

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D15577  
W/mv

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Argued - May 8, 2007

HOWARD MILLER, J.P.  
WILLIAM F. MASTRO  
GABRIEL M. KRAUSMAN  
EDWARD D. CARNI, JJ.

2004-09378  
2004-05595  
2006-04775

DECISION & ORDER

In the Matter of Sambasiva Rao Venigalla, et al.,  
respondents-appellants, v Dattatreyudu Nori, et al.,  
appellants-respondents; Attorney General of State  
of New York, intervenor pro se.

(Index No. 15676/01)

Robert L. Greene, New York, N.Y. (Burke & Stone, LLP [William J. Burke and Daniel Steinberg] of counsel), for appellants-respondents.

Chittur & Associates, P.C., New York, N.Y. (Krishnan S. Chittur of counsel), for respondents-appellants Sambasiva Rao Venigalla, Kattinger V. Rao, Anand Mohan, Venkaiah Dama, and Nehru E. Cherukupalli.

Krishnamurthy Aiyer, Brooklyn, N.Y., respondent-appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Caitlin J. Halligan, Robert H. Easton, and Jean Lin of counsel), intervenor pro se in his statutory capacity pursuant to N-PCL 706(d).

In a proceeding, inter alia, pursuant to N-PCL 706 to remove the Board of Trustees of Hindu Temple Society of North America, Dattatreyuda Nori, Gaddam D. Reddy, Sreedhar Kavil, Jaya Sivamurthy, Chitti Ramakrishna Moorthy, Hyma Reddy, Shivakumar K. Prabhat, Uma

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Mysorekar, Saimamba Veeramachaneni, Vijay Khanna, S. Sundararaman, L.S. Panchal, Raj Gopal, Pathmini Panchacharam, Sekhar Viswanathan, Haresh Sajani, and Hindu Temple Society of North America appeal (1), as limited by their brief, from so much of an order of the Supreme Court, Queens County (Golia, J.), entered June 16, 2004, as denied that branch of their motion which was pursuant to CPLR 4403 for an order rejecting the interim report of the referee, and granted that branch of the petitioners' cross motion which was to modify an order of the same court dated October 23, 2003, so as to direct the individual party respondents to pay the fees of the referee appointed by the order dated October 23, 2003, (2) from an order of the same court dated September 13, 2004, which, upon the order entered June 16, 2004, directed the individual party respondents to pay interim fees to the referee in the sum of \$5,100, and (3) from a judgment of the same court dated March 23, 2006, which, inter alia, upon a report of the referee dated March 10, 2006, directed that the newly-elected trustees of Hindu Temple Society of North America must assume their duties upon the signing of the judgment, and the petitioner Krishnamurthy Aiyer and the petitioners Sambasiva Rao Venigalla, Kattinger V. Rao, Anand Mohan, Venkaiah Dama, and Nehru Cherukupalli, separately cross-appeal from the judgment.

ORDERED that the cross appeals are dismissed as abandoned, without costs or disbursements (*see* 22 NYCRR 670.8[e][1]); and it is further,

ORDERED that appeal from so much of the order entered June 16, 2004, as denied that branch of the motion of the party respondents which was pursuant to CPLR 4403 for an order rejecting the interim report of the referee is dismissed, without costs or disbursements; and it is further,

ORDERED that the order entered June 16, 2004, is reversed insofar as reviewed, on the facts and in the exercise of discretion, without costs or disbursements, and that branch of the petitioners' cross motion which was to modify the order dated October 23, 2003, so as to direct the individual party respondents to pay the fees of the referee appointed by the order dated October 23, 2003, is denied; and it is further,

ORDERED that on the court's own motion, the notice of appeal from the order dated September 13, 2004, is deemed an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order dated September 13, 2004, is modified, on the facts and in the exercise of discretion, by deleting the provision thereof directing the individual party respondents to pay the interim fee of the referee, and substituting therefor a provision directing all of the individual parties to pay the interim fee of the referee and to bear the cost equally; as so modified, the order dated September 13, 2004, is affirmed, without costs or disbursements; and it is further,

ORDERED that the judgment is affirmed, without costs or disbursements.

The appeal from so much of the intermediate order entered June 16, 2004, as denied that branch of the motion of the appellants-respondents which was pursuant to CPLR 4403 for an

order rejecting the interim report of the court-appointed referee must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the proceeding (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from that provision of the order entered June 16, 2004, are brought up for review and have been considered on the appeal from the judgment (*see CPLR 5501[a][1]*).

On a prior appeal, this court found that the appellant-respondent Hindu Temple Society of North America (hereinafter the Hindu Society) had adopted by-laws in 1970 (hereinafter the 1970 by-laws), which provided for election of trustees by the members of the Hindu Society, and that the Hindu Society failed to comply with the 1970 by-laws. We further determined that the Hindu Society neither amended nor repealed the 1970 by-laws (*see Matter of Venigalla v Alagappan*, 307 AD2d 1041). Those findings constitute the law of the case, and cannot be challenged on this appeal inasmuch as such a challenge could have been raised on the prior appeal, but was not (*see Fiorenti v Central Emergency Physicians, PLLC*, 19 AD3d 539; *Palumbo v Palumbo*, 10 AD3d 680, 682). Thus, the Supreme Court correctly directed that the newly-elected trustees of the Hindu Society assume their duties upon the signing of the judgment in this proceeding.

Under the circumstances, the Supreme Court should have directed that interim payment for the referee's services be borne equally by all of the individual parties to this proceeding, rather than solely by the individual party respondents.

The remaining contentions of the appellants-respondents are without merit.

MILLER, J.P., MASTRO, KRAUSMAN and CARNI, JJ., concur.

ENTER.



James Edward Pelzer  
Clerk of the Court