CCH - 5

# IN THE COURT OF THE CITY CIVIL JUDGE, AT BANGALORE

## O.S.NO.7934/2001

PLAINTIFF : ISKCON, BANGALORE

DEFENDANTS : ISKCON MUMBAI

# JUDGEMENT

**DATED: 17TH APRIL, 2009**

HIGH COURT OF KARNATAKA
20 DEC 2010
BANGALORE.

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Srinivas and S.K.V. Chalapathy
High Court of Karnataka, Bangalore
RFA 421/09

**THE COURT OF THE IX ADDL. CITY CIVIL AND SESSIONS JUDGE AT BANGALORE (CCH NO.5)**

Dated this the 17th day of April 2009

Present: Shri B.Balakrishna, B.Sc., L.L.B.,
IX Addl. C.C. & S.J., Bangalore

**O.S. No.7934/2001**

Plaintiff: International Society for Krishna Consciousness (Iskcon) having its registered office at Iskcon, Harekrishna Hill, Chord Road, Bangalore 560 010 By its Secretary Stoka Krishna Dasa

(By Sri.S.K.V.Chalapathy, advocate)

/ vs /

Defendants:
1. International Society for Krishna Consciousness (Iskcon), a registered public trust having its registered office at Harekrishna land, Juhu, Mumbai-400 049.

2. Bhima Dasa, major

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This certificate copy contains 319 pages and a court fee stamps of Rs. 970 is affixed

3.Gopala Krishna Goswami, major

2 and 3 above are having their office at Harekrishna land, Juhu, Mumbai 400 049.

4.Jaya Pataka Swami, major

5.Vinay Kalro also known as Vibhava Krishna Dasa, major

6.Ashok Kumar Gupta, major

7.B. Kiran, major

8.Sudhir Chaitanya Dasa, major

4 to 8 at No.5, I cross, Sripuram, Sheshadripuram, Bangalore-20.

9.Sarva Aishwarya Dasa, Iskcon, Coimbatore center,Harekrishna land, 100 Feet New Scheme Road, Coimbatore, Tamilnadu.

10.Registrar of Societies, Karnataka State, 32, Jamuna complex, 5th main road, Gandhinagar, Bangalore-9.

11.State of Karnataka,

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represented by The Commissioner of Police, Infantry Road, Bangalore-11.

(By Sri.D.R.Ravishankar, advocate for D1 to D4, Sri.C.G.Gopalaswamy, advocate for D5 to D9 and ADGP for D10 and D11)

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|---|---|
| Date of Institution of the suit: | 15.10.2001 |
| Nature of the suit: | Declarations & injunctions |
| Date of commencent of Recording evidence: | 1.2.2008 |
| Date on which the judgment was pronounced: | 17.4.2009 |
| Total duration: | Day/s 02 Month/s 06 Year/s 07 |

(B. Balakrishna)
IX Addl. City Civil & Sessions Judge
Bangalore

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## JUDGEMENT

The plaintiff has instituted the suit against the defendants for a declaration that the executive committee or bureau of the 1st defendant or the 1st defendant society has no power or authority to remove the president or any office bearers of the plaintiff and its temples or to exercise control over the possession of the property by the plaintiff or administration of affairs of the plaintiff, declaration that plaintiff is the absolute owner of item No.1 of 'A' schedule and 'B' and 'C' schedule properties and it is in possession and enjoyment of the same as the absolute owner being an independent legal entity, permanent injunctions and a direction to the 10th and 11th defendant to discharge and exercise the statutory and regulatory powers and duties vested in them.

2. The case of the plaintiff, in brief, is as hereunder: The plaintiff viz., Iskcon is a society registered under Karnataka Societies Registration Act, 1960, bearing registration No.S49/78-79 and Stoka Krishna Das is its secretary and he is authorized to file the suit. With the construction of a new temple and complex at Hare Krishna Hill, Bangalore, the temple congregation started increasing. By 1995, the devotees started several programs. The plaintiff is a self-made, self-developed and self-supported society and it has built up its corpus by raising funds from the public in

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Karnataka and achieved development. In 1978, when its corpus was hardly Rs.10,000/-, it has risen to 39 crores within 16 years under the leadership of Madhu pandit Das. It acquired a vast landscape of 7 acres from B.D.A. under a registered deed of conveyance dated 3.8.1988. Thereafter by an order dated 27.5.1989, the additional special deputy commissioner, urban and land ceiling, Bangalore, accepted Form No.4 filed by the plaintiff under S.8 of the Urban and Land Ceiling Act. The plaintiff efficiently managed, administered and developed the same and the defendants became jealous of its progress. It has been getting its annual accounts audited and circulating its annual management information system report (MIS) to its members and establishments of Iskcon including Bombay for their information.

3. The temple and the cultural complex at Bangalore is unparalleled in its architectural beauty and it is a place of pride for Iskcon movement all over the world. Madhupandit Das, as its president, introduced an ambitious scheme called 'akshaya patra' under which 30,000 poor and deserving students are provided with lunch. Considerable funds required to be spent under the scheme are raised from donations from the people of the state of Karnataka. The Bangalore temple and cultural complex are a monumental place of pride and the plaintiff's president personally designed the said complex and monitored the construction and the

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installation of the deities. Nearly 25,000 persons from Bangalore representing various cross sections of the society have donated amounts as life members of Iskcon movement. The movables and the immovable properties of the plaintiff are vested in its governing council as per Sec.14 of the Karnataka Societies Registration Act. Hence, it is the statutory and regulatory duty of the 10th defendant to protect its properties against the threatened invasion and acts of defendants 1 to 9 and prevent the dispossession of the plaintiff. A similar order be passed against the 11th defendant to discharge its statutory and regulatory duties. The 10th and 11th defendant are added as parties for the said relief.

4. The defendants 2 to 9 are associated with the Iskcon movement and are envious of the plaintiff by reason of its worldly status and position. Srila Prabhupada, a disciple of Chaitanya Mahaprabhu preached, propagated and spread the philosophy of krishna consciousness all over the world. During his life time, he issued various orders, directives, teachings and instructions to his disciples time and again and they are published. In 1966 or thereabout, he started a movement under the name and style 'International Society for Krishna Consciousness in New York. Within a short time, the said movement spread all over the world and at present, there are 400 centers of Iskcon. Each Iskcon center or temple was then presided over by

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the temple president. In the beginning years, Srila Prabhupada himself participated in the 1st and 2nd initiation. But during the last few months before his samadhi, he authorized some of his senior disciples to initiate. On 11.2.1967, he wrote to Kirtnananda Swami, a senior disciple, that he wanted the centers to be established all over the world and every branch shall keep its independent identity. In 1970 or thereabout, 12 senior disciples named by him were individually called as governing body commissioners and collectively called as governing body commission or GBC. Its duties are clear from a letter dated 22.12.72 written by him to Karandara Das. The said letter makes it clear that he did not want a legally centralized organizational structure for Iskcon. He did not entrust or vest any properties or its management in the hands of GBC. GBC was not executive committee of the 1st defendant. Its main objective is to act as an information and monitoring hub to aid and guide various independent centers maintaining spiritual standards.

5. Based on his desire, in 1971 or thereabout, a separate society under the name and style of International Society for Krishna Consciousness came into existence at Mumbai and it is the 1st defendant. It was registered under Societies Registration Act, 1860. It was also registered under S.18 of Bombay Public Trusts Act, 1950. Srila Prabhupada was also one of the members of the 1st governing council. (Bureau) The bureau limited

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its activity to the collection and dissemination of information.. It is explicit that at the time of its registration, it had no immovable properties. The activities, projects or programs of independent Iskcon centers are not and need not be approved by the bureau of the 1st defendant.

6. The 1st defendant has framed its memorandum of association and rules and regulations to govern its functioning. Its registered office is situate at Harekrishna land, Juhu, Mumbai. As per clause 5 of its memorandum of association, the full management and control of its affairs is entrusted to and vests in the bureau comprising of 18 members. The bureau sought to open two centers only at New Delhi and Mayapur of West Bengal. In Bangalore, six voluntary inmates started the activities of the Karnataka Society in a humble manner in 1981 at Rajajinagar and Madhu Pandit Das was one of them and he later became the president by dint of labour and work and not by the imposition or appointment by the 1st defendant or its bureau. In its meeting dated 15.12.78, the bureau made some amendments to some parts of the instrument of trust and the change report was accepted by the Assistant Charity Commissioner, Greater Bombay region, Mumbai, without any inquiry as required by law. The bureau had no authority, right, power and/or locus standi whatsoever to make any amendments to the instrument of trust. Further in 1993, certain drastic

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amendments were carried out without following Rule 16 of the rules and regulations. Hence, the said amendments are illegal, null and void, ineffective, inoperative and bad in law.

