

IN THE COURT OF DR. NEERA BHARIHOKE, ADJ-01 (SOUTH),
SAKET COURTS, NEW DELHI

M. No.64/17

Delhi Diocesan Trust Association

.....Plaintiff

Versus

Edwin William

.....Defendant

O R D E R:

1. Vide this order, I shall dispose of application filed by applicant/plaintiff under Sec.151 CPC and Sec.340 Cr.P.C.
2. By way of present application it is submitted by the applicant that it is aggrieved by fraudulent withdrawal of the suit titled "Delhi Diocesan Trust Association Vs. Mr. Edwin William" through impersonation by the former attorney Mr. V.K. Samuel in connivance and conspiracy with the defendant and other unknown persons.
3. The applicant has submitted that the above-said suit was filed by the plaintiff seeking possession of the suit property through its then attorney Mr. V.K. Samuel who was removed from plaintiff organization

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in 2015. It is submitted that on being directed by this court to deposit deficient court fee, the plaintiff deposited the same on 28.01.2017 through the associate advocate as main counsel was not available owing to his father's death, however, on the same date a Vakalatnama was filed under the signatures of Mr. V.K. Samuel allegedly in the capacity of AR of plaintiff.

4. The applicant has further submitted that immediately upon coming to know about change of Vakalatnama the application under Sec.151 CPC and Sec.340 Cr.P.C. was filed through the existing secretary Rev. Mohit Heinz Hitter bringing it to the notice of Ld. Predecessor of this Court that V.K. Samuel is not the authorized representative of the plaintiff and that the change of Vakalatnama has been done mala fidely and fraudulently. A prayer was made for not passing any adverse order against the plaintiff including withdrawal of the suit or vacating the status quo order as plaintiff had reasonable apprehension of Mr. V.K. Samuel may withdraw the suit in conspiracy and connivance with the defendant and other unknown persons.
5. The said application was taken up on 08.02.2017 and notice was issued to Mr. V.K. Samuel for date fixed i.e. 17.04.2017 and process fee for the same was filed by the plaintiff on 13.02.2017.

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6. The applicant has submitted that when existing secretary of the plaintiff namely Rev. Mohit Heinz Hitter came to the court on 17.04.2017 alongwith counsel Sh. Sunil Kumar Singh, the matter was found not listed and upon inquiry it was discovered that the suit was withdrawn on 01.03.2017.
7. Applicant has submitted that the said withdrawal was a fraudulent act upon the plaintiff as well as upon judicial proceedings. Thus the present application has been filed for restoring the suit alongwith interim order of maintain status quo as well as for taking judicial notice and cognizance under Sec.340 Cr.P.C. against Mr. V.K. Samuel and defendant. The notice of the application was issued to both of them.
8. Mr. V.K. Samuel has filed a detailed reply and has denied the contents of the application. He has submitted that he is competent to withdraw the suit bearing number 7211/16 in the prevailing circumstances as enumerated in the withdrawal application and has acted bonafidely by withdrawing the suit. He is submitted that learned predecessor court after considering the averments made in the said application of withdrawal, allowed him to withdraw the suit.
9. Mr. V.K. Samuel has further submitted that he was competent being

duly authorized to withdraw the suit as a power of attorney has never been withdrawn by the competent authority by way of resolution as required by law as no intermission in this regard was ever conveyed to this court or to him to stop. Submitted that power of attorney still subsists in his favour to deal with the proceedings of the suit.

