

(2009) 04 DEL CK 0169

Delhi High Court

Case No: IA. No. 2857 of 2008 in CS (OS) 420 of 2008

Ch. Hoshier Singh
Mann and Others

APPELLANT

Vs

Charan Singh and
Others

RESPONDENT

Date of Decision: April 23, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47, 92

Citation: (2009) 162 DLT 208

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Laliet Kumar and Ashutosh Lohia, for the Appellant; K.C. Mittal, Sumit Babbar and Sujeet Singh for defendant Nos. 1, 2 and 4 to 11 and Ved Prakash Sharma, for defendant No. 3, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

The application of the plaintiffs for interim relief is under consideration. The plaintiffs, who are 12 in number have instituted this suit inter-alia on the averments that the plaintiffs No. 1,3 to 6 and the plaintiff No. 10 and the defendants No. 1 to 3 & 5 to 9 along with four other persons i.e. 18 in all were as on 12th May, 2007 trustees of Sir Chhotu Ram Educational Trust, Kanjhawala, Ghevra, Delhi, a Public Charitable Trust registered under the Trusts Act; that under Article 2, of the Rules & Regulations of the said trust, the trust is to always comply with the provisions of the Societies Registration Act, 1860; that in the meeting of the trust held on 27th March, 2007 it was resolved to amend the rules & regulations of the trust; that the elections to the post of the office bearers of the trust i.e. Chairman, Vice Chairman, Secretary, Joint Secretary and Treasurer were scheduled to be held on 12th May, 2007; that as per the rules & regulations, the elected candidates are to hold office for a period of three years; that in the meeting on 12th May, 2007, the plaintiff No. 1 was

unanimously elected as the Chairman of the Trust but no consensus emerged for the post of the other office bearers; that as a mark of respect, the members decided to bestow faith in defendant No. 2 to appoint the other office bearers of the trust in consultation with the plaintiff No. 1; that the defendant No. 2 in consultation with the plaintiff No. 1 appointed the defendant No. 1 as the Vice Chairman, Dr. Balbir Singh who is neither the plaintiff nor the defendant in the present suit as General Secretary, the defendant No. 6 as the Treasurer besides appointing plaintiffs No. 3, 5 & 6 as the Chairman and Secretary respectively of the schools run by the said trust; a letter dated 15th May, 2007 was written by defendant No. 2 in this regard; that the said office bearers occupied their respective offices and started functioning in their new capacities; that the amended rules of the trust were registered with the Registrar of Societies on 22nd May, 2007.

2. It is further the case in the plaint that as per the rules & regulations, the trust can have a maximum of 21 trustees; that though it was a part of the agenda for the meeting on 12th May, 2007 that the three vacancies of the trustees will also be filled up but the same could not be done on 12th May, 2007; however in the first meeting of the new executive committee of the trust held on 14th July, 2007, the executive committee and the board of trustees passed various resolutions including that for induction plaintiffs No. 7, 8 & 9 as the new trustees of the trust; that the said nominations were made unanimously in accordance with the rules & regulations.

3. The plaintiffs have further pleaded that notwithstanding the aforesaid, the defendant No. 2 attempted to usurp the powers of the trustees as well as governing body by continuing/attempting to act as the sole dictatorial authority and in pursuance whereof the defendant No. 2 vide his letter dated 14th August, 2007, in modification of his earlier letter dated 15th May, 2007 and consequent upon the alleged unwillingness of the defendant No. 6 for holding the post of Treasurer, appointed the plaintiff No. 3 as the Treasurer and the defendant No. 8 and one Shri S.S. Solanki who is not a party to the suit as the Secretary of the institutions run by the trust. It is the case of the plaintiffs that the said action of the defendant No. 2 is in derogation of the rules & regulations of the trust and was protested by the plaintiff No. 1 vide his letter dated 22nd August, 2007.

4. It is further the case of the plaintiffs that the defendant No. 2 issued another communication dated 22nd August, 2007 stating that he had been authorized in the meeting held on 14th July, 2007 to fill up the three vacant posts of trustees in the trust and for which posts he appointed the defendants No. 10, 11 and the plaintiff No. 7 as the trustees. It is the case of the plaintiffs that the said action of the defendant No. 2 is also in violation of the amended rules & regulations of the trust which had come into force w.e.f. 22nd May, 2007. According to the plaintiff, the three vacancies of trustees already stood filled up on 14th July, 2007 and thus as on 22nd August, 2007 there were no vacancies.

