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C.A.No. 538 OF 1998

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~ ITEM N: 107 COURT NO.7 SECTION XII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.538/1998

Mulla Gulam ALI & Safiabai D.Trust .. Appellant (s)
Petitioner(s)

Vs.

M/s Deelip Kumar & Co. .. Respondent(s)

(With appln(s) for providing additional evidence and office report)

DATE :7.2.2001: This/These matter (s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Appellant (s) : Mr. V. Balaji, Adv. with Mr. A.T.M. Sampath, Adv.

For Respondent (s) : Mr. V.Balachandran, Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....J

.SP2

The respondent is directed to vacate the premises and hand over possession to the appellant on or before 28.2.2002. During this period the respondent shall pay rental of Rs.2250/- p.m. commencing from March 1, 2001. Subject to payment of the rent as stated above and filing a usual undertaking, the respondent is granted time to vacate the premises on or before 28.2.2002.

Appeal is allowed accordingly.

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(Meenu Sethi) (R.K. Kumar)
Court Master Court Master

Signed order is placed on the file

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.538 OF 1998

Mulla Gulam Ali & Safiabai D. Trust .. Appellant

Vs.

M/s Deelip Kumar & Co. .. Respondent

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The appellant before us filed a suit in the Court of Third Assistant Judge, Madras in O.S. No. 7187/1982 for delivery of possession of the suit property to the appellant. The brief facts leading to the case are as follows:

The appellant let out the ground floor of the suit property to the respondent on a monthly rent of Rs.225/- to locate a shop. On the basis that the respondent had committed wilful default in the payment of rent for the period from 1.1.1979 to August 1982, a notice was issued on 26.7.1982 demanding the arrears of rent and, thereafter, on 7.9.1982 notice was issued to the effect that the rental agreement between the appellant and the respondent had come to an end as on 30.9.1982 and demanded the delivery of possession of the said property on 1.10.1982.

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Inasmuch as the respondent did not deliver the possession of the property, a suit was filed on behalf of the appellant. In the plaint it was also alleged that the appellant is a public charitable trust and the suit property belongs to it and hence is exempted from the application of the Tamil Nadu Buildings (Lease and Rent Control) Act. The respondent contested that the appellant is a public charitable trust. It is also pleaded that even after putting an end to the rental agreement and demand for the delivery of possession of the property rent having been received by the appellant, the appellant had waived the notice issued by him terminating the rental agreement. On these pleadings two important issues were raised as to whether the appellant is a charitable trust or not and whether the notice issued by the appellant had been waived. The trial Court examined exhibit No. 2 which is a certified copy of the Memorandum of Association of appellant trust and exhibit 9 which is a Deed of Settlement executed by Ibrahim Kulamali Dhanaliwala and Ors. in favour of the plaintiff, other documents produced by it to show its conduct in having made certain donations to various institutions, came to the conclusion that it is a public charitable trust. The trial Court also held that after receipt of the notice by the respondent, rental arrears prior to 30.9.1982 - the date on which the rental agreement came to an end - were sent by the demand draft and that was accepted and, therefore, there was

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no waiver at all. These findings stood affirmed by the Appellate Court on appeal. Thereafter, the matter was carried in second appeal to the High Court. The High Court found that the Courts below were wrong in holding that appellant is public charitable trust solely on the ground that public are the beneficiaries without considering the vital question of control and management of the trust which in the present case is entirely vested in a group of persons belonging to the same family. To reach this conclusion the High Court adverted to various texts set out in decisions of this Court in relation to findings whether temple is a private or public trust.

The question whether the temple has a public character or a private character cannot be determined except by reference to the control exercised by the trustees in relation to the temple i.e. if the trustees have total control over the institution and do not permit public as a matter of right to perform Pooja, entry to the temple or other sevas, the inference is obvious that it is not a public temple. That principle could not have been adopted in the case of present kind. It is clear from the trust deed that objects of the trust are to give donations to educational and charitable institution; to open and maintain schools and colleges for imparting general or technical education; to give scholarship to poor and deserving students studying in schools and

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colleges to enable them to prosecute further or higher studies; to donate to hospitals, maternity and medical homes, or centres established for the benefit of the public; to give medical aid or assistance to poor people especially to deaf and dumb, widows, destitutes or orphans; to establish pilgrim centres at important places of public worship and maintain the same; to donate for feeding during important public festivals such as Ramzan or Moharrum, etc., and/or during times of natural calamities such as floods, fire or famine; to help the poor, whether male or female, adults or children for education or higher studies; and to continue for such other charitable purposes which tend to promote international welfare enuring to the benefit of the public and public institutions for the benefit of the public.

The mere fact that the control in respect of the administration of the trust vested in a group of people will not itself take away the public character of the trust. Indeed if the trust is not administered properly and the objects of the trust are not carried out certainly for the benefit of the public resort can be had to Section 92 of the Civil Procedure Code and get a scheme framed for the proper administration of the trust and by displacing the trustees who are presently managing the trust. If that is the position in law we fail to understand as to how the High Court took the

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view that in spite of the finding recorded by the Courts below that the appellant is a public charitable institution and is engaged in such activities and has given several donations to several institutions which are exhibited as receipts before this Court, we find no substance in the contention that it is not a charitable trust. The finding recorded by the High Court in this regard is, therefore, set aside and the findings recorded by the Courts below are restored.

Learned counsel for the respondent pointed out that so far as the question of waiver is concerned, the High Court did not examine the same and, therefore, we should remit the matter to the High Court on this aspect of the matter. We do not think so. This question has been answered by the trial Court and the First Appellate Court categorically to the effect that after the termination of the rental agreement what was paid were only arrears of rent for prior period. We do not think any useful purpose will be served in sending the matter back to the High Court on this aspect.

At this stage learned counsel for the respondent seeks some time to vacate the premises on such terms as this Court may order. The respondent is directed to vacate the premises and hand over possession to the appellant on or before

28.2.2002. During this period the respondent shall pay rental of Rs.2250/- p.m. commencing from March 1, 2001. Subject to payment of the rent as stated above and filing a usual undertaking, the respondent is granted time to vacate the premises on or before 28.2.2002.

Appeal allowed accordingly.

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(S. RAJENDRA BABU)@@
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(K.G. BALAKRISHNAN)

New Delhi,@@
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February 7, 2001.