7. Srila Prabhupada did not allow GBC to have any control of whatsoever nature over the properties of Iskcon temples/centers/branches and it is supported, confirmed and elaborated by the amendments of 5th January 1971. He was treating GBC and Iskcon as parallels and not subordinate to each other. GBC, Calcutta, came into existence on 7th February 1993 and it is registered under the Societies Registration Act, 1860 as applicable to the state of West Bengal. As per the provisions of Societies Registration Act, 1860, no society such as the 1st defendant or Iskcon GBC can deal with any matter relating to Iskcon centers in India and the world. The 1st defendant cannot interfere with or control any any manner whatsoever over Iskcon in other states and countries. Any action taken by the bureau of the 1st defendant allowing other societies or trusts to deal with or interfere with or control in any manner over Iskcon activities, is outside the scope, ambit and the authority of the bureau.

8. GBC tried to disturb the possession of the president of the plaintiff on the strength of a resolution dated 14.2.1999 through the 4th defendant. Against it, OS No.2180/1000 was filed in City Civil Court, Bangalore. On challenging the said

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resolution in Kolkata High court, the said resolution was withdrawn. On 2.2.2001, general secretary of the bureau issued a meeting notice to consider and to take action for suspension of the president of the plaintiff as a vengeance to his crusade against a self-styled gurus. The 1st defendant is not competent to exercise any right or power or to deal with the matters pertaining to the plaintiff.

9. Srila Prabhupada had also initiated a donation scheme called 'International life membership program' and it continues till today. According to it, a donor is offered free accommodation for 3 days in any of the centers of Iskcon around the world. A meeting of the temple presidents called as Iskcon continental committee was held in Tirupati and in it, Devakinandan Das, the Vice President of Iskcon, Mumbai, proposed drastic changes in the system of issuing membership cards. The malafide intention of Bombay center was to control other centers by centralizing the issue of international membership cards. The ICC is an informal body having no legal standing. The entire life membership patronage program is based on reciprocity between centers. Hence, the 1st defendant should be restrained from enforcing the decision that no Iskcon life/patron card be issued following the existing practice in vogue since its inception. The plaintiff has stipulated certain criteria for opening its affiliated center and the opening of a new center cannot be in violation of any of the rules. The 1st defendant has no power to

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open any branch outside the state of Maharashtra. The only properties of it are those registered by it with the charity commissioner, Mumbai. The defendants 1 to 9, who are not even full time dedicated devotees, but business men, have recently embarked upon collection of donations in the name of plaintiff and it clearly amounts to misuse of the name of the plaintiff. The donations collected by them are not handed over to the plaintiff. The defendants are trying to create a parallel center in Bangalore and confusion in the minds of thousands of the followers of the plaintiff.

10. The 4th defendant illegally and unauthorizedly wrote a letter dated 18.3.1999 in his capacity as zonal secretary and representative of GBC in Karnataka and south India, about creating a so-called regional congregation development directorate, for preaching in Bangalore, Mysore and surrounding areas in eastern and southern Karnataka. He also issued a certificate dated 26.7.00 certifying regional congregation development directorate and appointing the members of the steering committee and calling it a 2nd branch of Iskcon at Bangalore. There is no GBC representative for Karnataka and south India. There is no necessity to establish another Iskcon at Bangalore. In fact, the defendants 4 to 7 are not authorized to open another Iskcon in Bangalore. The defendants are jealous of the meteoric rise in the assets and fame of Iskcon temple at Bangalore.

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With a view to lower the name of its president, the executive of the 1st defendant called for a meeting to take action for suspension of the president of the plaintiff. It was challenged by filing O.S. 1483/2001 and when the 4th defendant made a statement that no such resolution is passed, it was withdrawn. The defendants are now trying to obtain the possession of the temple at Bangalore and to oust its management so as to gain control over it and the 9th defendant is called to assist the 4th defendant. When the defendants 2 to 9 and their followers threatened to take forcible possession of the plaintiff's temple, the plaintiff's member filed a suit. By an order passed by Bombay High Court on 7.8.2001, the 1st defendant was directed to maintain status quo. Keeping in view of the direction of the Bombay High Court, the suit is filed.

11. The plaintiff is the absolute owner of the 1st item number of 'A' schedule and 'B' and 'C' schedule properties. Since the 1st defendant has denied its title to the same, it has become necessary for it to seek a declaration. The cause of action for the suit arose on 11th and 12th August and in the last few days, when the defendants gave an apprehension or threat. With it, the plaintiff has prayed that the suit be decreed as prayed for.

12. The 1st defendant has presented its written statement and the same is adopted by defendants 2 to 9. Their defense in brief is as hereunder: The 9th

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defendant, who is a member of its executive committee (known as bureau), is authorized to sign and verify the statement. Srila Prabhupada established several temples/centers in quick succession all over the world. In 1970, to assist him, he constituted GBC comprising of 12 disciples. It became an integral and indispensable part of the movement. In his Will dated 4.6.1977 , he declared GBC as the ultimate managing authority. Though temples/centers in other countries have been registered as separate entities, for India, Srila Prabhupada had a different scheme. He introduced the concept of branches/temples/centers that had to be a part of a centralized entity, though functioning with a considerable degree of autonomy. In 1971, a society was registered under the Societies Registration Act, to spread and manage the movement in India including opening of branches/temples/centers. The 1st defendant was obliged to get itself registered as a public trust. It also obtained registration under S.12A of the Income Tax Act, 1961 and also exemption for donations made to it under S.80G of the Act. Without GBC's express permission, no branch, temple or center could be opened. Srila Prabhupada got the 1st defendant establish branches at Bombay (apart from its head office), Delhi, Mayapur, Calcutta, Brindavan and Hyderabad and did not incorporate any temple or center as an independent entity in India. He attained mahasamadhi on 14.11.1977. Then, GBC took over

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the responsibility of guiding the movement and its constituents.

13. Sometime before Srila Prabhupada attained his Mahasamadhi, a few of his followers in Bangalore, commenced group activity pujas and sankeertans and other religious and charitable practices on a regular basis as prescribed by Srila Prabhupada. At about the time of, or immediately after his mahasamadhi, the group in Bangalore became organized into a branch of the 1st defendant (hereinafter referred to as the Bangalore branch of the 1st defendant, the Bangalore branch or its Bangalore branch depending on the context) and was functioning at the premises of Hanuman Temple, Crescent Road, Bangalore. In July 1980, it came to the notice of 1st defendant that the person who had taken the lead in organizing the Bangalore branch has got a society registered with name similar to it. But by then, the society had become defunct without having undertaken any activity connected with the movement and with no members or managing committee and there was none to be proceeded against and therefore, the 1st defendant left the matter at that. In August 1980, the Bangalore branch of the 1st defendant shifted to the premises No.34/A, 9th 'B' cross, West of Chord Road, Rajajinagar, Bangalore-10. Its affairs were and are managed by president who would normally describe himself as the president, Iskcon, Bangalore. In 1984, Madhu Pandit Das became the

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president of the Bangalore branch. It shifted to the premises bearing No.210, Bellary Road, Bangalore and now, it functions from Hare Krishna Hill, Rajajinagar, Bangalore. In 1991, Madhupandit Das had become a member of the bureau and the trustee and he continues to be the president of the Bangalore branch of the 1st defendant.

14. In 1993, GBC attained corporate status, when it was registered under West Bengal Societies Registration Act, 1960. It is the ultimate and supreme repository of all powers relating to the movement including the power to grant or refuse permission to use the word Iskcon. In 1999, Madhupandit Das began agitating and proselytizing some theological issues declared by GBC as dangerous deviation from the teachings and tenets of Srila Prabhupada falling out with several followers of the movement attached to Bangalore branch. Hence, the said followers began activities as a separate group. In due course, GBC permitted the said group to establish a temple known as Iskcon at Jagannath Mandir, Sheshadripuram, Bangalore and the 1st defendant accorded to it, the status of a branch. The 1st defendant has been at the forefront of spreading the movement in India. It has 50 branches/temples/centers in India. The branches/ temples/centers maintain a close contact with the bureau and receive guidance from it from time to time. It is their duty to maintain accounts scrupulously and got the same audited and submit

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the audited statements to the bureau annually. In turn, the bureau consolidates the accounts and integrating the same, files the required returns with the statutory authorities. Although the bureau has overall control over the branches/temples/centers, they enjoy a certain degree of autonomy, which in no case is a license They can raise funds using exemption granted to the 1st defendant u/s 80G of Income Tax Act and can enroll life patrons. But notwithstanding their enrollment, they would be life patrons of the 1st defendant. The organizational structure of the 1st defendant is such that its head office and branches/temples/centers form an integral and integrated body and no branch/ temple/center can claim to be independent. All the properties irrespective of location or acquisition by or in the name of any branch/temple/center, belong to and vest in the 1st defendant.

