IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA

CIVIL REVISION No.454 of 2021

SMT. VIJAYA NAGCHANDI AND ANOTHER

...Petitioners

and

KHASGI (DEVI AHILYA BAI HOLKAR CHARITIES TRUST, MANIK BAGH, INDORE THRU. RAJENDRA AND ANOTHER

...Respondents

Reserved on 20.03.2025

Pronounced on 24.03.2025

Appearance:

Shri Vishal Baheti, learned Senior Advocate assisted by Shri Nipun Soni, learned counsel for the petitioners.

Shri Abhinav Malhotra, learned counsel for respondent No.1.

ORDER

The present Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 has been preferred by petitioners / defendants No.1 and 2 being aggrieved by order dated 24.11.2021 in Civil Suit No.940-A/2019 passed by learned 7th Civil Judge, Junior Division, Indore, whereby their application under Order VII Rule 11 of the Civil Procedure Code, 1908 for rejection of the plaint has been rejected / dismissed.

02. The aforesaid impugned order dated 24.11.2021 has been challenged on the following factual backdrop that the learned Court below has erred in exercising its jurisdiction, which rendered plaint liable to be rejected as per specific bar contained in Sections 32, 36(1)(a) and 47 of the Madhya Pradesh Public Trusts Act, 1951.

03. Originally, respondent No.1 – herein / plaintiff (Khasgi Devi Ahilya Bai Holkar Charities Trust) Thru. Rajendra Joshi instituted a suit before learned 7th Civil Judge, Junior Division, Indore bearing Civil Suit No.940-A/2019 seeking for permanent injunction restraining the defendants from causing any disturbance or interference in the right, title and possession of the plaintiff and further relief of delivery of vacant possession of the subject property from defendants, directed the defendants to pay Rs.10,000/- per month, 35 months from prior to the filing of the suit till the date of vacant possession.

04. The plaintiff filed a present suit that subject property is H.No.1-1/2, Vitthal Mandir situated in Lohar Patti, Maulana Azad Marg, Malharganj, Indore (Old No.Nagar Palika, H.No. / Old Street No.2 and H.No.1) presently the Temple is bearing H.No.2/2, which is owned and possessed by the plaintiff Trust, the said plaintiff Trust constructed two storey house and rooms nearby Temple. Further stated that the defendants have no right over the aforesaid property, the defendants are causing financial loss to the plaintiff trust by occupying the property of the plaintiff trust as encroacher, the said property wholly owned and possessed by trust, the Government of M.P. has no right over the said property, the defendants are the encroachers and they should be evicted from the said property and handed over the vacant possession. Further stated that defendants are merely encroachers and creating interference with the plaintiff's right and possession of the property of the plaintiff and causing loss of Rs.10,000/- per month to the plaintiff trust, therefore, plaintiff filed a suit for recovery of possession and permanent injunction and claiming an amount of Rs.10,000/- per month.

05. After coming to know about the filing of the suit, the defendants / respondents LRs. of Dinkar Rao and Ors. filed an application under Order VII Rule 11 of CPC seeking relief to reject the plaint filed by the plaintiff invoking the above provision.

06. The averments in the application under Order VII Rule 11 of CPC that the present suit filed by Rajendra Joshi on behalf of the plaintiff Trust on the basis of purported Power of Attorney dated 23.07.2019 said to have been executed by one of the trustee Shri Satishchandra Malhotra. Further averred that as per the judgment of Hon'ble High Court, it has categorically said that the trustee of the trust cannot delegate his power to stranger by executing Power of Attorney. Para 104 reads as follow:-

> "Section 47 of Indian Trusts Act, 1882 :- Trustee cannot delegate -
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> A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless
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> (a) the instrument of trust so provides, or
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> (b) the delegation is in the regular course of business, or
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> (c) the delegation is necessary, or
>
> (d) the beneficiary, being competent to contract, consents to the delegation.
>
> *Explanation*.-- The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section. *Illustrations*
>
> (a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.
>
> (b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.
>
> (c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents."

