

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

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Court : Kolkata

Decided On : May-06-2014

Judge : I. P. Mukerji

Appellant : Malvika Foundation and ors.

Respondent : Eiilm Foundation and ors.

Judgement :

ORDER

SHEET GA NO.52 OF 2014 WITH CS NO.251 OF 2013 GA NO.3063 OF 2013 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE MALVIKA FOUNDATION AND ORS.Versus EIILM FOUNDATION AND ORS. BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 6th May, 2014.

Mr.S.N.Mitra, senior advocate, Mr.A.Mukherjee, Mr.D.Jainappear.

Mr.P.K.Ghosh, Mr.T.Bose, senior advocates, Mr.D.Dutta, Ms.V.Bhatiaappear.

Mr.R.L.MitraappeaRs.Mr.N.Dasgupta, Ms.P.Dharappear.

Mr.M.BoseappeaRs.Mr.C.GuptaappeaRs.The Court : The principal prayer in this application was for audit of the accounts of Eastern Institute for Integrated Learning in Management [EIILM].since the financial year 2009-2010.

Mr.P.K.Ghosh, learned senior advocate for the fiRs.defendant has taken me through the documents appended to the affidavit in opposition to the earlier interim application, filed on behalf of the second defendant.

A series of e-mail correspondence has been brought to my notice.

I form a concrete opinion from this correspondence that the balance-sheets from 2009-2010 were prepared by the parties in consultation with each other.

This is so because I find that draft balance-sheets were forwarded by one party to the other for his views.

Thereafter, the balance-sheet was returned.

At times it was sent back with counter views.

Thereafter, it was finalised, with consent, prima facie.

In those circumstances, I see no justification for reopening the audit of EIILM Foundation at this point of time.

After hearing the submissions on behalf of the parties, it appears that there is a complete deadlock amongst members of the three-member committee.

According to the terms of appointment of the committee it is to function by unanimous decisions only.

When this state of affairs was brought to the notice of Patherya, J.

her ladyship by an order dated 3rd October, 2013 appointed Mr.Sondwip Mukherjee, advocate as the Special Officer to settle the disputes amongst members of the Committee and evolve a workable solution.

I am of the opinion that the said order be fully implemented.

The Committee should try to be unanimous when it comes to taking important decisions for the functioning of the institute.

There is one substantial controversy, which has been raised, in my opinion, in this application.

Although Mr.Ghosh, learned senior advocate tried to provide an explanation, but to my mind this explanation would more fully come out when affidavits are exchanged.

This point relates to the ECC payment.

According to the rules of the Foundation a person is paid Rs.40,000/- as ECC fee, if he introduces one student.

This person is paid Rs.45,000/- per student if he introduces ten or more ten students.

This amount is only payable upon the students paying the full annual fee or full course, whichever happens earlier.

According to the statements appended to the petition, it appears that full ECC payment was made before payment of the annual fee by the student.

In some cases amounts much in excess of the stipulated amount have been paid.

Mr.Ghosh produces some documents and argues that the amounts paid were much lesser.

For example, he says that only Rs.90,000/- was paid to Mr.Pradip Mukhopadhyay, Rs.45,000/- paid to Smt.

Rupashree Banerjee and Rs.27,000/- paid to Mr.Kanak Kumar Maity.

Till this point is fully resolved on filing of affidavits, I ask Mr.Sandwip Mukherjee, Special Officer to ensure that no ECC payment is made in derogation of the above stipulation made in the rules of the Foundation.

Let affidavits be exchanged according to the following directions: Let affidavit in opposition be filed by 9th June, 2014.

List this application along with all pending applications on 25th June, 2014.

Affidavit in reply, if any, may be filed in the mean time.

Let affidavits be similarly exchanged in GA No.3063 of 2013.

So far as prayer [c].is concerned, a reasonable notice of all payments above Rs.25,000/- for travelling expenses and advertisement have to be made to the plaintiffs representative so that he can properly object before Mr.Mukherjee, the Special Officer.

Let the Special Officer be paid by the Institute 1200 GMS.as his ad hoc remuneration by 4th June, 2014 for the work already done.

He may be further paid @ Rs.12,000/- per month commencing from 1st June, 2014 as his remuneration from the funds of the Institute.

Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(I.

Pkd.

A.R.[C.R.].P.MUKERJI, J.)

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