15. The 1st defendant is a public trust and the members of the bureau are trustees. The 1st defendant alone is empowered to use the word Iskcon. The plaintiff's claim that it is an independent body not answerable to the 1st defendant and it is entitled to use the said word is baseless, untenable and false. It has not obtained the permission of GBC for its registration and to use the word Iskcon. As such, it has no legal or moral authority to spread the movement. It may have been registered as a society under Karnataka Societies Registration Act, 1960, but it did not carry on any activity as to lead

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the 1st defendant to believe that the plaintiff has become defunct. When its registration came to the notice of the 1st defendant for the first time in July 1980, there was no member nor was there any managing committee. Thus, the plaintiff had stumbled at the 1st step and fallen into a hole. Madhu Pandit Das who is a member of bureau and a trustee had not whispered once about the existence of the plaintiff in the suits defended against the 1st defendant or filed by him. In July/August 2001, Madhupandit Das and other self-styled office bearers of the plaintiff, breathed life into it, refurbished it and altered/tampered with existing records and fabricated new ones in a bid to present the plaintiff as active all along. The plaintiff is a fraud in law and on facts, as it was brought about and revived without legal sanction and authority of GBC. It is claiming ownership over the properties of the 1st defendant with the aid of Madhupandit Das and his cohorts who have clandestinely manipulated the finances and records of the 1st defendant.

16. Radhakrishna Temple at Harekrishna Hill, all trusts, organizations and properties howsoever and in the name of whomsoever are traceable to the funds of the 1st defendant and all of them belong to the 1st defendant through its branch headed by Madhupandit Das. The 1st defendant reserves its right to adopt appropriate proceedings against Madhu Pandit Das. With a view to usurp the properties held by the 1st defendant, the plaintiff

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and its office bearers have altered/tampered the existing records. The real architect of the suit is Madhupandit Das and the plaintiff is only a name lender. He filed O.S. No.2180/1999 and O.S. No.1483/2001. But he withdrew them. He set up another person to file O.S. No.4169/2001 in Bombay City Civil Court, for reliefs similar to those in the suit. When it became inconvenient, the plaintiff tried to withdraw it, but the court dismissed it.

17. The plaintiff has used the exemption granted to the 1st defendant u/s 80G of the Income Tax Act. Though the activities of the branch have been going on unabated, the office bearers of the Bangalore branch have not submitted the accounts and other details since 1.4.2000. It has denied the averments made in para-3 of the plaint. What has been in existence in Bangalore is the Bangalore branch of the 1st defendant. It is its initial corpus that has grown into multi-crore fund. It is attributable to collection of donations. B.D.A. allotted property in question to the 1st defendant through its branch. The funds for its acquisition, construction of the temple, day to day activities of it and its projects and programs came from collections made by its branch. Exemption under Urban Land (Ceiling and Regulation) Act, 1976, does not determine title to the property in question. The plaintiff has not sent any management information reports to the 1st defendant. Akshayapatra is an extension of Srila

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Prabhupada's "Food for life" program. The temple at Harekrishna Hill has taken its shape because of dedicated work by large number of devotees, followers and life patrons and Madhupandit Das has put in tireless effort in that regard as the president of the Bangalore branch. The properties listed in document No.4 belong to the 1st defendant.

18. The plaintiff has not functioned nor has it maintained any accounts. In about July/August 2001, it has simply effected some cosmetic changes to the audited accounts of the Bangalore branch and fabricated the annual list of office bearers and other documents and filed all those in one bunch with the 10th defendant on 9.8.2001. It has also not held annual general meetings. There is no movable or immovable property belonging to the plaintiff. The 1st to 9th defendants have no designs in so far as the plaintiff is concerned. The plaintiff is not in possession of any property, much less those referred to in the plaint. The 1st defendant is entitled to, and is in possession of Sri. Radhakrishna temple at Harekrishna hill.

19. The 2nd, 3rd and 4th defendant are secretary, chairman and vice- chairman of the bureau. The defendants 5 to 8 are steering committee members. The 9th defendant is a member of the bureau and president of Coimbatore branch of the 1st defendant. The plaintiff which has come into existence without the permission of GBC

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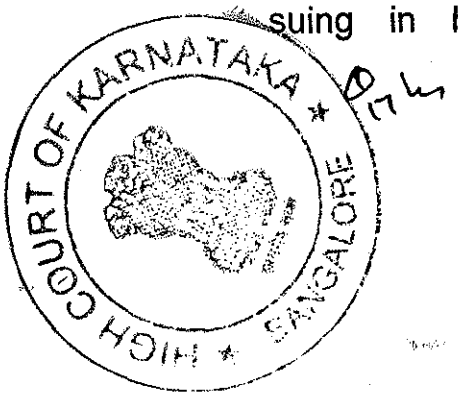
is not a part of Iskcon. It has denied that GBC has remained an unregistered body of persons. It is functioning in its corporate existence as a society registered under the West Bengal Societies Registration Act, 1960. Its objectives are not limited to what the plaintiff has averred, but extend far beyond. The bureau is the ultimate managing authority in so far as its branches/temples/centers are concerned. It is not a mere information collecting and disseminating body. The 1st defendant has established 50 branches/ temples/ centers all over India and Bangalore branch took shape in 1978. Madhupandit Das was not on the scene then. He came into the movement in 1981 or thereabout, when the Bangalore branch shifted to 1st Block, Rajajinagar and in 1984, he became the president of the branch. He was not responsible for registration of the plaintiff as a society . The 1st defendant is an all India body, while the GBC is a world wide body. The law that governs societies registered does not preclude them from extra territorial functioning. There is no prohibition for a society established in one state to pursue its objects in other state, both inclusively and exclusively. The 1st defendant controls its branches/temples/centers situate in different parts of India. The averments made in paras 16 and 17 are denied.

20. In O.S. 2160/1999 and O.S. 1483/2001, Madhu Pandit Das had not claimed that he was suing in his individual/personal capacity. The



Bangalore branch has been managing Radhakrishna Temple at Harekrishna Hill, Bangalore. Neither the plaintiff nor its president has anything to do with its management. The plaintiff, indeed, has rules and regulations, but they are amended not on the date/dates declared by the plaintiff. They are intended to cause confusion. Bombay Public Trusts Act, 1950, does not prohibit a trust from holding immovable property outside the territory of the State of Maharashtra, but it requires the trust to file with the Charity Commissioner the particulars of all the properties to be entered in the register. Failure to submit such particulars does not dis-entitle the trust to the properties.

21. The averments in para-21 of the plaint are taken straight from the plaint in O.S. No.4467/2000. The activities of the defendants 1 to 9 in establishing the second branch of the 1st defendant in Bangalore and collecting donations are lawful acts. The 4th defendant is a governing body commissioner and zonal secretary for Karnataka and other states and has the necessary authority to look after the spiritual welfare of the congregation of devotees and to guide them to advance in the path shown by Srila Prabhupada. The plaintiff is a total stranger to the affairs of the 1st defendant. The averments made in paras 24, 26 and 27 of the plaint are denied. The plaintiff was defunct at the time of filing OS No.1483/2001. Madhu Pandit Das who was one of the plaintiffs withdrew O.S.2180/99 and

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O.S.1483/01.The plaintiff has claimed that its president had filed those suits. Hence it is estopped from making any allegations contradictory those of the said suits.

22. The suit is an abuse of the process of the court. The plaintiff has relied upon suits filed by Madhu Pandit Das. The plaintiff is quite easily identifiable with Madhupandit Das. If its corporate veil is pierced, he will be seen behind it. There is no cause of action for the suit and the one alleged is a ruse to approach the court. The 10th and 11th defendants are not necessary parties. The suit is not properly valued and the court fee paid is insufficient. The relief of declaration in respect of properties set out in document No.4 is valued at Rs.39 crores. The plaintiff is not entitled to the relief claimed by it. With it, the 1st defendant has prayed for dismissal of the suit with exemplary costs.

23. By filing additional written statement under Order 8 Rule 6A of C.P.C., the 1st defendant has denied the averments made in para 26A and 28 of the plaint. By taking the stand that Madhu Pandit Das is its president, the plaintiff has directly interfered with the possession of the 1st defendant, management and control of the properties of its branch. To protect its possession, management and control and to avoid multiplicity of litigations, the 1st defendant has no other alternative than to make a counter claim for permanent injunction. The cause

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of action for it arose on or about 16.10.2001 when the suit was filed. It is in time. With it, it has prayed for a judgment and decree for permanent injunction, to restrain the plaintiff, its office bearers, etc., from interfering with its possession, management and control of its Bangalore branch and Radha Krishna temple and A to C schedule properties.

24. By presenting written statement, the plaintiff has resisted the counter-claim as hereunder: It is not permissible in law. The court has not permitted the 1st defendant to file the additional written statement. The defendants want to raise a question regarding the very existence of the plaintiff, its constitution and validity of the governing body which is totally alien to the written statement already filed. Hence, it is not open to the defendants to put forward such a plea. The counter -claim goes far beyond the reliefs claimed by the plaintiff. The reliefs similar to the counter-claim are put forward in OS No.1758/2003 and there cannot be any counter claim in respect of the properties not in existence, not specified and particulars of the same are not furnished. There is no substance in the allegations that the plaintiff is a fictional, immoral and illegal manifestation bearing the name of the 1st defendant. It has denied that it was abandoned within a few months of registration, it has fabricated, fudged, doctored, altered or otherwise tampered with records of the Bangalore branch. There was no Bangalore branch in existence at any point of time.