07. Further averred that Section 32 of Madhya Pradesh Public Trusts Act, 1951, there is clear bar in filing of the civil suit on behalf of unregistered trust deed. Further averred that the plaintiff trust is not registered under the above Act, a notification is mandatory under Section 36(2) of the M.P. Public Trusts Act, 1951. Further averred that no such notification has been placed on record, the order passed by the Registrar of Public Trust does not give any exemption to the trust. Further averred that the plaintiff has not placed the trust deed on record to show that the trustee of the plaintiff trust is entitled to delegate his power to any other person, in the absence of specific law the delegation of powers by trustee is expressly prohibited under Section 47 of Indian Trusts Act, 1882, filing of the present suit is barred by law and he prays to allow the application and reject the plaint filed by the plaintiff by invoking the provision under Order VII Rule 11 of CPC.

08. A reply filed by the defendant containing *inter alia* that the plaintiff trust *vide* order dated 10.08.1971 passed by Registrar of Public Trust in Case No.13-B-113(1)/1970-71 (old Case No.5-B-113/1966-67) is exempted from registration. Further stated that Shri Rajendra Joshi, Manager of the Trust duly authorised by trustee (Shri S.C. Malhotra) had filed present suit. Further stated that plaintiff trust is a big trust having property all over the India. All the trustees of the plaintiff trust i.e. Khasgi (Devi Ahilya Bai Holkar Charities) Trust *vide* resolution dated 25.09.2009 had authorised to Shri S.C. Malhotra to execute a Power of Attorney to any employee / person for looking over the regular affairs of the trust and to safeguard the properties. Further stated that Section 47 of the Indian Trusts Act, 1882 provides for such delegation and trustee Shri S.C. Malhotra is vested with the power to delegate Mr. Rajendra Joshi through a Power of Attorney dated 23.07.2019 to look after the affairs of the plaintiff Trust. Further stated that the delegation through Power of Attorney dated 23.07.2019 is legal and valid. Further stated that the plaintiff trust *vide* order dated 10.08.1971 issued by the Registrar of Public Trust in Case No.5-B-113/1966-67 is exempted from the registration. The Hon'ble Supreme Court directed the State of M.P. not to interfere in the management of the trust and the properties is still with the Khasgi Trust, which is in the legal possession and Trust has every power to manage and safeguard the property by obtaining legal means. Further stated that the order of the learned trial Court is well reasoned and needs no interference by this Court and the application under Order VII Rule 11 of CPC *devoid* of merits and liable to be dismissed.

09. After considering the pleadings and documents, the learned 7th Civil Judge, Junior Division, Indore considering the entire material on record, dismissed the application filed under Order VII Rule 11 of the CPC with observations that the Registrar of the Public Trust in Case No.5-B-113/1966-67 has passed an order exemption dated 10.08.1971 plaintiff trust is exempted from registration under Section 36(1)(a) of the Act, he followed the judgment of Hon'ble Supreme Court in the case of **State of M.P. vs. Khasgi Devi Ahilya Bai Holkar Charities Trust and Ors.** reported in **2021 (2) MPLJ 179 : 2020 SCC OnLine 4458** observed that there is no bar instituting a suit, exempted the trust from registration. Further observed that the trustee has authorised the co-trustee Mr.Malhotra *vide* resolution dated 25.09.2009 to execute a Power of Attorney to any employee / person for looking over the affairs of the Trust. Further observed that on the basis of the said resolution, Shri Rajendra Joshi has instituted a suit, hence, it appears that there is necessary compliance of provision under Section 47 of the Act. With the above findings, the application filed by the defendants under Order VII Rule 11 of CPC is rejected by the trial Court.

10. Being aggrieved by and dis-satisfied with the order of the learned trial Court dated 24.11.2021, the petitioners / defendants No.1 and 2 filed the present Civil Revision.