10. Mr. V.K. Samuel have contended that the present application has been filed by an authorized person having no legal authority to move the present application as he has never been appointed as power of attorney by any competent authority by view of resolution as mandated under Order 29 Rule 1 CPC. Mr. V.K. Samuel has drawn attention to letter dated 22.7.2014 which it is clear that appointment of the applicant was only up to the next Diocesan Council which has taken place on 22nd to 24th, 2016 and therefore the appointment of the present applicant has component on 24 September 2016 when the next council has taken place and accordingly he is not authorized to move the present application and the capacity of secretary of CNI.
11. Mr. V.K. Samuel has submitted that according to Memorandum of Association and Articles of Association of Delhi Trust Association, there is no provision providing for bishop, secretary and treasurer of CNI rather the Bishop of CIPBC shall be ex-officio. It is further submitted

that according to the proceedings of meet of Episcopal Synod of the CIPBC, popularly known as Anglican Church of India which was held on 09.07.2015 at Bangalore, it was resolved that as per provisions in chapter 38, as Metropolitan, Most Rev. Rockes Barnabas Sadhu was appointed as President and Chairman of Indian Church Trustee and as bishop of Delhi Diocese to administer Delhi Diocesan Trust Association. Mr. V.K. Samuel has submitted that thus it is amply clear that this appointment of CNI has no concern with Delhi Diocesan Trust Association and therefore the secretary Mohit Heinz Hitter has the right to move the present application with the permission of the chairman and bishop of CIPBC and therefore the present application is not maintainable and it is actually him who is trying to get the restore by way of impersonation. It has been submitted that the present application has been moved by a person who has no authority and concern with the DDTA.

12. Mr. V.K. Samuel has reiterated the reasons for withdrawing the suit no. 7211/16. He has denied the plaintiff in the said suit to be a religious institution in view of the same being registered in the Company Act. Mr. V.K. Samuel has denied the submissions made in the application and has submitted that he had power of attorney which has never been

revoked or withdrawn at any point of time by any competent authority and also that no communication of his removal is stated to have been refused by him from competent authority of Delhi Diocesan Trust Association. He has submitted that he has left the membership of Church of Fatehpuri, CNI only and not from Delhi Diocesan Trust Association he has prayed for dismissal of the present application.

13. The defendant in suit number 7211/16 has also filed a detailed reply and has submitted that the present application is not maintainable under section 151 CPC as the said provision can be invoked only in absence of specific provisions of procedure under CPC. It has been further submitted that this court has become functus officio after the withdrawal of the suit and that after the order dated the 01.03.2017, this court is barred by Order XX Rule 3 to me that alter or add to the same except as provided by section 152 CPC or on review.
14. Attention has been drawn to the letter dated 22.07 2014 on which reliance has been placed by the applicant as a source of authority of Rev. Mohit Heinz Hitter at clause 'g' where it has been mentioned specifically that Rev. Mohit Heinz Hitter shall initiate legal proceedings only with the approval of the Bishop of Delhi and that no such letter of approval to file the present application has been annexed. The letter

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dated 22.07 2014 if the alleged to be forged and fabricated. The defendant in the suit bearing no.7211/16 has relied on the observation of the Hon'ble Supreme Court of India in the case titled ***Vinod Kumar M Malavia etc. versus Maganlal Mangaldas Gameti and Ors. (Civil Appeal no. 8800-8801/2013)*** where it has been held that mergers of churches as claimed by Church of North India was not carried out in accordance with provisions of law. It has also been submitted that in view of the said judgment, the Church of North India does not have any authority in the affairs of plaintiff and Bishop of Delhi Diocese Church of England, known as Anglican Church of India shall be ex officio member of the Delhi Diocesan Trust Association as per the articles of association of Delhi Diocesan Trust Association.

15. The defendant in the said suit has submitted that plaintiff, being an institution registered under Companies Act, can authorize any person to sign, verify and Institute any application only by way of resolution passed in legally constituted board meeting and no such resolution has been passed in favour of Rev. Mohit Heinz Hitter to file the present application or to represent the plaintiff Delhi Diocesan Trust Association. The defendant has filed the Internet print out of the company master data of Delhi Diocesan Trust Association which does

not show the name of Rev. Mohit Heinz Hitter as a director of Delhi Diocesan Trust Association.