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It never held any property at Bangalore. It never functioned from Hare krishna Hill. The 1st defendant has not claimed ownership over the schedule properties. The schedule properties are in possession of the plaintiff. Without seeking possession, a bare relief for injunction is not maintainable. It is surprising a claim is put forward in respect of properties which the defendants are not even aware of. The plaintiff has been legally constituted and validly functioning. The very same contentions are raised in OS No.1758/03. It has denied the allegation that the valuation of the suit is not proper and the court fee paid is insufficient. There is no truth in the allegation that Madhupandit Das is president of Bangalore branch, as he is president of the plaintiff. But it has admitted that he is a member of the bureau of the 1st defendant. Since the 1st defendant is not in possession of the schedule properties, the question of plaintiff interfering with it does not arise. The 1st defendant has neither title nor possession over the schedule properties. There is no cause of action for the counter claim. With it, the plaintiff has prayed for rejection of the counter claim with exemplary costs.

25. Even though the defendants 10 and 11 have entered their appearance through ADGP, they have not presented their written statement.

26. On the above pleadings, the following issues are framed:

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1) Whether the plaintiff proves that the 1st defendant has no power or authority to exercise control over the possession of the property by the plaintiff?

2) Whether the plaintiff proves that it is the absolute owner in possession of the 1st item of 'A' schedule and 'B' & 'C' schedule properties?

2A) Whether the additional written statement filed by the defendants beyond the amendment carried out to the plaint is liable to be rejected?

2B) Whether the defendants prove that the 1st defendant acquired the schedule properties out of the funds of its branch of Bangalore and the said branch is in possession of them?

2C) Whether the counter-claim is maintainable on the face of OS No.1758/2003?

3) Whether the plaintiff is entitled to declarations sought for?

4) Whether the plaintiff is entitled to the permanent injunction sought for?

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5) Whether the plaintiff is entitled to mandatory injunction sought for?

6) Whether the valuation of the suit is proper and the court fee paid thereon is correct and adequate?

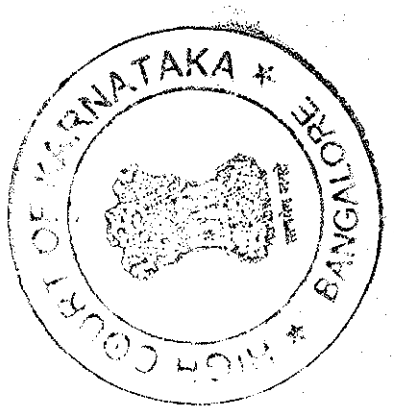
6A) Whether the 1st defendant is entitled to permanent injunction sought for in its counter claim?

7) To what order or decree?

27. In support of its claim, plaintiff has got examined 3 witnesses as P.W.1 to 3 and got marked 253 documents as Ex.P1 to P253. In support of their defense, the defendants have got examined 4 witnesses as D.W.1 to 4 and got marked 345 documents as Ex.D1 to D345. Arguments were heard and written arguments are filed.

28. My findings on the above issues are as under:

1. Yes
2. Yes
2A. No
2B. No
2C. Yes
3. Yes
4. Yes
5. No



6. No
6A. No
7. As per final order, for the following:

## REASONS

29. **Issue No.2A**: As the subject matter of this issue has raised a legal question and it has become necessary to decide on it first before entering upon discussion on other issues, I have taken it up for discussion in preference to the other issues.

30. By inserting para 26A and adding to the prayer column, the plaintiff amended its plaint. With it, the plaintiff has sought for a declaration that it is the absolute owner of the first item of the 'A' schedule and 'B' and 'C' schedule properties, since the 1st defendant has now denied its title to the same. Further by adding that it is a separate entity independent of the 1st defendant to the 1st paragraph of the prayer column, fresh pleadings are laid on record by the plaintiff. Pursuant to the amendment carried out, naturally and necessarily, additional written statement of the 1st defendant containing the counter-claim was filed.

31. In the additional written statement, the 1st defendant has asserted that the plaintiff is a fictional, immoral and illegal manifestation of a

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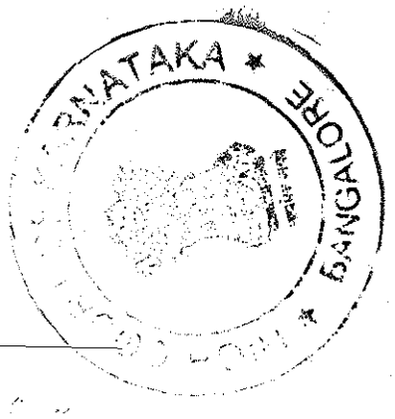
society bearing the name of the 1st defendant and it was abandoned within a few months of its registration. It is also asserted that the plaintiff is an illegal body, it became defunct in law and in fact and so on and so forth. Thus, it has questioned the very functioning and continuance of the plaintiff in answer to the amendment carried out to the plaint that the plaintiff is a separate entity independent of the 1st defendant. As such, the additional written statement filed by the 1st defendant cannot be said to be beyond the amendment carried out to the plaint and as such, the additional written statement cannot be said to be liable to be rejected, as maintained by the plaintiff. When the very amendment carried out to the plaint has necessitated the filing of additional written statement and besides that, when law provides for an opportunity of filing additional written statement in answer to the amendment carried out to the plaint, I do not see any substance or reason in the stand assumed by the plaintiff. Moreover, when plaintiff itself has provided an opportunity to the defendants and especially to the 1st defendant in raising the stand which is a part of the additional written statement, the plaintiff cannot be permitted to assume the said stand and contend that the additional written statement is beyond the amendment carried out to the plaintiff and is, therefore, liable to be rejected. Added to it, when the plaintiff has filed written statement to the counter-claim made by the 1st defendant, I find it



really difficult to appreciate its stand. When the plaintiff has sought for declaration of its title to the schedule properties and claimed to be in possession of the same, denying the same and asserting that the 1st defendant is in possession of the schedule properties, when counter-claim is made, it is not possible for me to say that the additional written statement is beyond the amendment carried out to the plaint. In view of this, I have to negative this issue. Even there was no argument addressed worth consideration to persuade the court say that the plaintiff has succeeded in establishing the subject matter of this issue. Hence, my finding on it is in the negative.

32. **Issues 1, 2, and 2B**: As the discussion to be made on these issues is closely interlinked or overlaps on each other, I have taken them up together for consideration to avoid repetition of facts and to better appreciate the evidence produced in relation to the subject matter of the same.

33. When the plaintiff has claimed to be a society registered under Karnataka Societies Registration Act, 1960 and it is the absolute owner in possession and enjoyment of the schedule properties, in addition to claiming a declaration that the executive committee or bureau of the 1st defendant or the 1st defendant has no power or authority to remove the president or any other office bearers of it and its

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temple or to exercise control over the possession of the plaintiff or its affairs of administration, filing elaborate written statement, the 1st defendant has questioned its claim on very many fronts, besides putting forth a defense that the 1st defendant acquired the schedule properties out of the funds of its branch of Bangalore and the said branch is in possession of them and the defendants 2 to 9, by adopting its written statement, have added chorus to the same. It is in the light of the same, by assessing and appreciating the evidence brought on record on either side, a finding needs to be recorded on these issues.

34. Before going deep into the merits and demerits of the claim and the defense, it is necessary to take note of the fact that there is no dispute that plaintiff is a registered society. In fact, in para 3(c) of the written statement, because the defendants 1 to 9 have mentioned that the plaintiff may have been registered as a society under the Karnataka Societies Registration Act, 1960, the fact that it is a registered society comes out irresistibly, albeit, the defendants have not admitted it in unequivocal words and without mincing any words. In spite of it, P.W.1, who is a member of the managing committee of the plaintiff and authorized by Ex.P213 which is a copy of the resolution passed by it, has given evidence thereon and the same is not disputed in the cross-examination. He has also spoken on Ex.P2, which is a certificate of

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registration of the plaintiff. Its validity is not questioned in the cross-examination. Neither there is any evidence produced by the defendants to dispute its validity.

35. However, in the cross-examination, by asserting that Shankabrit Das registered the plaintiff, but right from the date of its registration, the plaintiff does not exist, D.W.1 has tried to support the defense, but in vain. Because, he himself, by admitting that apart from the 1st defendant, except the plaintiff, no other entity was registered as a society for spreading the movement, has reinforced the testimony of P.W.1. Further, when the 1st defendant had not asked Shankabrit Das to dissolve the plaintiff, it is, indeed, difficult to characterize his testimony as truthful or trustworthy, for if the plaintiff had been registered as an independent society against the will and volition of the 1st defendant, it would not have been a mute spectator to the same and instead, it would have initiated necessary action against the plaintiff and vindicated its stand. But, it did not tread upon the said path for reasons best known to it. Hence, its failure to initiate action in that respect cannot go unnoticed without leaving its adverse impact on the credibility of its defense. Even the learned senior counsel for the plaintiff Sri. S.K.V.Chalapathy opened his arguments by submitting that plaintiff is a registered society is not disputed. But there is no argument addressed for and on behalf of the defendants, questioning the

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registration of the plaintiff. Thus, the half-hearted controversy generated by the defendants over the registration of the plaintiff dies on its own.