11. Shri Vishal Baheti, learned Senior Advocate assisted by Shri Nipun Soni, learned counsel for the petitioners submitted that the suit was filed by the plaintiff in the year 2019 bearing Civil Suit No.940-A/2019, whereby the petitioners / defendants preferred an application for rejection of the plaint under Order VII Rule 11 of CPC, which was dismissed by the learned trial Court. Further submitted that the plaintiff Trust is not registered under the Madhya Pradesh Public Trusts Act, 1951, under Section 32 of the Madhya Pradesh Public Trusts Act, 1951 the suit is not maintainable. Further submitted that the plaintiff Khasgi Trust, is an expressed trust for public, religious and charitable trust. Under Section 4(1) of the Madhya Pradesh Public Trusts Act, 1951 every such trust requires compulsory registration. Further submitted that one of the trustee delegate the powers / authorise to co-trustee Mr. Malhotra *vide* resolution dated 25.09.2009 is bad in law, all the trustees must be impleaded in the suit, they cannot delegate power to another trustee passing resolution or all the trustees should execute a Power of Attorney empowering one among them to file the suit. Further submitted that the order of the learned trial Court is not in accordance with law, the plaintiff pleaded that the Registrar of Public Trust has given exemption to plaintiff Trust from its registration. Further submitted that the exemption under Madhya Pradesh Public Trusts Act, 1951 a notification is mandatory under Section 36(2) of Madhya Pradesh Public Trusts Act, 1951. In the present case, no such notification has been placed on record, the order passed by Registrar does not give any exemption to the trust, therefore, the order of learned trial Court is not sustainable under law and is liable to be set aside and prays to allow the petition. In support of his contention, cited the decision of Hon'ble Apex Court in the case of **Khasgi (Devi Ahilyabai Holkar Charities) Trust v. Vipin Dhanaitkar** reported in **2022 SCC OnLine SC 900**, another decision of Hon'ble Apex Court in the case of **Duli Chand Vs. Mahabir Pershad Trilok Chand Charitable Trust** reported in **1983 SCC OnLine Del 270 : AIR 1984 Del 145**.

12. Shri Abhinav Malhotra, learned counsel for respondent No.1 submitted arguments that the plaintiff Trust *vide* order dated 10.08.1971 passed by the Registrar of Public Trust in case No.5-B-113/1966-67 is exempted from the registration. Further submitted that the plaintiff filed the suit on the basis of the resolution dated 25.09.2009 by all the trustees of the trustee (S.C. Malhotra) authorised him to file suit, to execute any documents etc., looking after the trust activities and the said resolution signed by all the trustees, Commissioner and Superintendent Engineer PWD, Indore, the said authorisation is valid and the suit of the plaintiff is maintainable. Further submitted that the judgment of Hon'ble Apex Court cited by the petitioners / defendants in the case of **Khasgi (Devi Ahilyabai Holkar Charities) Trust v. Vipin Dhanaitkar** (supra) is prospective by the date of filing a suit, passing resolution by all the trustees, giving authorisation to the plaintiffs way back in the year 2009, the order passed by the Registrar dated 10.08.1971 is exempted from registration under Section 36(1)(a) of the Public Trusts Act, 1951 therefore, the judgment of Khasgi case (supra) is not retrospective effect and is applied from prospective, thus the impugned order of learned trial Court is not perverse and does not call for any interference by this Court, the present Civil Revision is liable to be dismissed.

13. In the light of the rival submissions of the learned counsel for the parties, the point for determination arises as follows :-

> "Whether, the impugned order dated 24.11.2021 in Civil Suit No.940-A/2019 by learned 7th Civil Judge, Junior Division, Indore is sustainable in dismissing the application filed under Order VII Rule 11 of CPC (**or**) needs any interference by this Court?

