

Malvika Foundation and ors. Vs. Eiilm Foundation and ors.

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Court : Kolkata

Decided On : Aug-05-2013

Judge : Nadira Patherya

Appellant : Malvika Foundation and ors.

Respondent : Eiilm Foundation and ors.

Judgement :

ORDER

SHEET G.A.No.2176 of 2013 With C.S.No.251 of 2013 IN THE HIGH COURT AT CALCUTTA ORDINARY CIVIL JURISDICTION ORIGINAL SIDE MALVIKA FOUNDATION & ORS.Versus EIILM FOUNDATION & ORS.BEFORE: The Hon'ble JUSTICE PATHERYA Date:

5. h August, 2013.

Appearance: Mr.S.N.Mitra, Sr.Adv.Mr.Mainak Bose, Adv.Mr.Deepak Jain, Adv.Mr.A.Mukherjee, Adv. for the Plaintiffs/Petitioners Mr.Hirak Mitra, Sr.Adv.Mr.Debajyoti Dutta, Adv.Ms.Vijaya Bhatia, Adv. for the Defendants No.1,2,4&5.

Mr.Pratap Chatterjee, Sr.Adv.Mr.Samrat Sen, Adv.Mr.R.L.Mitra, Adv.Ms.Priyanka Dhar, Adv. for the Respondent no.6 The Court: By order dated 26th July, 2013, an order was passed in terms of prayers (c) and (d) of the Notice of Motion.

On the returnable date, i.e. 2nd August, 2013, the interim order was modified in terms of prayer (d) and the order of injunction was restricted to the defendant no.1 in respect of its bank account.

Such order is continuing.

This day the parties have submitted at length.

The most important issue that emerges is that both want preservation of the institute.

But there is a tug of war between the parties with regard to the management and control of the institute.

Various allegations have been leveled and breach of trust alleged.

But without advert to these allegations and counter allegations, at this stage, what assumes importance is the preservation of the institute.

Initially, the institute was run by a set of trustees appointed by the petitioner no.1 and at present, is being run by a totally different set of trustees of the respondent no.1.

It is this take over which has been challenged.

Until a decision is taken whether the take over was justified or not, to protect so also to preserve the institute from ruin, a three-Member Committee is appointed, comprising of Mr. Rajeev Kumar, representative of the petitioners and Dr.

Rama Prasad Banerjee, representative of the respondents.

To oversee the functioning of the said two-Member Committee, a third person, namely, Ms. Debi Kar, Ex-Principal of Modern High School, is appointed as a Supervisor.

In the Code of Civil Procedure, no provision is made for supervisor, but being an educationist, it would not be very correct to term her as either a Receiver or a Special Officer.

Therefore, Ms. Debi Kar, an educationist, is appointed as a Supervisor.

It is made clear that the three-Member Committee comprising of the Supervisor and the members and representatives of the petitioners and the respondents will not interfere with the day to day administration of the institute, but admission, receipt of sums, disbursements and all monetary aspects of the institute will be monitored by the three-Member Committee.

This is to ensure that no allegation or counter allegation of mismanagement of funds or siphoning of funds is made by any of the parties.

Provision for this mode of functioning of the institute is done purely on a provisional basis and will be reassessed after four weeks.

The Supervisor will be entitled to a remuneration of Rs.10,000/- per month to be paid out of the moneys of the institute.

Directions are given for filing affidavits.

Affidavit-in-opposition be filed within three weeks; reply, if any, be filed within two weeks thereafter. Matter to appear in the list six weeks hence.

To enable the three-Member Committee to proceed with their works, as mentioned above, the latest position of the institute be informed by the present members of the institute to the three-Member Committee.

Interim order granted in terms of the prayer (c) is continued for 16 weeks.

It is made clear that the order passed on 2nd August, 2013 in terms of the prayer (d), as modified, will continue till the present status of the institute is handed over to the three-Member Committee.

Till the status of the institute is intimated to the three-Member Committee, Ms. Vijaya Bhatia, Advocate and Mr. Deepak Jain, Advocate are appointed Joint Special Officers for purposes of disbursements and collections of money, if any.

The three-Member Committee so also the Joint Special Officers will open separate bank accounts in any nationalized bank.

The three-Member Committee will be entitled to take assistance of an accountant or any person concerned with finance.

Let this order passed this day be communicated to Ms. Debi Kar by the petitioners. The three-Member Committee including the Supervisor and all parties are to act on a signed photocopy of this order on the usual undertakings.

(PATHERYA, J.) sm/sg2

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