36. With the establishment of the fact that the plaintiff is a registered society, the real controversy involved in the suit surfaces. It is whether the plaintiff is an independent entity or not and whether a branch of the 1st defendant was functioning at Bangalore or not. Even in the course of written arguments filed for the defendants, it is argued that the core issue is whether the activities of Iskcon, Bangalore, were carried on by the plaintiff or by the 1st defendant through its branch. In view of it, I may say that it is essential to find out whether the plaintiff has succeeded in proving itself as an independent entity. Likewise, it is also necessary to find out whether the defendants 1 to 9 have established that a branch of the 1st defendant was functioning at Bangalore. When once the plaintiff establishes itself as an independent entity, it is needless to say that the voluminous evidence produced by the defendants 1 to 9 questioning the very constitution of the plaintiff, its validity and carrying on its activities in accordance with its rules and regulations, the statute governing it etc., loses its hold or weight. To resolve the controversy, the facts borne on record are to be marshalled and the evidence produced with reference to it has to be appreciated. To do the said exercise, it is needless to say that pleadings play a pivotal role in the first

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instance. But it may not be out of place to say here that the evidence produced would also play a significant role in finding an answer to the controversy.

37. But before proceeding to unfold and analyze the controversy and to find a lasting solution to it, it is necessary to take note of a stiff and stout defense raised by the defendants 1 to 9 calling the plaintiff as illegal, questioning its functioning and so on and so forth. As it goes to the root of the controversy on hand, it needs to be addressed in the first instance itself, before taking upon the exercise of finding a lasting solution to the controversy.

38. In the course of very lengthy and elastic arguments addressed for the defendants 1 to 9, learned senior counsel Sri. Yoganarasimha and Sri. D.R. Ravishankar repeatedly and strenuously brought out multi-faceted or multi-dimensional contentions in the form of grounds questioning the very validity of the constitution of the plaintiff. The 1st and the foremost ground urged is that the plaintiff has not obtained any permission from GBC and/or the bureau whether before or after its registration to claim association with the movement. The other face of it is that it has not obtained the permission of GBC to use the word 'Iskcon' or the phrase 'International society for krishna consciousness' and as such, it has no legal authority to spread the movement, whether in

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Karnataka or in any part of the country.

39. The 2nd ground is that to bring a society into existence under S.5 of K.S.R. Act, it is required that seven or more persons subscribe their names to the memorandum of association and because, there was no governing body, the plaintiff cannot be said to have been brought into existence and it has had a still-birth and it died before its birth or to say, it is a still-born society. The 3rd one is that all the four categories of membership are impermissible and contrary to S.2 of the Act. No governing body meeting could have taken place and in fact, it did not take place, is the 4th one. Whereas, according to the 5th one, registration of the plaintiff with identical name as that of the 1st defendant is contrary to S.7 of the Act. The 6th one is that as no AGM was held within 18 months of its registration, it is deemed to have been unregistered as ruled in ILR 1985 Kant. 1230. According to the 7th and the last ground, clause XI r/w clause VII of Ex.D3 is contrary to the provisions of the Act.

40. But the same was countered by Sri. S.K.V. Chalapathy by contending that there was no need or necessity of obtaining the permission of either GBC or the bureau of the 1st defendant to use the word 'Iskcon' and to register the plaintiff and as such, the defense raised in that behalf is not only misconceived, but also untenable. In view of this, I shall deal with the 1st ground first.

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41. It is really interesting to note that D.W.1 has not given any evidence worth its name in support of the defense raised. Hence, for want of any evidence, the defense has remained as it is unsubstantiated. Thus, it has suffered a severe jolt at the very threshold itself. In addition to it, it is worth mentioning about the evidence given by D.W.1 to the effect that the 1st defendant, recognizing the spiritual supremacy of GBC, amended its rules and regulations in 1993 to give authority to it to take action against erring followers of the movement in India. Thus his own evidence gives ample indication of the fact that as on the date of the registration of the plaintiff, GBC had no power to deal with erring branches. As such, it is not possible for me to say that the plaintiff had to take the permission of GBC either to claim association with the movement or to use the name Iskcon.

42. In the cross-examination, by admitting that Srila Prabhupada had constituted GBC to guide the corporations incorporated across the world and during his life time, it was not registered or incorporated, D.W.1 has virtually demolished the defense raised. As brought out from him, Ex.P234 is a certified copy of the memorandum of association of GBC registered in Calcutta. It curious to note that he has slipped away by pleading his inability to say whether the objects of unregistered GBCs and Ex.P234 are similar. The very fact that he has had

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no courage to deny the suggestion, if read with his other evidence already referred to above, would tend to suggest that he was not willing to speak out the truth. His further evidence that each member of GBC is in charge of a particular area to oversee the activities of the constituents of krishna consciousness movement and each constituent was to report to GBC on its activities for guidance would also forcefully suggest that GBC was established only to guide and monitor the activities of the constituents of the movement, as rightly pointed out by Sri. S.K.V. Chalapathy.

43. It is also brought out from D.W.1 that several corporate bodies came into existence to spread the movement, even after the life time of Srila Prabhupada and all the constituents of the movement were receiving guidance from GBC even before its incorporation under Ex.P234. It also does not leave any doubt to say that there is an element of truth in the claim projected by the plaintiff. Thus it has effectively questioned the defense raised to the contra, besides pointing out to that there is no force in the arguments addressed for the defendants. The further evidence elicited from him to the effect that GBC had laid down guidelines for Iskcon centers across the world and rule VIII-B of Ex.P202 applies to confederation of Iskcon centers including the followers would also lend some more credence to the view taken up.

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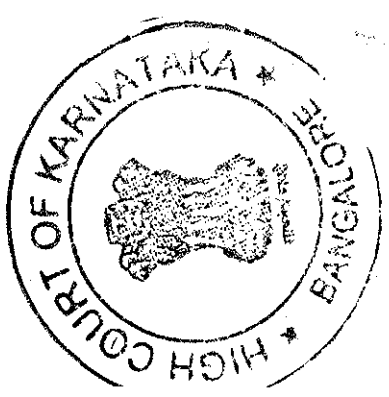

44. By stating in categorical terms that GBC has nothing to do with the opening of the centers, D.W.1 has, at last, demolished the very fabric of the defense raised. On the face of it, I am afraid the defendants cannot wriggle out of the insurmountable difficulty brought about by his statement. It is also important to note the evidence taken out from P.W.1 to the effect that there is no difference between GBC and governing body committee, Srila Prabhupada had appointed members of the governing body committee to take care of different zones as religious authorities and committee members had no role in the administration of the centers. It is also brought out from him that in 1977, there were 18 governing body commissioners and they were visiting the temple once in a while to oversee religious activities. It is also brought from him that there was no mechanism or procedure to ensure whether the principles laid down by Srila Prabhupada are followed or not and none of the members had any authority to ensure the following of the said principles. Certainly, it has also contributed much in sustaining the claim advanced. Of course, some amount of ignorance is extracted from him about the rules and regulations of GBC, its constituents, its territorial jurisdiction and its power of doing anything, whenever any spiritual directives are violated by its members. But I have to say that the fact that evidence of ignorance cannot partake the character of positive evidence is lost sight of. In

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view of this, I am not hesitant to fall in line with the arguments addressed for the plaintiff.

45. It is also interesting to take note of the evidence given by D.W.4 that in 1970, Srila Prabhupada constituted GBC for regulating the spiritual activities of, and for spiritual guidance to, the movement across the world. Even in the cross-examination, he has repeated that GBC was constituted under Ex.P234 to guide all entities spreading Iskcon movement around the world and the entities were reporting to zonal secretaries of GBC on their activities, strengthening the view taken further.

46. Coming to the defense of the necessity of obtaining the permission of the bureau of the 1st defendant to establish and register the plaintiff, there is no evidence worth reliable produced by the defendants capable of establishing it, as forcefully argued by Sri. S.K.V. Chalapathy. Even Ex.P202, P235 and P236 do not contemplate such a situation, let alone establishing the necessity of such a permission. Adverting my attention to the text of the same, he also argued that both the plaintiff and the 1st defendant having been registered under two different Acts cannot have control or hold over each other and the creation of such a circumstance is totally repugnant to the very word and spirit of the Acts. I cannot turn down his contention, but to accept it.



47. In so far as the permission of GBC to use the word 'Iskcon' is concerned, it is necessary to note that Ex.P234 does not make taking of permission of GBC obligatory. Curiously enough, D.W.1 is unable to say whether every constituent of the movement is registered as Iskcon. If the use of the word 'Iskcon' without the permission of GBC is forbidden, it is not known why every constituent was permitted to use it without the permission. Further, if it was unauthorized, then GBC should have taken action against the same. But there is nothing to indicate it, administering a clear rebuff to the defense raised. As admitted by him, apart from the 1st defendant, the plaintiff is also registered with that name. But why is plaintiff allowed go with it, raises its own doubt, questioning the credibility of the defense.

48. Sri. S.K.V. Chalapathy also contended that there is no plea challenging the validity of the constitution of the plaintiff or its registration and that is why, the court has not framed an issue on it. It is also argued that while disposing of IA 12 and 13, this court has said that the validity of the constitution of the plaintiff is not in dispute and it is confirmed by Hon'ble High Court. The argument has proceeded to say that it is a well settled principle of law that when a plea and and an issue are not there, no amount of evidence can be looked into, placing reliance on a decision reported in State Bank of India and others Vs. S.N. Goyal, (2008) 8 SCC 92.