14. Order VII Rule 11 of CPC reads as follows:

> "1. Rejection of plaint.- The plaint shall be rejected in the following cases:-
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> (a) where it does not disclose a cause of action;
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> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
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> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
>
> (d) where the suit appears from the statement in the plaint to be barred by any law;
>
> (e) where it is not filed in duplicate;
>
> (f) where the plaintiff fails comply with the provision of Rule 9.
>
> Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

15. In the present case, the petitioners / defendants filed an application under Order 7 Rule 11 of CPC stating that the present suit filed by the plaintiff / respondent is not maintainable, the present suit is filed for permanent injunction and vacant possession in respect of the subject property in H.No.2/2 and claiming amount of Rs.10,000/- per month. Admittedly, the plaintiff Trust is not registered under the M.P. Public Trusts Act, 1951, it is mandatory under Section 4(1) of the M.P. Trusts Act, 1951 for registration. Admittedly, the present suit is filed by the plaintiff Trust on the basis of exemption certificate issued by the Registrar of Public Trust in Case No.5-B-113/1966-67 dated 10.08.1971. Further admittedly, the present suit is filed by the plaintiffs on the basis of resolution dated 25.09.2009 issued by trustees to trustee and appointed Shri Rajendra Joshi as attorney empowered him to do the following acts and deeds on behalf of the trust. The copy of the resolution signed by President, three trustees, Commissioner, Indore Division, Indore and Superintendent Engineer, PWD, Indore, learned trial Court accepted the resolution and exemption certificate issued by the Registrar of Public Trust dated 10.08.1971, the application filed by the plaintiff is rejected in contrary to the law.

16. The learned counsel for the petitioners relied upon the decision of Hon'ble Apex Court in the case of **Khasgi (Devi Ahilyabai Holkar Charities) Trust v. Vipin Dhanaitkar)**[1] in that judgment, issue (b) was framed in Para 23 as under :-

> "23(b). Whether the Khasgi Trust is a public trust within the meaning of the Madhya Pradesh Public Trusts Act, 1951 and whether its provisions are applicable to the trust? "

17. Answer to the above question, I would like to refer to paras 38, 39, 40, 41, 42 and 43 of judgment of the Khasgi case (supra) :-

> "38. The second issue to be decided is whether the provisions of the Public Trusts Act apply to the Khasgi Trust. We have already quoted the enclosure to the letter dated 6th May 1949, issued by Shri V.P. Menon. The enclosure incorporates the decision of the Government of India on the claim made by the Maharaja about the Khasgi properties. It specifically records that the powers and functions of the

1. **2022 SCC OnLine SC 900**

Khasgi Trust shall be subject to such legislation as the Central Government or Madhya Bharat Government may enact generally for the purposes of regulating such Trusts. It is in this context that we will have to examine the provisions of the Public Trusts Act, which was enacted in the year 1951. Subsection (4) of Section 2 defines a Public Trust, which reads thus.:—

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or context,-

(1)…………;

(2)………….;

(3)………….;

(4) "public trust" means an express or constructive trust for a public, religious or charitable purposes and includes a temple, a math, a mosque, a church, a wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose;

(5)………….; …………….."

39........ Thus, it can be said that the Khasgi Trust, is an express Trust for public, religious and charitable purposes. Under Section 4(1) of the Public Trusts Act, every such Trust requires compulsory registration.

40. The Trustees in support of their appeals relied upon the order dated 10th August 1971, passed by the Registrar of Public Trusts, holding that the Khasgi Trust was entitled to exemption under Clause (a) of Sub-Section (1) of Section 36 of the Public Trusts Act. Paragraph 3 of the said order reads thus.:—

"3 Out of five members of the Management Committee of Khasgi (Devi Ahilyabai Holkar Charities) Trust are nominated by the State Government and Central Government. In such circumstances, control of the State Government on this Trust is evidently clear. Even the savings of the Trust could be spent only with the prior permission of the State Government in accordance with the Section 14 of the Trust Deed. It is clear from it that State Government is in full control of the present Trust and it is eligible for the exemption from registration. I believe that the Objection raised by the Secretary of the Trust is valid and appropriate. Thus, proceedings of the registration are concluded."

41. It is, therefore, necessary to consider the ambit of Section 36. For the sake of convenience, we are reproducing Section 36, which reads thus:—

"36. Exemption.-

(1) Nothing contained in this Act shall apply to-

(a) a public trust administered by any agency acting under the control of the State or by any local authority,

(b) a public trust administered under any enactment for the time being in force, and

(c) a public trust to which the Muslim Wakfs Act, 1954 (29 of 1954) applies.

