

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Sep-12-2013

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET G.A.No.2160 of 2013 With ARC 1 of 2002 IN THE HIGH COURT AT CALCUTTA ORDINARY ORIGINAL CIVIL JURISDICTION ORIGINAL SIDE IN THE MATTER OF: RAI SURAJMAL BAHADUR CHARITABLE TRUST AND RE: RAJENDRA KR.

BANKA & ORS.AND MAHESH TULSHAN BEFORE: The Hon'ble JUSTICE PATHERYA Date:

12. h September, 2013.

Appearance: Mr.Reetobrata Mitra, Adv.Mr.Sabyasachi Sen, Adv.Mr.Swarnendu Ghosh, Adv.Mr.Nirmalya Dasgupta, Adv.Mr.Dibnath Dey, Adv. for the petitioners Mr.Sakya Sen, Adv.Mr.S.R.Kakrahia, Adv.Mr.Suman Adhikary, Adv.Mr.Sanjeeb Seni, Adv. for the interim trustee The Court: By this application the petitioners herein seek grant of leave to enter appearance in ACR No.1 of 2002 and to be

granted time to file written statement therein upon service of ACR No.1 of 2002.

The case of the petitioner is that he is the principal trustee of Rai Surajmal Bahadur Charitable Fund/Trust and for the misdeeds of the trustee-respondent C.S.No.202 of 2002 was filed which was dismissed for misjoinder of causes of action.

Therefore, on merit the said suit was not decided.

In appeal the order of dismissal was affirmed.

The order of Appeal Court is dated 23rd April, 2013 and, therefore, the petitioner is now entitled to seek a copy of the ACR No.1 of 2002 as he would be entitled to enter appearance pursuant to advertisement of 2002.

As there has been no change in the status of the petitioner since 2002 and this day except that the suit was dismissed orders be passed, as sought.

Section 5 of the 1920 Act lays down the procedure to be followed in case applications are filed under the said Act and entitles the trustees and any other person to be served with a copy of the application.

Assuming that the petitioner is any other person he would be entitled to contest ACR No.1 of 2002 upon receiving a copy thereof and filing a written statement thereto.

In the advertisement of 2002 any person intending to appear in the application was entitled to file his affidavit-in-opposition.

If the petitioner was entitled to file his application in April 2002 there can be no bar to contest the said proceeding this day.

The petitioner as the eldest male member of the Tulshan family is the principal trustee.

By the order dated 13th May, 2002 the petitioner was also appointed as interim trustee and has continued to function as such.

Therefore, orders be passed.

Counsel for the respondent in opposing the said application, submits that it is after 12 years that the petitioner has come to exercise his right, if any, not as any other person but as a principal trustee.

This application has also been filed as a trustee and a principal trustee.

The advertisement of 2002 was noted by the petitioner but as both ACR No.1 of 2002 and CS 20. of 2002 were being heard together, no attempt was made to enter appearance.

The petitioner has not claimed to be any other person in this application.

In fact, at the time of dismissal of CS No.202 of 2002 it was specifically stated that the order of dismissal would not prevent or prejudice the petitioner herein from bringing appropriate action on the same cause of action.

No step has been taken by the petitioner to file an independent suit.

Section 5(2) of 1920 Act has been engrafted with the particular intent to expeditiously dispose of the application on appearance by either the trustee or any other person.

In the instant case the petitioner did not exercise his right at the time of publication and, therefore, is estopped by statute from pursuing this application.

ACR No.1 of 2002 has been filed under Section 7 of the 1920 Act and calls for directions to be issued by the Court regarding management and administration of the trust property on an application filed by the trustees.

As the petitioner is not a trustee and has not described himself as any other person nor did he enter appearance pursuant to the publication effected, this application merits no order.

Having considered the submissions of the parties ACR No.1 of 2002 was filed in April 2002.

A publication was effected on 19th April 2002 calling upon any person interested to file affidavits.

The time for filing such affidavit was also specified in the said application.

Pursuant thereto, the petitioner had an opportunity to not only enter appearance but to file an affidavit or a written statement in accordance with law.

But the petitioner did not take any step instead the suit was filed wherein an order was passed on 13th May, 2002 appointing interim trustees.

The said order was also passed in ACR No.1 of 2002.

The interim trustees comprised of the plaintiff no.1 in CS No.202 of 2002, defendant no.1 therein and one Chakradhar Agarwal.

On an application filed under Order 7 Rule 11 of the Code of Civil Procedure for dismissal of the plaint, an order was passed on 6th October, 2010 dismissing CS No.202 of 2002 for misjoinder of causes of action.

While dismissing the said suit liberty was given to the petitioner herein to file appropriate proceedings on same cause of action.

Admittedly, no proceeding has been filed and although the order dated 6th October, 2010 was challenged in appeal, by order dated 23rd April, 2013 the Appeal Court confirmed the order of the Trial Court.

Therefore, although the suit was not decided on merit but for the misjoinder of the causes of action, the orders were passed.

Two causes of action were pursued by the petitioner in CS No.202 of 2002 and the reliefs sought on basis thereof related to a declaration that the petitioner was the principal trustee of the said trust while the rest of the reliefs related to removal of the trustees for breach committed by them.

Therefore, the petitioner sought for declaration that he was a principal trustee and the said issue till date remains undecided.

This application has only been filed on the premise that the petitioner is a principal trustee and in view of no declaration made the said application, at this stage, cannot be allowed.

Although it has been contended by the counsel for the petitioner that he be treated as any other person but no such case has been made out by the petitioner describing himself to be a person interested in the estate.

He has claimed a right as a principal trustee and, therefore, to treat him as any other person would be contrary to the claim of the petitioner.

Accordingly, this application merits no order and is dismissed.

All parties concerned are to act on a photostat signed copy of this order on the usual undertakings.

(PATHERYA, J.) pkd/sg2

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