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The ratio laid down in it speaks that in the absence of appropriate pleading on a particular issue, there can be no adjudication of such issue. Thus, it lends some credence to the argument of Sri. S.K.V. Chalapathy.

49. Not getting disheartened and inviting my attention to para 2(k), 3(c), 3(e), 8(d) and 9(b) of the written statement, it is vehemently contended for the defendants that the submission made that there are no pleadings is an unfair submission. As could be seen from the said paras, the 1st defendant has not questioned or denied the validity of the constitution of the plaintiff in so many clear words. Of course, it has asserted that the plaintiff is a fraud in law and sham and it has come into existence illegally. But the said pleading cannot be equated with specific denial of the validity of the constitution of the plaintiff as rightly pointed out by Sri. S.K.V. Chalapathy. On the other hand, the fact that the said pleadings are inconsistent with each other is noticeable, for in one breath, when the 1st defendant has asserted that the plaintiff had become defunct, giving a go by to it, in the next breath, it has maintained that the plaintiff has now been revived, of course, with a rider that it is without legal sanction and the authority of the GBC and/or of the bureau. Yet in another breath, it has also asserted that the plaintiff's present resurrection has been for clandestine and collateral purposes of usurping the properties belonging to the 1st defendant. Thus

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the fact that the 1st defendant has not maintained a single and solitary stand or consistency in its stand does not escape the notice of anybody. Even placing reliance on para 14 of the written statement presented to the counter-claim of the 1st defendant, it is argued further that the plaintiff is fully aware of the pleadings and has contested the same. But as could be seen from the said para, what the plaintiff has contended is that a society cannot become defunct under the provisions of Karnataka Societies Registration Act, unless it is dissolved in the manner provided.

50. But nevertheless, the pleading placed on record on the plaintiff by the 1st defendant cannot altogether be ignored or pushed to the background. In view of this, with reference to the pleadings on record, it is necessary to appreciate the evidence brought on record. But it is equally necessary to note that there is no issue raised on the validity of the constitution of the plaintiff for want of specific pleading, as rightly pointed out by Sri. S.K.V. Chalapathy. In view of this, the ratio of the decision aforesaid applies to the situation on hand on all its fours. Hence, subjecting to the same, the evidence on record needs to be analyzed and appreciated.

51. According to the 1st ground urged, 7 or more persons had not subscribed their names to the memorandum of association of the plaintiff, albeit its registration and therefore, the plaintiff became

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defunct immediately without carrying any activity and as it did not convene or hold any meeting and it did not have the governing council or executive, it is no entity in the eye of law and as such, it cannot challenge the power and authority of the 1st defendant and claim to be an independent entity. As per S.7 of the Act, 7 or more persons may subscribe their names to the memorandum of association. As rightly pointed out by Sri. S.K.V. Chalapathy, Ex.D2 shows that 7 persons have subscribed to it and thus, there is compliance with the requirement of the said section. Further, Ex.D2 does not provide for any criteria for the selection of missionaries. The fact being so, it is not possible even to appreciate the arguments addressed for the defendants in that respect.

52. In particular, Sri. Yoganarasimha and Sri. D.R. Ravishankar drawing much inspiration from the various provisions of Karnataka Societies Registration Act, 1960, contended that a person to become a member must fulfill both the components of S.2(b) of the Act. The said section defines a member as a person who having been admitted to the membership of a society in accordance with the rules and regulations thereon, shall have paid his subscription and signed the roll or list of members thereof. To obtain support to their contention, they invited my attention to both oral and documentary evidence and in particular Ex.P204 to contend that there were no members enrolled, no register of

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members maintained, no executive committee constituted and by furnishing false information even on the very first day, a list of 22 members was filed with the registrar of societies, as reflected in Ex.D2, when in fact, there were only 6 members on the committee as against 20 members and therefore, the plaintiff was not legally constituted. To find out whether there is any substance, reason or force in their contentions, the evidence on record needs to be scrutinized.

53. As rightly pointed out by Sri. Yoganarasimha, S.2(b) of the Act comprises of two components to be fulfilled before a person can become a member of a society. No doubt, the evidence on record makes the non-payment of the subscription by the members barring P.W.2 and Bharathi Devi, lucid. But, placing reliance on a decision reported in Workmen of saw mills and wood working factory of Madras sapper ex-service men's rehabilitation association Vs. Messrs Bangalore timber industries, I.L.R. 1990 Kant. 3013, Sri. S.K.V. Chalapathy submitted that the non-payment of membership fee is not a necessary ingredient to qualify for membership. The dictum laid down in it fully endorses his submission. As such, the non-payment of subscription by other members cannot be of much consequence. Because there were 7 persons who had subscribed to the memorandum of association as depicted in Ex.D2 and the fact that the other members had not subscribed their

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signatures, cannot be made much of, the argument brought out for the defendants that the plaintiff could not have come into existence, has to pale into insignificance.

54.Of course, as could be seen from Ex.P88 only, when the memorandum of association and rules and regulations of the plaintiff were registered on 8.5.1978, the list of members of its governing body and accounts were submitted only on 24.9.87 leaving a gap of more than 9 years in between and no evidence is forthcoming from P.W.1 to explain it away. Coming down heavily upon it, Sri.D.R.Ravishankar repeatedly argued that the very fact that list of members of executive committee and accounts had not been filed every year would bring out clinching proof to the fact that there was no activity connected with the movement undertaken and there were no members or managing committee and as there was none to be proceeded against, the 1st defendant left the matter at that. Thus, the defense raised brings out a clear picture of the grievance nursed by the defendants. According to it, soon after its registration, the plaintiff became defunct.

55.However, taking the help of Ex.P238 which is a certified copy of the letter dated 21.7.1998 addressed to the deputy charity commissioner by the 1st defendant, as admitted by D.W.1, Sri.S.K.V. Chalapathy countered the contention of Sri.D.R.



Ravishankar by contending that when the 1st defendant too had filed audited final accounts for the year ending 1985 to 1995 only on 21.7.1998, it cannot find fault with plaintiff filing its accounts, as reflected in Ex.P88. Of course, as mentioned in Ex.P238, due to some misunderstanding between the 1st defendant and its auditors, it could not file the audited accounts. But any way, there was a lapse or failure on the part of the 1st defendant in filing its audited final accounts on time or atleast within reasonable time. When there is inaction or failure on the part of the 1st defendant, it cannot be permitted to comment upon the conduct of the plaintiff exhibited in Ex.P88. I mean to say when both the plaintiff and the 1st defendant are sinking in the same boat, they cannot hurl any allegation on each other. As such, the contention of Sri.D.R. Ravishankar is, indeed, difficult to accept. To find out which one of the two versions is probable and worthy of belief, the only course open to the court is to scan the evidence brought on record. As already said above, there is enormous ocular and documentary evidence produced per chance in their anxiety to establish the claim and the defense.

56. P.W.2 has given evidence that somewhere in 1978, Bharathi Devi introduced him to Shankabrit Das and he got associated himself with Hare Krishna movement at Bangalore. He has also given evidence that both of them consulted him regarding registering an independent society at

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Bangalore and he drafted a memorandum of association. He has also given evidence that at a meeting all devotees and followers of Iskcon held on 25.4.1978, he presented the draft of the memorandum and rules and regulations along with a proposal of 22 governing council members and out of the members who were present, 7 members including himself resolved to subscribe their signatures to the memorandum and rules and regulations. He has also given evidence that after registration, the plaintiff started functioning at No.39, crescent road, Bangalore and in the meeting held thereafter, Bharathi Devi and he paid a subscription of Rs.1,111/- each for enrolling them as life members of the society. He has also given evidence that during 1979, he reminded Shankabrit Das that the 1st annual general body meeting will have to be held within 18 months from the date of its registration and therefore, he has to convene annual general body meeting in 1979. It is also in his evidence that after repeated reminders, Shankabrit Das convened first annual general body meeting of the plaintiff in September 1979 and then, Amiya Vilas Das and Anantapadmanabha Das who were also governing council members were not present, as they had left Bangalore for preaching in other parts of the country. It is also in his evidence that a new governing council of 20 members was elected at meeting and Bharathi Devi and he were also elected as the members of the governing council and Shankabrit Das was elected as the

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president.

57. In the very beginning of the cross-examination itself, it is brought out from P.W.2 that he was associated with Hare Krishna movement from February 1978 to 1988 and Amiya Vilas Das was secretary till he resigned in March 1979. Of course, he is ignorant as to who was vice-president. But his ignorance cannot be out-stretched to disbelieve his evidence and discard it in one stroke ignoring the fact that he has given evidence after 29 years. Further, his inability to recall who was the secretary after the resignation of Amiya Vilas Das cannot also be of any consequence for the same reasons. It is also brought out from him that there were 22 governing body members at the time of registration of the plaintiff and out of them, 7 were subscribers to the memorandum. It is also brought out from him that he paid the subscription fee for his membership of plaintiff within 15 days after its registration reinforcing his testimony. Yet in another place also, he is allowed to reiterate his stand that both Bharathi Devi and he paid the subscription.