16. It has been submitted that the suit was withdrawn by V.K.Samuel on the basis of same power of attorney by virtue of which the suit was filed and it is not the case of the applicant that the said power of attorney was legally revoked by plaintiff. Defendant has denied all the submissions made in the application and has prayed for its dismissal.
17. Arguments Heard. Record perused.
18. It is noticed that Rev. Mohit Heinz Hitter was appointed as honorary secretary of Delhi Diocesan Council vide letter dated 22 July 2014 till the next Diocesan Council and admittedly that took place on 24 September 2016. Even otherwise, the plaintiff in CS no. 7211/16 was Delhi Diocesan Trust Association and not Delhi Diocesan Council. The applicant has not been able to show any board resolution in favour of Rev. Mohit Heinz Hitter passed by Delhi Diocesan Trust Association. I find force in the submissions of defendant that plaintiff, being an institution registered under Companies Act, can authorize any person to sign, verify and Institute any application only by way of resolution passed in legally constituted board meeting and no such resolution has

been passed in favour of Rev. Mohit Heinz Hitter to file the present application or to represent the plaintiff Delhi Diocesan Trust Association. The applicant has been unable to show that Rev. Mohit Heinz Hitter is the secretary of the Delhi Diocesan Trust Association being plaintiff in the said suit. Thus there is no merit in the contention of the applicant that even in absence of board resolution Rev. Mohit Heinz Hitter can file the present application under Order XXIX Rule 1 CPC.

19. Delhi Diocesan Trust Association is a company registered under the Companies Act and in the facts of the case Rev. Mohit Heinz Hitter is a stranger to the said company which has its own distinct entity and is regulated by provisions of Companies Act. The Special Power of Attorney was executed in favour of Mr.V.K.Samuel by Rt. Rev. Sunil Kumar Singh in favour of whom the Committee of Management of Delhi Diocesan Trust Association had executed General Power of Attorney dated 7. 07.2009 which authorized him to appoint further attorney by and on his behalf and on behalf of Delhi Diocesan Trust Association and in the meeting of committee of management held on 8.01.2010 at the office of Delhi Diocesan Trust Association, it was resolved to give Special Power of Attorney to Mr. V.K. Samuel to act in the name and on behalf of Delhi Diocesan Trust Association. Clause 7 of the Special

Power of Attorney specifically covenants that SPA in favour of Mr. V.K. Samuel can be revoked at any time by the Rt. Rev. Sunil Kumar Singh. The applicant has not been able to show or produce any such document executed by Rt. Rev. Sunil Kumar Singh for revoking the SPA executed by him in favour of Mr. V.K. Samuel.

20. The applicant in the present application and also in the application which was filed allegedly on behalf of plaintiff during the pendency of the suit under section 151 CPC and under section 340 Cr.PC supported by affidavit of Rev. Mohit Heinz Hitter. The said application was filed by submitting that the authority in favour of Mr V.K. Samuel stand withdrawn and therefore he should not be allowed to withdraw CS no. 7211/16. However neither the present application nor the earlier application is supported by any document to show that Rev. Mohit Heinz Hitter is the authorized signatory or secretary of Delhi Diocesan Trust Association. Rather no document has been filed to show any connection of Rev. Mohit Heinz Hitter with Delhi Diocesan Trust Association and in the absence of the same the previous application filed by him under section 151 CPC and under section 340 Cr.PC is equally non-maintainable.

21. The applicant has filed various communications made by him to Mr VK

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Samuel or to various banks under his signature in support of his submission that he is secretary of Delhi Diocesan Trust Association. However on perusal of the same, it is noticed that all these correspondences describe him as Secretary, DDC and not as Secretary, DDTA. Delhi Diocesan Trust Association is a company duly registered under the provisions of Companies Act which has its own independent existence and is a corporate entity governed by Companies Act and in absence of revocation of SPA executed in favour of the Mr. V.K.Samuel by Rt. Rev. Sunil Kumar Singh, the withdrawal of the suit bearing no.7211/16 by Mr VK Samuel cannot be said to have been withdrawn by fake representation or by impersonation.

22. In view of these observations, there is no merit in the present application and the present application is accordingly dismissed. **File be consigned to record room.**

**(Announced in open
Court on 21.09.2017)**

**(Dr. Neera Bharihoke)
ADJ-01, South District
Saket Courts, New Delhi**