(2) The State Government may exempt by notification, specifying the reasons for such exemption in the said notification, any public trust or class of public trusts from all or any of the provisions of this Act subject to such conditions, if any, as the State Government may deem fit to impose."

(emphasis added)

42. The order of the Registrar proceeds on the footing that even if Clause (a) of Sub-Section (1) of Section 36 is applicable, Section 14 of the Public Trusts Act will apply. Obviously, if Clause (a) is attracted, nothing contained in the Public Trusts Act shall apply to such a Trust, which will include Section 14 as well. The powers of the Registrar under the Public Trusts Act are found in Chapter V. None of the provisions of the Public Trusts Act confer any power on the Registrar to decide the question whether an exemption under Clause (a) of Sub-Section (1) of Section 36 is applicable to a particular public Trust. Therefore, we have independently examined whether Clause (a) of sub-Section (1) of Section 36 will have application. It is not the case that the Khasgi Trust is being administered by any local authority as such. The question is whether it is being administered by any agency acting under the control of the State Government. There are six Trustees of the Khasgi Trust, out of which, one is the Ruler, who is the ex-officio President. Two Trustees are the nominees of the Ruler. The remaining three are the nominees of the State Government and Central Government. Neither in the order of the Government of India dated 6th May 1949 nor in the Trust Deed, there is anything to indicate that the Khasgi Trust is administered by any agency acting under the control of the State Government. Even the power to nominate two Trustees vested in the State Government and similar power vested in the Central Government to nominate one Trustee has to be exercised in consultation with the Ruler. The three Trustees nominated by the Government do not have a majority in decision making. The State Government has no effective control over the functioning of the Khasgi Trust. In one sense, it is an autonomous public Trust. Therefore, on the face of it, Clause (a) of Sub-Section (1) of Section 36 has no application. The Khasgi Trust cannot claim to be covered under the excepted category in clause (a) of sub-section (1) of Section 36.

43. We may note here that the High Court has proceeded on the erroneous footing that as there was no notification issued under sub-

Section (2) of Section 36, Clause (a) of Sub-Section (1) of Section 36 will not apply. Sub-Sections (1) and (2) of Section 36 operate in different fields. When sub-Section (1) is applicable to a Public Trust, none of the provisions of the Public Trusts Act is applicable to the Trust. Sub-Section (2) is an independent power of the State Government to issue a notification exempting certain Public Trusts from all or any of the provisions of the Public Trusts Act. Thus, we have no manner of doubt that the Khasgi Trust will be governed by the Public Trusts Act and that the same is required to be registered accordingly. "

18. Learned counsel for respondent No.1 argued that the above said judgment applied only prospective effect therefore, the judgment of Khasgi case (supra) cannot be applied with retrospective.

19. To answer the above objection, a Judgment of Hon'ble Apex Court in the case of **Manoj Parihar v. State of J&K**[2]. Paras 26 and 27 read as follows:-

"26. What was done in *Bimlesh Tanwar* [*Bimlesh Tanwar* v. *State of Haryana*, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] was actually a declaration of law. Therefore, the same will have retrospective effect. In *P.V. George* v. *State of Kerala* [*P.V. George* v. *State of Kerala*, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823], this Court held that "*the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically*".

27. This Court was conscious of the fact, as could be seen from para 19 of the Report in *P.V. George* [*P.V. George* v. *State of Kerala*, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823], that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. But still this Court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term.

20. Another decision of Hon'ble Apex Court in the case of **Kanishk Sinha v. State of W.B**[3]. Para 3 reads as follows:-

"3........Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always

2. **2022 (14) SCC 72**
3. **2025 SCC OnLine SC 443**

prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpretated by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fidely done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many."

21. In the light of above judgment (supra), the contention of the respondent, the judgment of **Khasgi (Devi Ahilyabai Holkar Charities) Trust v. Vipin Dhanaitkar** (supra) is effective retrospectively and the said judgment is aptly applied to the facts of the present case and the plaintiff trust is required to be registered accordingly.