5. The plaintiffs further claim that in a meeting of the trustees held on 15th September, 2007 certain resolutions were passed and which annoyed the defendants No. 1,5,6,7,8,9 & Mr. S.S. Solanki who together with the defendants No. 10 & 11 wrote a letter dated 22nd September, 2007 to the defendant No. 2 to pass a No Confidence Motion against the existing management and also requested him to re-constitute the trust. According to the plaintiffs the said letter was written by nine persons out of whom the defendant No. 10 & 11 were not trustees though claiming to be trustees nominated by the letter dated 22nd August, 2007 of the defendant No. 2. The plaintiffs state that the defendants No. 2 & 3 circulated a letter calling for an emergency meeting of the trust and which also was not in accordance with the rules; on the failure of the plaintiff No. 1 (being the Chairman) and of the Secretary of the Trust to call such meeting, the defendant No. 1 issued a letter dated 12th October, 2007 whereby he called a emergency meeting on 16th October, 2007 with the agenda to select the Chairman and other office bearers of the trust and to discuss and resolve the No Confidence Motion against the Chairman and Secretary of the trust. It is the case of the plaintiffs that the defendant No. 1 being the Vice Chairman of the trust was under the rules & regulations thereof not authorized to convene any meeting.

6. It is further the case of the plaintiffs that Dr. Balbir Singh aforesaid being the Secretary of the trust instituted a suit in this Court being CS(OS) No. 2054/2007 and vide interim order dated 16th October, 2007 wherein, with respect to the meeting scheduled for 16th October, 2007 it was ordered that though the meeting may be held but no further action would be taken in pursuant to any resolution adopted in the said meeting. The defendants in that suit subsequently filed a written statement and a copy of the resolution passed in the meeting of 16th October, 2007 whereby No Confidence Motion had been passed against the plaintiff No. 1 as Chairman and Dr. Balbir Singh as the Secretary and their team. The plaintiffs further aver that though in the agenda, the No Confidence against the Chairman & Secretary only was included but in the meeting on 16th October, 2007 No Confidence was passed against all the office bearers. Also, again though it was not in the agenda, new committees were constituted in the said meeting.

7. According to the plaintiffs, the office bearers under the rules were elected for a period of three years and there is no provision for their removal and this action of the defendants of purported removal and appointing themselves as the office bearers of the trust is illegal. The plaintiffs thus, in the suit claim the relief of declaration that the defendants No. 10 & 11 are not the trustees of the trust and that the No Confidence Motion passed on 16th October, 2007 is null and void and the appointments made on 16th October, 2007 as office bearers of the trust are null and void and of mandatory injunction directing the defendants to surrender all documents/records etc. of the trust to the plaintiffs. Interim relief during the pendency of the suit of restraining the defendants from acting as office bearers of the trust has been claimed. In the replication, it is stated that the plaintiffs 11 and 12

were made trustees on 24th January, 2008.

8. The defendants in their written statement do not dispute the 18 trustees of the trust as on 12th May, 2007. The defendants dispute the election of the plaintiff No. 1 as the Chairman in the meeting held on 12th May, 2007. It is pleaded that the plaintiff No. 1 was also nominated by defendant No. 2. It is further pleaded that the plaintiffs 7 to 9 and 11 and 12 are not trustees and have no locus to file the suit; that the suit is bad for non-joinder of Dr Balbir Singh, Shri S.S. Solanki and Shri Chander Verma who are the trustees. The defendants dispute the resolution dated 14th July, 2007 claimed by the plaintiffs appointing the plaintiffs No. 7 to 9 as the trustees of the trust. It is further pleaded that the plaintiffs 1 to 6 and 10 who only of the 12 plaintiffs are the trustees, are in minority and the majority of the trustees in the meeting of 16th October, 2007 have passed the no confidence motion against the then chairman and office bearers of the trust; that the plaintiffs 1 to 6 opted not to participate even in the meeting of 16th October, 2007. It is pleaded that in the said meeting, the trustees present and voting unanimously expressed no confidence against the then chairman and other office bearers and appointed new office bearers. The defendants rely upon Clause 12 of Chapter IV titled Special Provisions in Additional Rules & Regulations of the trust which is as under:

If any member of Board of Trustees or Governing Body is found involved in anti-trust or anti-governing body activities or is found to act in a way as to bring a bad name to the trust or governing body, he may be terminated by the Board of Trustees after duly endorsing such as an act of the Member of Board of Trustees/Governing Body by calling a meeting of the trust. In case of non-unanimity, the decision can be taken by a majority vote.