58. Further, it is also brought out from him that a meeting should be called by issuing a notice and a notice of 21 days is to be issued for a general body meeting. It is also brought out from him that in September 1979, he received the notice of the 1st general body meeting and he does not know

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whether others had received any notice. It is also elicited from him that he does not have membership card and he has lost his subscription receipt. When it is not disputed in the cross-examination, I do not see any reason to disbelieve his testimony. It is also brought out from him that there were six selected missionaries then, that bylaw does provide for selection of a missionary, that a non-member cannot become an office bearer of society, when he became a member, no document came into existence, at the time of inception, there were 22 members in governing body and 17 members in 1984 and he does not know who were all governing body members as on today. But the said evidence can leave any impact, only when it is ultimately found that what functioned from Bangalore was only a branch of the 1st defendant and supposing, it is, eventually, found that it was only plaintiff that functioned and has continued to function at Bangalore, the said evidence cannot be of any consequence, as rightly pointed out by Sri.S.K.V. Chalapathy.

59. Right at the moment, it is necessary to note that the defendants have not made it clear whether the plaintiff and the branch of the 1st defendant are one and the same or different and whether they were functioning separately. Even when the said circumstance was posed to Sri.D.R. Ravishankar, during the course of his arguments, he could not and did not make it clear. Even the voluminous

evidence produced on either side is also unhelpful that way. But it is also necessary to note that the evidence taken out from P.W.1 that before and after 1984, there was only one management of the temple at Bangalore gives a clear indication that either the plaintiff or the branch of the 1st defendant was functioning only. Even Sri.S.K.V. Chalapathy stressed the same. Even otherwise, the functioning of the plaintiff and the branch of the 1st defendant on a track of collision cannot even be imagined.

60. As brought out from P.W.1, Ex.D1, D2 and D3 are bylaws, memorandum and rules and regulations of the plaintiff respectively and Ex.D1(a) is the source of power for the governing council of the plaintiff to certify him as a missionary. Even though, he has denied a suggestion that Ex.D1 cannot be understood to have given any power either to the president or to the executive to certify any person as a missionary, he has admitted that Ex.D1(a) confers power on the executive to allow or reject the application for membership and nothing beyond that. But a bare look at Ex.D1(a) would disclose that the governing body has a right to allow or reject the membership of any application which should have been an applicant. In view of it, I find it difficult to see any reason in the suggestion tendered to P.W.1 to the contra. On the other hand, Ex.D1(a) has fully endorsed his evidence.

61. In regard to Ex.D1 and D2, it is brought out

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from P.W.1 that they are binding on all concerned with the plaintiff and the signature found in them is that of Shankabrit Das painting a clear picture that Shankabrit Das had taken an active role in their preparation. It is also brought out from him that there were only 7 subscribers to the memorandum and bylaws and he does not know whether 4 of them were missionaries recognized as such by the 1st defendant. But nothing is brought out from him as to who were those 4 missionaries recognized by the 1st defendant. Furthermore, no evidence is produced by the defendants to show their recognition by the 1st defendant. Hence, on the strength of the evidence of ignorance, it is really difficult to opine that 4 of them were missionaries recognized by the 1st defendant. Even otherwise, on the face of the fact that the evidence of ignorance cannot partake the character of positive evidence, the defendants cannot obtain any tangible help out of the said evidence. Since the defendants themselves have inducted Ex.D1 to D3 into evidence and their correctness is not questioned by them, it is needless to say that they go a long way in sustaining the claim projected, more so, when it is drawn out from him only that plaintiff had obtained legal advice from P.W.2 about their correctness and it is also brought out from P.W.1 that he had applied for membership in May 1984 and became a member in June 1984. But he has also mentioned that in April 1984, he had become missionary reiterating and re-enforcing his stand.

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62. Curiously enough, it is also brought out from P.W.1 that between the date of the registration of the plaintiff and 15.6.1984, one general body meeting and many governing body meetings had been conducted. He has mentioned that Shankabrit Das had records of the minutes of the meetings and he has not seen them. Further, he has not made any enquiry as to where those records are now. It is also brought out from him that when he took over the charge of the plaintiff, he took the reference of the meetings held in 1984, account books and bylaws to his custody. Even though he is ignorant about the role of the 4th defendant and Bhanuswamy in the administration of the temple at Bangalore prior to 1984, he has mentioned that after 15.6.1984, both of them had a role in the administration of it. Further as brought out from him before and after 1984, there was only one management of the said temple sending out a clear indication of a picture that there was either plaintiff or the branch of the 1st defendant functioning and not both of them.

63. It is also elicited from P.W.1 that immediately after 1984, Madhupandit Das did not hold any position in the 1st defendant. But in 1991-92, he was bureau member of it. In particular, it is also elicited from him that Madhupandit Das used to describe himself as president of Iskcon, Bangalore, in all his communications and letters. This piece of

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evidence brought out by the defendants themselves lends some more credence to the claim projected. The plaintiff has specifically contended that after registration of the plaintiff, it has been carrying out the objects for which it is established. It has also contended that it has been getting its annual accounts audited and the audited accounts are placed before its members and are filed with the 10th defendant. Thus,P.W.1 and 2 have given elaborate evidence on the functioning of the plaintiff and activities carried on by it.

64. Of course, the cross-examination directed against P.W.1 has assumed different dimensions, per chance to render his testimony hanky-panky. But in the ultimate analysis, in my considered view, it has not succeeded in impeaching his testimony, for more than one reason. Firstly, his testimony enjoys considerable support from the documentary evidence and secondly, he has denied very many suggestions tendered to the contra. Nevertheless, I find it necessary to subject the cross-examination directed against him to a serious and a careful scrutiny before reaching a finis.

65. But, focusing my attention on some of the provisions of the Act, Sri.S.K.V.Chalapathy contended that the proviso to S.13 stipulates that when a society has failed to file its records for a consecutive period of five years, the registrar may, after giving a reasonable opportunity of being heard

to the society, by an order, cancel the registration of such society and direct its dissolution. In the suit on hand, it is not the case either of the plaintiff or the defendants that the Registrar of societies has cancelled the registration of the plaintiff. Further, it is also argued for the plaintiff that as per S.27A of the Act, where a society has not held or is unable to hold annual general body meeting or where a new governing body has not been constituted after the expiry of the term of the office of the members of the governing body or on the report of the registrar or otherwise, the state government, if it considers necessary in the public interest so to do, may appoint an administrator for the society. Here again, I have to point out that the state government has not resorted to the said action. As such, I find considerable force in the contention of Sri.S.K.V.Chalapathy that a society cannot become defunct, as pointed out by the defendants and their defense is undoubtedly fallacious.

66. In view of the above, I have to say that the governing body that came into existence with Ex.D2 had remained intact. This is fortified by the principle handed over in a decision reported in Quraish Educational Society and another Vs. State of Karnataka, AIR 1987 Kant. 122, for according to it, non-filing of returns nor failure to hold general body meetings over the years, does not have the effect of, ipso facto, eliminating the governing body which, at one point of time, was duly elected, unless sub-

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section (3) of S. 27A of the Act comes into play.

67. Relying upon a decision reported in Muddappa Vs. Panchakshraiah, ILR 1985 Kant. 1230, Sri. S.K.V. Chalapathy contended that a society registered under Karnataka Societies Registration Act, is a legal entity. An observation made in it supports his contention. In fact, I should say that even the defendants have placed reliance on the same decision. In the light of the provisions of the Act and the ratio laid in AIR 1987 Kant.122, a registered society does not cease to exist, merely because, it has become inactive or has not held annual general body meeting or has not submitted accounts or list of office bearers to the registrar of societies as required under the Act, as rightly pointed out by Sri.S.K.V.Chalapathy. In view of this, the contra stand assumed by the defendants 1 to 9 cannot stand. Precisely for the same reasons, the elaborate arguments addressed by the learned senior counsel for the defendants 1 to 9, Sri. Yoganarasimha and Sri.D.R.Ravishankar, cannot alter the situation or turn it to the advantage of the defendants to any extent.