22. Unless and until the trust is registered under the M.P. Public Trusts Act, 1951 is hit by Section 32 of M.P. Public Trusts Act, 1951. Section 32 reads as follows :-

32. Bar to hear or decide suits:

"(1) No suit to enforce a right on behalf of a public trust which has not been registered under this Act shall be heard or decided in any Court.
(2) The provisions of sub-section (1) shall apply to claim or set off or other proceeding to enforce a right on behalf of such public trust. "

23. The exemption certificate issued to the plaintiff trust is issued by Registrar of Public Trust is not in accordance with law, it is clear that the plaintiff trust is governed by M.P. Public Trusts Act, 1951, required to be registered under Act, the plaintiff trust claimed the exemption by filing the suit, the said exemption cannot be claimed by trust when the Hon'ble Supreme Court has expressly invalidated the exemption through its judgment of Khasgi case (supra) directed the plaintiff trust to get registered as per the provision of M.P. Public Trusts Act, 1951 stated in Para 43 of the said judgment that "*thus no manner of doubt that Khasgi Trust is governed by the public Trust Act and the same is required to be registered.*" Therefore, the claim of exemption by plaintiff is invalidated under section 32 of the M.P. Public Trusts Act, 1951 fairly applies, the suit is barred, as per Section 36(1)(a) of the M.P. Public Trusts Act 1951. **State of M.P. v. Khasgi (Devi Ahilya Baiholkar Charities) Trust**[4]. Para 98 and 99 reads as under :-

> "98. On 10-8-1971, the Registrar, Public Trust, Indore, passed an order exempting Khasgi (Devi Ahilyabai Holkar Charities) Trust from its registration only.
>
> 99. Section 36(1)(a) of the M.P. Public Trust Act, 1951 reads as under:
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> —
>
> "Section 36. *Exemption.*— (1) Nothing contained in this Act shall apply to—
>
> (a) A public Trust administered by any agency acting under the control of the State or by any local authority"
>
> For exemption under the M.P. Public Trust, 1951, a notification is mandatory under section 36(2) of the M.P. Public Trust Act, 1951 and in the present case, no such notification has been placed on record. Thus, the order passed by the Registrar does not give any exemption to the Trust."

24. Therefore, this Court has no option except the suit instituted by plaintiff trust is clearly barred by law and the plaint is to be rejected under Order VII Rule 11 of the CPC.

25. The another contention raised by the petitioners, the suit instituted by stranger a reference to Sections 47 and 48 of the Indian Trusts Act, 1882 is necessitated as follows:-

> "Section 47 of Indian Trusts Act, 1882 :- Trustee cannot delegate -

4 **2021 (2) MPLJ 179** : **2020 SCC OnLine MP 4458**

A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless

(a) the instrument of trust so provides, or

(b) the delegation is in the regular course of business, or

(c) the delegation is necessary, or

(d) the beneficiary, being competent to contract, consents to the delegation.

Explanation.-- The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section. *Illustrations*

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents."

48. Co-trustees cannot act singly.

"When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides."

26. In support of above provisions, learned counsel for the petitioner placed reliance a judgment in the case of **Duli Chand v. Mahabir Pershad Trilok Chand Charitable Trust**[5]. Paras 15 and 16 read as follows :-

"15. The question that requires decision is whether this resolution authorises the said Trustee Shri Tara Chand Jain to institute the suit in the name of the Trust or, whether it is necessary that all the trustees should join in the suit.

16. It is well-known that a Trust is not a legal entity as such. In fact, a Trust may be defined as an obligation imposed on the ostensible owner of property to use the same for a particular object for the benefit of a named beneficiary or a charity. Thus all Trustees in law are owners of the property but they are obliged to use the same in a particular manner. If a number of trustees exist, they are joint owners of the property. It is not like a Corporation which has a legal

5 **1983 SCC OnLine Del 270 : AIR 1984 Del 145**

existence of its own and therefore can appoint an agent. A Trust is not in this sense a legal entity. It is the trustees who are the legal entities. Section 48 of the Indian Trusts Act, 1882, states:—

"When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides."