9. According to the defendants, the meeting dated 16th October, 2007 was attended by 11 trustees including the defendants No. 10&11 and who unanimously passed a No Confidence Motion. It is thus the case of the defendants that the removal of the office bearers appointed on 12th May, 2007 is in accordance with law. It is further the case that the present suit is not maintainable in view of judgment dated 30th January, 2008 in CS(OS)2054/2007 (supra).

10. The plaintiffs in the replication have for the first time contended that Dr Balbir Singh, Shri S.S. Solanki and Shri Chander Verma were not required to be made a party since they were removed from membership of trust for failure to attend meetings of trust. Elsewhere it is pleaded that Shri Chander Verma and another trustee Dr Chanderketu were removed on 24th January, 2008 for their antitrust activities and in whose place plaintiffs No. 11 and 12 were inducted as trustees.

11. The plaintiffs besides challenging the convening of the meeting dated 16th October, 2007 also rely upon Clause 2(e) of Chapter-I of the aforesaid Additional Rules & Regulations which provides for any major decision about the trust or its institutions such as nomination or termination of trusteeship etc. to be adopted by

at least 2/3rd majority (14 trustees) of 21 trustees. The plaintiffs contend that even if the meeting called on 16th October, 2007 is found to be properly convened and in pursuant of Clause 12 aforesaid, the same still does not satisfy the test of Clause 2(e) in as much as the No Confidence Motion is not by 2/3rd majority. It is stated that according to both the parties as on that date there were 21 trustees and the No Confidence Motion, if any, had to be of at least by 14 trustees, while according to the documents filed by the defendants also, there were only 11 trustees present in the said meeting. Per contra, the defendants have urged that under Clause 12 the No Confidence Motion was required to be passed by majority vote only and the requirement of 2/3rd does not apply.

12. The counsels for the defendants contend that the present suit is for the reliefs falling within the ambit of Section 92 of the CPC; the plaintiffs had along with the suit filed an application (IA No. 2858/2008) seeking leave of the court but withdrew the said application on 4th August, 2008. It is the case of the defendants that upon withdrawal of the said application, the suit is barred by Section 92 of the CPC. Reliance was placed on [R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others](#), .

13. I do not find any merit in the contention of the counsel for the defendants that the present suit is barred by Section 92 of the CPC. The present suit is not of the category covered by Section 92 of the CPC. The present suit is to address personal grievances and disputes and to assert personal rights, may be as the office bearers of the trust, but certainly not in public interest, or in a representative capacity. Every suit with respect or against a public charitable trust does not fall within the domain of Section 92 of the CPC. Where the suit is filed for vindication of private rights and not as representatives of the public or where the right as a trustee is asserted and is denied by the other, the suit is not covered u/s 92 of the CPC. Reference can be made to [Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another](#), and to Vidyodaya Trust v. Mohan Prasad 2008 5 A.D. (SC) 101.

14. It is further the argument of the defendants that the present suit is also barred by the earlier suit being CS(OS) No. 2054/2007 which was preferred by Dr. Balbir Singh in a representative capacity. A copy of the order dated 30th January, 2008 in the said suit has been filed. However, a perusal of the said order shows that that suit was dismissed for the reason of being barred by Section 92 of the CPC and thus being not maintainable. Of course, while dismissing the suit this Court had also observed that it is the prerogative of the trust to run the trust in an efficient, honest and proper manner and if majority of trustees feel that the trust is not being run in a proper manner and the funds are being misappropriated, the trustees can always exercise their right to manage the trust and recall such persons and handover the management to other set of persons. It is the contention of the defendants that the meeting of 16th October, 2007 was under challenge in the said suit and upon dismissal of the said suit, the present suit is barred by res judicata. Reliance was

placed on [Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh C. \(Dead\), M.N. Singh and Others, .](#)

15. I do not agree with the aforesaid contention of the defendants. The earlier suit was dismissed as not maintainable. It tantamounts to rejection of the plaint. If the suit is dismissed for a technical defect, the findings, even if any, given on merits do not constitute res judicata.

16. The counsel for the defendant No. 3 also raised a technical plea that the interim order of restraint sought could not be granted as no relief of permanent injunction had been claimed. Relying upon Manisha Commercial Ltd v. N.R. Dongre 87 (2000) DLT 393 and V.D. Tripathi v. Vijai Shanker Dwivedi AIR 1976 All. 98 it was contended that a party is not entitled to interim relief which can never be granted to the party while disposing of the suit finally.

