

<b>Matter of Singh v Sikh Cultural Socy., Inc.</b>
2012 NY Slip Op 31676(U)
June 16, 2012
Supreme Court, Queens County
Docket Number: 19764/2011
Judge: Sidney F. Strauss
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Short From Order

NEW YORK SUPREMES COURT - QUEENS COUNTY

Present: HONORABLE SIDNEY F. STRAUSS  
Justice

IA Part 11

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In the Matter of the Application of DARBARA  
SINGH, both individually and in his capacity as a  
member of the SIKH CULTURAL SOCIETY, INC.,

Index No.: 19764/2011

OTSC Date: March 28, 2012

Petitioner,

-against-

Cal. No.: 23

Seq. No.: 1

THE SIKH CULTURAL SOCIETY, INC.,  
ET. AL.,

Respondents.

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The following papers numbered one to 17 read on this motion by petitioner Darbara Singh for an order (1) vacating the so-ordered stipulation dated July 22, 2011, which settled and discontinued the action entitled *Grewal v Boparal*, Index No. 18889/2010, pursuant to CPLR 2201 and 2221(2) staying all proceedings in that action; (3) granting a judgment and order appointing receiver and/or court referees to manage the finances, conduct elections and oversee the Sikh Cultural Society Inc.'s (Society) construction of a new Temple until the court deems said Society to be in compliance with numerous orders; (4) suspending the entire Executive Committee and Board of Trustees of the Society until the court deems the Society to be in compliance with numerous orders; (5) conducting a comprehensive audit of the past and present financial standing of the Society, going back to 1993, pursuant to three prior court orders; (6) the immediate undertaking of a membership drive, under court supervision; (7) the holding of an election for all 18 members of the Board of Trustees immediately after the membership drive is concluded; (8) holding an election of all members of the Executive Committee, particularly the President after the membership drive is concluded; (9) holding the Chairman of the Elections Committee in contempt of various court orders to conduct a membership drive and elections on behalf of the Society; and (10) vacating an existing so-ordered stipulation in another action. Respondents Society, Harbans Singh Dhillon and Gurdev Singh Kang crosses moves for an order dismissing the petition, and awarding costs and attorneys' fees.

Papers  
Numbered

Order to Show Cause-Verified Petition-Affidavit-Emergency Affirmation	
-Exhibits(A-G)-Affidavits of Service . . . . .	1-6
Notice of Cross Motion- Affirmation-Exhibits(A-B).....	7-10
Additional Affirmation-Exhibit(A).....	11-13
Reply Affirmation-Affidavit-Exhibits(A-I).....	14-17

Upon the foregoing papers the petition and cross motion are decided as follows:

The Sikh Cultural Society Inc., a not-for-profit religious corporation, was incorporated pursuant to the Religious Corporation Law and the Not-For-Profit Corporation Law. On July 26, 2010, Harbhanjan Singh Grewal, Tarlochan Pal Singh and Harinder Singh commenced a special proceeding against Boparal, Bhupinder Singh, and twenty-eight named individuals, and the Sikh Cultural Society Inc, entitled *Grewal v Boparal*, ( Index No. 18889/2010) to void the results of an election that was to have taken place on July 18, 2010, pursuant to Not-For Profit Corporation Law §618. Said action was settled and discontinued pursuant to a so-ordered stipulation dated July 22, 2011.

Petitioner Darbara Singh commenced the within Article 78 proceeding on August 22, 2011, against the Society, Harbans Singh Dhillon, the Chairman of the Society's Election Committee, Surjit Singh Kalhar, Chairman of the Society's Board of Trustees; Jaswinder Singh Padda, the Society's Cashier, Kulwant Singh, the Society's Chairman of the Society's Property Maintenance Committee, and Gurdev Singh Kang, the purported president of the Society.

Petitioner seeks to challenge the validity of the entire Executive Committee and Board of Trustees of the Society, and seeks, among other things, to vacate the so-ordered stipulation dated July 22, 2011, which settled and discontinued the action entitled *Grewal v Boparal*, (Index No. 18889/2010), and to stay all proceedings in that action pursuant to CPLR 2201 and 2221. Petitioner asserts that the parties to the so-ordered stipulation in the *Grewal* proceeding lacked authorization and standing to enter into said so-ordered stipulation, and thereby waive petitioner's rights as a member of the Society. It is also asserted that the so-ordered stipulation makes changes to the Society's constitution without the formal approval of such an amendment by the membership of the Society. Although petitioner alleges that this proceeding is brought "individually and as a member of the Society" and alleges that the claims are brought against the respondents individually and in their official capacities, no such individual claims exist.

Respondents Society, Dhillon and Kang in their cross motion to dismiss the petition, assert that the within proceeding should be dismissed on the grounds of lack of standing, laches, failure to join all necessary parties, failure to state a cause of action, lack of jurisdiction, duplicative motions and failure to establish any right to injunctive relief.

"The method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with' " (*Matter of Theodore T. [Charles T.]*, 78 AD3d 955, 956-957, [2010], quoting *Matter of Hennessey v DiCarlo*, 21 AD3d 505, 505 [2005] ; see *Matter of Sharma v New*, 87 AD3d 1070, 1070-1071 [ 2011]; *Matter of El Greco Socy. of Visual Arts, Inc. v*

*Diamantidis*, 47 AD3d 929, 929, 852 NYS2d 165 [2008]). "Moreover, where the court orders service by a particular date, all components of service must be accomplished by that date" (*Matter of El Greco Socy. of Visual Arts, Inc. v Diamantidis*, 47 AD3d at 929; see *Matter of Sorli v Coveney*, 51 NY2d 713, 714 [1980]; *Matter of Sharma v New*, supra; *Matter of Phillips v Sanfilippo*, 306 AD2d 954, 955 [2003]). The failure to comply with the service requirements of an order to show cause will result in the dismissal of an action for lack of personal jurisdiction ( see *Jones v Dennison*, 30 AD3d 952 [2006 ]), and a court may deny a motion where a party does not make personal service in the manner directed in an order to show cause. (see *Contimortgage Corp. v Garrett*, 32 AD3d 977 [2006]).