Section 47 reads:

"A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the declaration is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation."

There is, therefore, a very grave doubt in our mind as to whether a single trustee can sue and whether he can sue in the name of the Trust. It is also very doubtful whether a resolution can be passed authorising only some of the trustees to file a suit. In the decision given by Deshpande J., *Birdhi Chand Jain Charitable Trust* v. *Kanhaiyalal Shamlal*, 1972, R.L.R. 142, it was held that a resolution could be passed authorising one of the Trustees to file the suit. But, that resolution had not been proved. It was also observed:—

"But the trust is not a legal person and the description of the petitioners is, therefore, wrong. It could have been amended, if necessary. But that question does not now arise."

This judgment proceeded on the basis that all the trustees could authorise one of them to file the suit. It is possible for some of the trustees to authorise the others to file a suit, but this could only be done by the execution of a power of attorney. It cannot be done by a resolution. If 'A', 'B' and 'C' are owners of a property, they have to bring a joint suit for possession. They are all necessary parties to the suit. They cannot by resolution allow some of the other co-owners to file the suit. In such a suit, all the owners must be joined as parties as either plaintiffs or, as defendants. Usually, the co-owners who are not joined in the suit are joined as proforma defendants. But, it is not possible for some of the owners to file a suit without joining others. As trustees are owners of the property, the same principle applies. They all have to be joined as parties to the suit, but they can execute powers of attorney allowing themselves to be represented by some other co-trustees. The judgment is not apparently right when it proceeds on the assumption that a resolution can be passed, allowing the other trustees to sue. It may be mentioned that this point arose incidentally before Deshpande, J., and was not the substantial point in that particular case.

27. In view of the above judgments, the trust has no legal value itself and delegation of power through resolution is contrary to the scheme of the Trusts Act, the same does not dispense with the requirement laid down in Sections 47 and 48 of the Indian Trusts Act, 1882. The present suit is filed by Shri Rajendra Joshi gets authority on the basis of trust resolution authorising the co-trustee Mr. Malhotra to carry out the works of the trust by executed General Power of Attorney. All the co-trustees must be joined in the suit, if any one or more of them are unwilling to join in the suit as plaintiffs or for some reason or the other it is not possible to join them as plaintiffs, they must be impleaded as defendants, so that all the co-trustees are before the Court, when all the trustees are not joined, suit of the plaintiff is not maintainable for non-joinder of the parties, the plaint can be rejected on the ground of all the trustees were not added as parties in the suit, they cannot delegate by just passing a resolution dated 25.09.2009, therefore, I am of the opinion that the suit could not have been maintained by one of the co-trustees and further, no resolution passed unanimously by all the other co-trustees could authorise one of the trustee to file the suit and the trustees cannot be delegated the stranger to file the suit, therefore, the present suit was not properly instituted and the suit filed by the plaintiff is not in accordance with law.

28. Looking to the facts and circumstances of the case and averments in the plaint, the suit is barred by law, the suit of the plaintiffs is not maintainable and the order of the learned trial Court is erroneous and not sustainable in view of the judgment of Hon'ble Apex Court in the case of **Khasgi (Devi Ahilya Bai Holkar Charities) Trust vs. Vipin Dhanaitkar** (supra), the said judgment squarely applies to the present facts of this case effective retrospectively, therefore, the suit of the plaintiff is not maintainable, plaint can be rejected on the basis of judgment of Khasgi case (supra).

29. The Court below has failed to take into account of all the above aspects before dismissing the application filed by the petitioners for rejection of the plaint and the same is liable to be set aside and the order of the learned trial Court is not sustainable and needs intereference by this Court.

30. In view of the above foregoing discussions, the Civil Revision Petition is allowed and the impugned order dated 24.11.2021 in Civil Suit No.940-A/2019 passed by learned 7th, Civil Judge, Junior Division, Indore is set aside and consequently, the plaint in Civil Suit No.940-A/2019 is ordered to be rejected. No order as to costs.

31. All the pending applications, if any, stand disposed off.

(DUPPALA VENKATA RAMANA)
JUDGE

Anushree