17. The counsel for the plaintiffs has referred to a) [Sarbjit Singh and Others Vs. All India Fine Arts and Crafts Society and Others,](#) to contend that it is not open to a society to do any act contrary to its Memorandum and Articles of Association; b) [Dr. Raj Vardhan Azad Vs. All India Ophthalmological Society and Others,](#) where prima facie view was taken of a Resolution passed in General Body meeting of society; c) Sanjay Jain v. Bar Council of Delhi AIR 1999 DelHI 3 for the proposition that a practice not in consonance with statute cannot be allowed to stand even if it is hallowed by time; d) [Anil Agarwal and Others and Vinod Kumar and Others Vs. The Institute of Chartered Accountants and Others,](#) for the proposition that power to recall is not inherent in the electorate and in the absence of a power of removal of Chairman and Vice Chairman in the bye laws the members are not entitled to do so; e) [N. Sivarama Chandrasekhara Rao Vs. State of Andhra Pradesh and others,](#) , to the same effect.

18. The aforesaid pleadings and submissions would show that the controversy in the present suit is as to whether the office bearers of the trust as elected/appointed pursuant to the meeting of 12th May, 2007 are to continue for a period of three years i.e., till 11th May, 2010 or the new office bearers appointed on 16th October, 2007 whose appointment is challenged and the inter alia the removal sought in the suit entitled to continue for three years i.e. till 15th October, 2010. Some of the persons appointed pursuant to the meeting dated 12th May, 2007 are not parties to the present suit and some are not supporting the suit and have been impleaded as the defendants. The other question which arises though no express relief is claimed with respect thereto is as to the appointment /induction of three trustees in addition to the 18 admitted trustees. Of these, the plaintiff No. 7 is common. While the plaintiffs contend that plaintiffs No. 7 to 9 were so inducted as trustees, the defendants contend that the plaintiffs No. 7 and the defendants No. , 10 and 11 were inducted as the trustees. Yet another dispute is as to whether Dr Balbir Singh, Shri S.S. Solanki and Shri Chander Verma all of whom are not parties, ceased to be the trustees, and plaintiffs 11 and 12 appointed in their place or the said persons

continued to be trustees. Again no express relief is claimed in this regard.

19. I had during the hearing posed the question to the counsels as to what purpose the present litigation will serve. The term of the office bearers who have sued as plaintiffs is barely for a period of further one year. The disposal of the suit is likely to take longer than that. While the counsel for the plaintiffs contended that if interim injunction is granted in favour of the plaintiffs, the office bearers appointed pursuant to 12th May, 2007 shall continue for the remaining term i.e., till May, 2010, the counsel for the defendants 1, 2 and 4 to 11 contended that the office bearers presently functioning are entitled to continue for a period of three years from their appointment. The counsel for the defendant No. 3 however suggested a solution to not only the application for interim relief but also for disposal of the suit. It was suggested that since there was no controversy as to the 18 trustees as on 12th May, 2007, the suit could be disposed of by directing the said 18 members to be the only trustees of the trust and by further directing fresh election to the post of the office bearers of the trust, to be held by the said 18 trustees and with the induction of the remaining three trustees being left to be decided in accordance with the rules and regulations of the trust.

20. It is sad that such dispute has been brought to the court. The trustees of a public charitable trust are expected to perform a duty rather than to seek posts/office. The positions to the governing body of a public charitable trust for which the parties are litigating are supposed to be non-remunerative. I do not see any reason for the parties to pine for the same.

21. The courts have evolved a policy for non interference with the internal affairs and management of such trusts/societies for the reason that they are to be governed by their Charter/Rules & Regulations and by the rule of majority, acting in terms of said Charter.

22. From the narration of facts above it is evident that there are dissensions not only amongst the trustees but even amongst the office bearers of the trust. The application for interim relief seeks the relief of restraining the defendants from acting as office bearers of the trust and directing the defendants to deposit or surrender all documents/statements of accounts/records in respect of the trust to the plaintiffs. However, amongst the defendants are persons whom the plaintiffs also contend are the office bearer having been elected /appointed alongwith the plaintiffs. Granting the injunction as claimed will have the effect of allowing the trust to function without all the office bearers. Also as aforesaid Dr Balbir Singh who was appointed as the General Secretary as per the elections/appointments relied upon in the plaint is not a party to the suit. Obviously, he was not willing to join with the plaintiffs. In his absence, it cannot be said whether he is interested in continuing to function as the General Secretary of the trust or not. If he is not, grant of injunction would be meaningless inasmuch as there would be then no General Secretary of the trust.

