

**IN THE COURT OF LD. DISTRICT JUDGE-01
SOUTH-EAST DISTRICT, SAKET COURTS: NEW DELHI**

CS DJ 439-22

VAJRA BEN ASHARA Vs. VIVEK DEWAN

ORDER

1. Today the matter has come up for orders on an application under Order VII Rule 11 CPC by way of which the defendant prays for the rejection of the plaint on the basis that the present suit is barred by law.
2. The present suit was filed by the plaintiffs under Section 92 CPC with respect to the management of Dunagiri Foundation for Himalayan Herbal Research and Yogic Studies i.e. defendant no. 4. Defendant no. 4 is a trust registered under the Indian Trust Act, 1882. Plaintiff no. 1 and defendant no. 1 were the founding trustee of defendant no. 4.
3. Leave under Section 92 CPC was granted to the plaintiffs to pursue the present case vide order dated 31.07.2023. Leave was granted after hearing the counsels of both the plaintiffs and defendants.
4. Thereafter, the present application under Order VII Rule 11 CPC has been filed by the defendants on the following grounds:-
 - (i) That the suit is barred by Order II Rule 2(3) CPC as the plaintiff no. 1 had earlier filed CS SCJ No. 454/2021 against

the defendant no. 1 for temporary and permanent injunction with respect to the same cause of action.

(ii) That the suit is barred by Clause 12 of the Trust deed which mandates arbitration between the parties in case of any dispute.

(iii) The plaintiff no. 1 is no longer a trustee of defendant no. 4 trust and the plaintiffs have no locus to file the present case.

(iv) That the plaint has not been verified in terms of provisions of Order VI Rule 9 CPC.

(v) The Power of Attorney granted by the plaintiffs is not duly executed and properly stamped.

5. Ld. counsel for defendants has submitted that the plaintiff no. 1 has already filed a Civil Suit against defendant no. 1 arising out of the same cause of action and as such the present suit, filed without seeking any leave of the Court is not maintainable in terms of Order II Rule 2 CPC. He has relied upon the following judgments:-

(i) Gurbux Singh Vs. Bhooralal AIR 1964 SC 1810.

(ii) Cuddalore Powergen Corporation Ltd. Vs. Chemplast Cuddalore Vinyls Limited and Another 2025 SCC Online SC 82.

6. It is further submitted that a valid arbitration agreement exists between the plaintiff no. 1 and defendant no. 1 as incorporated in clause 12 of the Trust Deed. As such, this Court does not have jurisdiction to try the present case.

7. The plaintiffs are not an interested party with respect to defendant no. 4 trust as plaintiff no. 1 is no longer a trustee of defendant no. 4 and the other plaintiffs have no connection with defendant no. 4.
8. The Power of Attorney granted in favour of the plaintiff is defective and not adequately stamped and has not been executed as per the law where it was executed. With respect to Power of Attorney of plaintiff no. 1, it is submitted that the same is in Spanish and no official translation is placed on record and as such cannot be read. Similarly, the Power of Attorney of plaintiff no. 3 was required to be accepted in California as per the law of the State of California, USA.
9. Per contra, Ld. Counsel for plaintiffs has submitted that the suit is filed by three plaintiffs against four defendants whereas the earlier suit was filed only by plaintiff no. 1 against defendant no. 1. Moreover, the earlier suit was filed to protect the interest of plaintiff no. 1 due to the misdeeds of defendant no. 1 with respect to the personal property of plaintiff no. 1. Whereas the present suit has been filed with respect to the mismanagement of defendant no. 4 and as such the facts in the present case constitute a different cause of action than in CS SCJ No. 454/2021. Thus, it is submitted that the present case is not covered by the bar of Order II Rule 2 CPC.
10. With respect to the arbitration clause, it is submitted that in terms of judgment of Hon'ble Supreme Court of India in **Sh.**

Vimal Kishore Shah & Anr Vs. Jayesh Dinesh Shah & Ors
(2016) 8 SCC 788, disputes relating to trust are not capable of being decided by arbitration.

11. It is further submitted that defendant no. 4 is a public charitable trust and the plaintiff no. 1 was the original trustee of defendant no. 4. As the trust is a public charitable trust, any member of the public interested to avail the benefits of the trust is a person who can seek proper management of the said trust. As such, the plaintiff has locus to file the present case.

