defendant nos. 1 to 6 to the I.A.8273/2021 & I.A.8274/2021 be filed within a period of seven days.

In the interest of justice, the date of hearing from the en-bloc date of hearing i.e. 27.08.2021 is preponed with the matter being directed to be re- notified for consideration of I.A.8273/2021 & I.A.8274/2021 inclusive of all other pending I.A.s qua which the pleadings are complete for the date 28.07.2021 at 3.00 PM and the report in relation to the completion of pleadings of each of the I.A.s be put by the Registry for the next date of hearing.

ANU MALHOTRA, J JULY 14, 2021 'Neha Chopra' Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:15.07.2021 16:17:18 This file is digitally signed by PS to HMJ ANU MALHOTRA.