23. The appointment of office bearers as pleaded by the plaintiffs themselves, according to me is not lawful. The trustees of a public charitable trust are to exercise their duties/functions themselves and not by delegation. The Indian Trust Act, though applicable to private charitable trusts, but principles whereof are applicable to public charitable trusts also, in Section 47 thereof, provides so. The Apex Court recently in [J.P. Srivastava and Sons Pvt. Ltd. and Others Vs. Gwalior Sugar Co. Ltd. and Others](#) , cited with approval [Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another](#), holding, whether a trust is a private trust governed by the Indian Trusts Act or is a public charitable or religious trust, a trustee cannot delegate any of his duties, functions and powers to a co-trustee or to any person unless the instrument of trust so provides or the delegation is necessary or the beneficiaries competent to contract consent to the delegation or the delegation is in the regular course of business. It was further held that the trustees even by a unanimous resolution authorise one of themselves to act as managing trustee for executing the duties, functions and powers relating to the trust and everyone of them must join the execution of such duties, functions and powers.

24. However, the trustees in the present case, as per the plaintiffs, instead of electing the office bearers of the trust themselves, are informed to have authorized the defendant No. 2 to nominate the office bearers. The same is dereliction of the duty as a trustee. The trustees are to exercise their discretion in the matter of electing/appointing the office bearers of the trust, in the best interest of the trust and its beneficiaries. I am therefore not inclined to grant any interim order restoring to the management of the trust, office bearers whose own appointment does not appear to be in accordance with the rules and regulations of the trust. The dispute as to whether plaintiff No. 1 was elected or also nominated by defendant No. 2 also requires trial.

25. Having held so, axiomatically, the appointment of office bearers in meeting of 16th October, 2007, suffers from same defect, in as much as even they were not elected/appointed by the trustees and were again appointed by the defendant No. 2 only. Thus, the conclusion is inescapable that neither the plaintiffs nor the defendants are the office bearers elected in accordance with the Charter of the trust.

26. The next question to be considered is whether the factum of removal as pleaded by the defendants is contrary to the rules & regulations of the trust. The competing Rules 2(e) and 12 have already been noticed herein above. Undoubtedly, the action/decision of removal of office bearers would be a major decision. However, the two have to be read harmoniously. It is also significant that in Rule 2(e), instance of termination of trusteeship is given but not of termination of governing body or of any member thereof. The two can co-exist only if termination of governing body or any member thereof is read as exempted from the requirement of 2/3rd majority. The rule applicable to termination of governing body would be by majority vote only

as provided in the specific rule therefore .Such majority vote has to be of the trustees present and voting. Seen in this light, at this stage, it cannot be said that the No Confidence Motion passed in the meeting of 16th October, 2007, is illegal, or contrary to the rules and regulations.

27. The counsel for the plaintiffs has also urged that neither in the agenda nor in the minutes of the meeting dated 16th October, 2007 is there any reference to the grounds on which the power of termination under Rule 12 could be exercised. I, however, do not find any merit in the said submission. The trustees are not lawyers and astute draftsmen. What has to be seen is as to what was the purpose of the meeting of 16th October, 2007. The purpose thereof clearly was for removal of the governing body. Even otherwise it has been held in catena of judgments that in relation to meetings of clubs, societies & trusts, there is no requirement of agenda or of agenda to be specific.

28. In my opinion, in the aforesaid circumstances leave apart the ingredient of prima facie case, the balance of convenience is also not in granting the injunction. The grant of injunction as claimed would not be in the interest of the trust and would tantamount to allowing the trust to function without the Vice Chairman, the General Secretary and the treasurer. The plaintiffs are not entitled to the interim order on this ground alone. The office bearers of the trust, elected / appointed according to the plaintiffs are a divided house and the same can only result in harm to the trust. One set of office bearers ought not to be permitted at this interim stage to run the affairs of the trust.

29. That brings me to the question of further orders in the suit. As aforesaid, counsels were heard on that aspect also. Should this Court, bound by the procedure for disposal of suits prescribed in CPC, frame issues and set down the suit for trial, inspite of finding that neither of the two parties claiming management of the trust is entitled thereto. The pendency of this suit, and disposal whereof is likely to take some time, is likely to be detrimental to the trust and ultimately detrimental to the beneficiaries of the trust. The trust is running educational institutions. The trust, presently is in the hands of people, not entitled to constitute its governing body, under its Charter. The effect of putting the suit to trial would be to allow such people to continue in such management. The parties to the suit clamoring for office of governing body of trust, appear to be oblivious to the same.