Petitioner, pursuant to the within order to show cause signed by the Hon. Marguerite A. Grays dated August 22, 2011, was required to serve the order to show cause and supporting papers on each of the attorneys appearing in this action and the Office of the Attorney General of the State of New York, on or before August 25, 2011, and to personally serve each of the respondents on or before August 25, 2011.

The court's computer records indicate that the attorneys of record for the respondents in this action are Nicholas Mundy Esq PLLC and King & King LLP. It is apparent from the papers submitted herein that the Society, Mr. Dhillon, and Mr. Kang are represented by Nicholas Mundy Esq. PLLC, and that Michael Carr is of counsel to Mr. Mundy. It is unclear as to whether any or all of the remaining respondents are represented by King & King LP, as no notice of appearance has been filed.

It is undisputed that prior to the court's signing the order to show cause, counsel for the Society informed petitioner he was authorized to accept service on behalf of the Society. The original return date of the within order to show cause was August 31, 2011. Mr. Glaser and Mr. Carr appeared in court on August 31, 2011, and the matter was thereafter transferred to this part. The service of the transfer order is not at issue here.

Petitioner, in support of the within motion, has submitted affidavits of service from a single process server, Horace Jones which attest to the service of a copy of the order to show cause and supporting papers on the Office of the Attorney General on August 23, 2011, and to personal service of a copy of the order to show cause and supporting papers on Kulwant Singh, Surjit Singh Kalhar, Harbans Singh Dhillon, and Gurdev Singh Kang on August 23, 2011; and to personal service of a copy of an order to show cause and supporting papers on August 24, 2011 on Jaswinder Singh Padda.

Mr. Glaser asserts that Mr. Mundy was served with a copy of the order to show cause prior to appearing before Justice Grays on August 22, 2011. It is undisputed that Mr. Mundy was authorized to and would accept service of process on behalf of the Society. Counsel for the moving respondents asserts that respondents were not served with the order to show cause and supporting papers, and that petitioner failed to effectuate service of the papers as directed by the service clause of the order to show cause.

Clearly service of the proposed order to show cause and supporting papers on Mr. Mundy prior to August 22, 2011, was insufficient to establish service of these papers in accordance with Justice Grays' directives. Rather, petitioner in compliance with the court's directives was required to serve an executed copy of the order to show cause and the supporting papers, on each of the respondents, the Office of the Attorney General and the attorneys who had appeared in the proceeding, on or before August 25, 2011.

Therefore with respect to the Society and its counsel, petitioner was required to serve two copies of the executed order to show cause along with the supporting papers on counsel prior to August 25, 2011. There is no evidence that petitioner served an executed copy of the order to show cause and supporting papers on the Society, and on Mr. Mundy, or Mr. Carr, on or before August 25, 2011. Petitioner thus has failed to establish that jurisdiction was properly obtained over the respondent Society.

Furthermore, petitioner has not established that he properly served the Office of the Attorney General. Petitioner has submitted an affidavit of service stating that the Office of the Attorney General was served on August 23, 2011 at 1:00 pm, at 120 Broadway, New York. Petitioner, in his reply, also submits affidavit of service from the same process server which states that service was made on August 23, 2011 at approximately 1:00pm on Bhupinder Singh Boparai, personally, at his place of business located at 95-01 134<sup>th</sup> Street, South Richmond Hill, New York. Mr. Boparai was a respondent in the *Grewal* proceeding, and is not a respondent in this proceeding. Petitioner, therefore, pursuant to the August 22, 2011 order to show cause, was not required to serve Mr. Boparai. Clearly, it would be physically impossible for the same process server to have served both the Office of the Attorney General and Mr. Boparai on the same date and at the same time, at addresses that are miles apart, in two different counties. These affidavits are clearly suspect and are rejected.

In view of the foregoing, that branch of the cross motion which seeks to dismiss the petition on the grounds of lack of jurisdiction, is granted.

With respect to the remaining respondents, petitioner now moves for an order granting the ultimate relief sought in the verified petition, and in essence is seeking summary judgment. In view of the fact that issue has not been joined, petitioner's motion is premature and, therefore, is denied (CPLR 3212).

Furthermore, as petitioner seeks to vacate the so-ordered stipulation of settlement in the *Grewal* proceeding, a stay of that proceeding, and related relief, he is required to so move in that proceeding and may not seek such relief here under the guise of an Article 78 proceeding. It is noted that Mr. Singh made a separate motion in the *Grewal* proceeding for the identical relief, which this court denied in an order dated June , 2012.

Finally, to the extent that petitioner seeks an order holding Mr. Dhillon, the chairman of the election committee, in contempt for the violation of various court orders, the only order attached to the petition relates to a stipulation of settlement of a proceeding commenced under Index Number

1692/2008. Mr. Dhillon was not a party to that proceeding, and neither the stipulation of settlement, nor the court's order in that proceeding directed the chairman of the election committee to take any action with respect a membership drive and elections. The court, therefore, finds that the petition fails to state a claim for contempt.

In view of the foregoing, petitioner's motion is denied in its entirety, and respondents' cross motion to dismiss the petition is granted. Respondents request for attorney's fees is denied.

Dated: June 16, 2012

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Hon. Sidney F. Strauss  
J.S.C.