12. With respect to alleged defects in the Power of Attorney, it is submitted that the same is a curable defect and does not become a ground of rejection of plaint under Order VII Rule 11 CPC.

13. To conclude his arguments, Ld. Counsel for plaintiffs has submitted that once a leave has been granted under Section 92 CPC, it is presumed that the Court has gone through the plaint and the plaint cannot be rejected under Order VII Rule 11 CPC. He has relied upon the judgment of the Hon'ble Supreme Court of India in **Sudhir G. Angur & Ors Vs. M. Sanjeev & Ors** MANU/SC/1647/2005.

14. Heard. Perused.

15. Based upon the above submissions, it is clear that the main challenge to the suit has been raised under Order II Rule

2(3) CPC. Order II Rule 2(3) CPC reads as follows:-

“(2). **Relinquishment of part of claim-** Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) **Omission to sue for one of several reliefs-** A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

16. The arguments of the defendants are that since plaintiff no. 1 has sought mandatory and permanent injunction against defendant no. 1 with respect to the assets of defendant no. 4, the plaintiff no. 1 should have sought leave in the previous suit to file the present case. Whereas the plaintiffs have contended that the two suits are between different parties than the previous suit.

17. Looking at the plaint in the present case, it is clear that the present case has been filed by the plaintiffs under Section 92 CPC for better administration of defendant no. 4 trust claiming to be persons interested in the trust. Perusal of the plaint in CS SCJ No. 454/2021 reveals that the said suit was filed by plaintiff no. 1 with respect to his property licensed to defendant no. 4 trust herein.

18. Thus, what is clear is that the cause of action in the earlier suit was the removal of property of plaintiff no. 1 by the defendant no. 1 from the services of the trust. Whereas in the present case, the cause of action has arisen by the mismanagement of defendant no. 4 trust by defendant no. 1 and the alleged illegal appointment of defendant no. 2 and

defendant no. 3 as a trustee of defendant no. 4 trust.

19. Thus, the cause of action in both the cases is distinct and cannot be equated. Further, the interest of plaintiff no. 1 in the previous case was personal whereas the present case has been filed by the plaintiff no. 1 as an ex-trustee of defendant no. 4 and by the other plaintiffs having an interest in the trust. Once it is held that the present cause of action is distinct from the cause of action in the previous suit, the judgments cited by the defendants would have no impact on the present case.

20. Thus, it cannot be said that the present suit is barred by Order II Rule 2 CPC.

21. Coming to the aspect of arbitration, Hon'ble Supreme Court of India in **Sh. Vimal Kishore Shah (supra)** has held as follows:-

“61. We, accordingly, hold that the disputes relating to Trust, trustees and beneficiaries arising out of the Trust Deed and the Trust Act are not capable of being decided by the arbitrator despite existence of arbitration agreement to that effect between the parties. A fortiori – we hold that the application filed by the respondents under Section 11 of the Act is not maintainable on the ground that firstly, it is not based on an "arbitration agreement" within the meaning of Sections 2(b) and 2(h) read with Section 7 of the Act and secondly, assuming that there exists an arbitration agreement (clause 20 of the Trust Deed) yet the disputes specified therein are not capable of being referred to private arbitration for their adjudication on merits.”

22. Thus, a reading of the above extract reveals that the affairs of a trust cannot be decided by arbitration and as such the

case has to be decided by the Court only.

23. With respect to the locus of the plaintiffs and their Power of Attorney, the same was considered by the Ld. Predecessor Court while granting leave to the plaintiffs under Section 92 CPC. The said order has not been challenged and has attained finality. As such, the Court cannot go into the same issue again.

24. As far as the issue of verification not been properly done, the same is a curable defect and cannot result in the rejection of plaint.

25. Thus, no grounds have been established by the defendants to reject the present plaint. Moreover, as held by the Hon'ble Supreme court of India in **Sudhir G. Angur (supra)**, once leave under Section 92 CPC has been granted that too in the presence and after opposition of the defendants, there is no occasion of rejection of plaint under Order VII Rule 11 CPC.

26. As such, the present application is dismissed.

**Announced in the open
Court on 12.03.2026**

**(RAHUL BHATIA)
District Judge 01(SE),
Saket Courts, New Delhi**