30. The courts are the parens patriae and the guardian of the public charitable trust / institution (in this regard also see [I. Nelson and Another Vs. Kallayam Pastorate and Others,](#)).

31. The Apex Court in Chenchu Rami Reddy v. Government of Andhra Pradesh AIR 1986 SC 1156 had held that more often than not, detriment to what belongs to many collectively does not cause pangs to any, for no one is personally hurt directly. It was further held that for this reason only those entrusted with care of public

property have to show exemplary vigilance. The Apex Court further held that property of such charitable institutions or endowment must be jealously protected - It must be protected for a large segment of the community has beneficial interest in it. It was further held that the authorities exercising the powers with respect to such institutions and endowments must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today; they cannot afford to take things at their face value or make a less than the closest and best attention approach to guard against all pitfalls. Seen in this light I feel that if the ordinary course of litigation as prescribed in the CPC is to be permitted to be followed in the present case i.e. of framing of issues and putting the matter to evidence, not only till 2010, till when the present office bearers claim their turn to be but till the adjudication of the present suit, the affairs of the trust would suffer.

32. However, I also find that unless the dispute as to the three additional trustees and some other who are alleged to have ceased to be trustees is also not resolved immediately, the elections of the office bearers to the trust even after 2010 are likely to be affected and thereby again affecting the affairs of the trust. Not only so, the same is likely to be a drain on the monies of the trust as well.

33. The office of a trustee is a non-remunerative office. There can of course be certain amount of prestige/status attached to the same. I have considered on the anvil of irreparable injury, whether the plaintiffs and the defendants, whose trusteeship is disputed would suffer any irreparable loss and injury if held to be not trustees. In my opinion, they would suffer injury to their reputation and esteem. However, their appointments, again being not in accordance with rules and regulations of the Trust are void. The new trustees claimed by plaintiffs are appointed by governing body whose own appointment is found to be invalid and the new trustees claimed by the defendants are stated to be appointed by the defendant No. 2 as a delegatee and which appointment, is for this reason bad. Thus the question of their suffering any injury does not arise. Moreover the interest and rights, even if any of such persons have to give way to the larger interest of the trust and for the beneficiaries of the trust. I thus hold that neither plaintiffs 7 to 9 and 11 and 12, nor defendants 10 and 11 are the trustees of the trust.

34 Justice cannot be the causality in the game of litigation. Just because the rules of the games of litigation provide for the issues to be framed and evidence to be led, does not allow the parties to insist upon playing the game by the said rules. Though I have held hereinabove that the suit as filed does not require the plaintiffs to seek permission u/s 92 of the CPC but this Court of its own, exercising the powers u/s 92 of the CPC and finding the situation to have arisen where the directions of this Court are necessary for appropriate functioning of the trust, is competent to change the rules of the game and to do justice and what is in the best interest of the ultimate beneficiaries of the trust.

35. It is in the best interest of the trust that the elections/appointments to the office bearers are made immediately, in accordance with rules. There is no dispute as to the 18 trustees. Of course the plaintiffs in replication have claimed that some of them have ceased to be trustees. That is disputed by the defendants. There is no claim in the suit with respect thereto. This Court will thus proceed as if all 18 are trustees. However, even if any of them who are not before the court do not want to be trustees or to continue as trustee, as long as the minimum number of 11 trustees prescribed in the Rules exist, such trustees are required to elect the office bearers.

36. The suit is disposed of with the direction that the 18 trustees as on 1st May, 2007 or such of them who are willing to so act are the only trustees of Sir Chhotu Ram Educational Trust, Kanjhawala, Ghevra, Delhi-110081 and neither the plaintiffs 7 to 9, 11 and 12 nor the defendants 10 and 11 are the trustees or entitled to act as the trustees of the said trust. The election to the post of the office bearers of the trust, in accordance with the rules and regulations of the trust, be held within the period of two months herefrom. Till then, the existing office bearers to continue. If any of the parties feels at any point of time that there is an impediment by others to the holding of the said election, they shall be entitled, notwithstanding the disposal of the suit, to approach this Court for appropriate directions in that regard. In the circumstances, the parties are left to bear their own costs. Decree sheet be drawn up accordingly.