68. Inviting my attention to the under noted decisions reported in (1) Co-operative central bank ltd. And others Vs. Additional industrial tribunal and others, AIR 1970 SC 245, (2) Dr. K.T. Shivaiah Vs. G.Puttaswamy gowda and another, 1994(3) KLJ 360 and (3) Rajendra singh Vs. State of Madhya

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Pradesh and others, AIR 1996 SC 2736, Sri.S.K.V. Chalapathy tried to obtain support to his contentions. In the first decision, what is laid down is that the bye-laws of the society framed pursuant to the provisions of Andhra Pradesh Co-operative Societies Act, cannot be held to have the force of law. In the second decision, it is laid down that rules framed by a society are not statutory provisions, but in the nature of a contract between the members and members and members and the society. The rules and regulations of a society or association can not be construed as a statutory provisions. A Society framed or formed with reference to the provisions of the Societies Registration Act, cannot be a statutory body. In the third decision, it is ruled that the violation of each and every provision does not furnish a ground for the court to interfere. The provision may be a directory or a mandatory one. In the case of directory provision, substantial compliance would be enough. Unless it is established that the violation of a directory provision, has resulted in loss and or prejudice to a party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not follow as a matter of course. In the light of the weight of the authority that flows out of the ratio laid down in the aforesaid decisions, I have to fall in line with the contentions of Sri.S.K.V.Chalapathy. Precisely for the same reason, I do not find any force at all in the argument advanced by the learned counsel for the defendants that the plaintiff was not

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in existence as it had become defunct soon after its registration. When a society registered does not die, much less for the violation of the provisions of the Act, I have to say that their argument is fallacious and unpalatable. In the light of this, I find considerable force in the arguments addressed for the plaintiff that having regard to the above circumstances and the law laid down by the Hon'ble Apex court, the question regarding the legal existence of the plaintiff cannot be gone into at all. Even then, it is necessary to scan the evidence produced in support of the defense raised and the arguments addressed touching upon the same.

69. Laying stress on para 25 of ILR 1985 Kant 1230, Sri.S.K.V.Chalapathy also contended that as observed in it, the governing body constituted under the registered memorandum of association continues to be in the management of the affairs of the society even after 18 months of the registration of the society without convening the 1st annual general body meeting required by law. This does not leave any doubt to linger in the mind of any body to say that even in the absence of holding 1st annual general body meeting within 18 months of the registration of the society, the governing body, first constituted, would continue to hold its reins. Thus, the contention of Sri.S.K.V. Chalapathy gets fortified. As such, I cannot accept the contra arguments addressed for the defendants.

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70. Dealing with S.27A of the Act, it is ruled that ultra vires of Article 31A (1)(b) and 30(1) of the constitution. In view of this, the application or utility of S.27A of the Act goes out of picture. By making use of it,it is also argued for the plaintiff that non-filing of returns or failure to hold general body meetings over the years does not have the effect of, ipso facto, eliminating the governing body. To say otherwise there was no argument worth consideration addressed for the defendants.

71. Addressing very lengthy arguments by Sri. Yoganarasimha and Sri.D.R.Ravishankar brought down a scathing attack on Ex.P204 and called it a created document. They argued that a comparison of Ex.P204 and Ex.D6 would bring out the concoction behind Ex.P204, since, the 3rd page of it is missing, even though, it is claimed to be the original and hence, it is impossible to believe it. It is also argued that in Ex.P204, page No.1A and 5A are pasted and they are not found in Ex.D6 making it certain that they are insertions. But, Sri.S.K.V.Chalapathy, admitting the fact that page No.3 is missing in Ex.P204, countered the arguments of Sri.Yoganarasimha and Sri.D.R. Ravishankar, by contending that while arranging and pasting the pages, the possibility of 3rd page being left out cannot be ruled out and as such, on the strength of the said fact, the whole of Ex.P204 cannot be disbelieved, more so, when the 3rd page is very much available in Ex.D6 and it is produced

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by the plaintiff only.

72. It is also argued for the plaintiff that page 1A, 5A, 23A, 30A, 30B and 35A of Ex.P204 are the notices of various AGM whose proceedings are recorded in the minute book and the time of filing documents at interlocutory state, copies of those notices were not filed, as what was intended to file at that stage was only the minutes of the various meetings. It is also argued that it was a conscious decision to paste those notices on the left side of 1st page of the respective proceedings with new numbers suffixed with alphabets and said exercise does not mean that notices were made after the suit. Because the said argument stands to reason and realities of life, it cannot be brushed aside lightly as untrue to facts, for If at all, the plaintiff wanted to manipulate Ex.P204 by pasting additional pages, it could have finished the said job neatly and making it appear spick and span, without giving any room for any doubt or suspicion and therefore, the pasting of the said pages cannot be viewed with any doubt or suspicion, as rightly pointed out by Sri.S.K.V. Chalapathy.

73. Ex.P204 is a minutes book maintained by the plaintiff, as spoken to by P.W.1. It is made a target of great criticism and comment by the defendants, by subjecting him to elaborate cross-examination and calling it a created document to suit the case of the plaintiff or its convenience. It is, therefore,

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necessary for me to find out which version of the two is probable and worthy of belief. As could be seen from Ex.P204, it is proceedings of the annual general body meeting held on 1.7.1984. Even, Ex.P212 which is a notice dated 25.5.1984, as spoken to by P.W.1 in a way tends to enhance the credibility of Ex.P204, for with it, Shankabrit Das had requested the members of Iskcon to attend the general body meeting on 1.7.1984. It would indeed furnish a tinge of probability to the general body meeting on that day. Further, Ex.P171 which is a certificate of posting, as spoken to by P.W.1, by pointing out that information, perhaps of the meeting dated 1.7.1984, had been given to 21 persons entered therein who include P.W.2 also, has lent some more credence to Ex.P204. Even P.W.2 has spoken on it corroborating the say of P.W.1. P.W.2 has also identified Ex.P204(a) to (c) and (d) to (g) are the signatures of Shankabrit Das and Madhupandit Das respectively. A reading of Ex.P204 would disclose that the meeting had been conducted at No.39, Crescent Road, Bangalore-1 and the office was proposed to be shifted to No.210, Bellary Road, Bangalore-80. Further, it also discloses that at the time of inception of the society in May 1978, 6 full time missionaries were recognized as the general body members, in addition to recognition of 14 well-wishers who were desirous of becoming life/patron members. It also discloses that full time selected members Shankabrit Das, Anantha Padmanabha Das, Amiya

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Vilas Das and Bhakta Das, tendered only their signatures out of the 20 members and out of the 14 life/patron members, only Bharathi Devi, S.R. Ramakrishna and P.W.2 tendered their signatures. It is also clear from it that 14 life/patron members had not paid their subscription. In view of this, I cannot belittle the contention of Sri. S.K.V. Chalapathy that as 14 persons had not paid subscription, they came within category of life members. Thus, there is nothing elicited or extracted from P.W.1 and 2 to discredit Ex.P204. Notwithstanding the same, it is argued for the defendants that out of the 22 persons named in Ex.D3, 14, whose names are furnished, are life patron members of the 1st defendant enrolled through Hyderabad branch during the period from 1975 to 1978. But, it is curious to note that the defendants have not brought before any document capable of showing that those 14 persons are life patrons of the 1st defendant.

74. Of course, it is brought out from P.W.1 that Ex.D6 is a xerox copy of Ex.P204. It is produced by the plaintiff only, but the 3rd page of it is missing in Ex.P204. But, when the missing page is very much found in Ex.D6, the factum of its unavailability in Ex.P204 cannot be made much of. Nevertheless, Sri. D.R.Ravishankar strenuously contended that Ex.D6 was produced at the interlocutory stage, whereas, Ex.P204 was produced at the time of the trial inserting certain pages to suit the convenience

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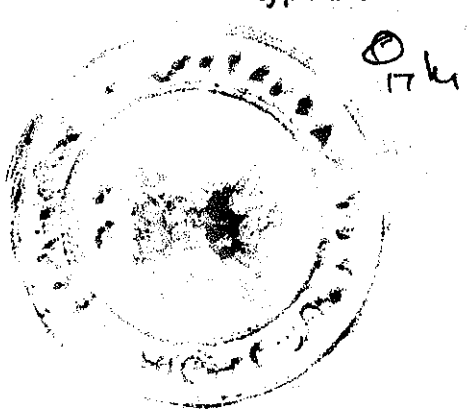
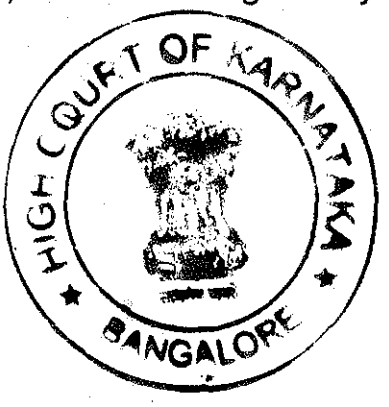
of the plaintiff. His contention cannot altogether be ignored, as it stands to reason and realities of life, because such an inclination or tendency on the part of a party to a suit can be visualized. But the fact that it cannot be universally applied to all parties cannot be lost sight of. Having produced Ex.D6 containing page 3, the plaintiff could not have run the risk of producing Ex.P204 without page 3, if it were a manufactured document, as no party would like to lead himself to an insurmountable difficulty knowingly. It is necessary to note that Ex.D6 is not complete in itself. I mean to say that it is only a part of Ex.P204. As such one cannot find all the pages of it in Ex.D6. In view of this, the arguments of Sri.D.R.Ravishankar about missing of page 3 and pasting of extra pages cannot aid the defendants in tangible terms.

75. Laying stress on the evidence taken out from P.W.2 which is reproduced in the written arguments filed for the defendants, it is argued for them that the 4th page of Ex.P204 is in handwriting and it bears the signature of Madhupandit Das and Shankabrit Das and Ex.D6 would clearly reflect that there was another page 3 which is not found in Ex.P204. As brought out from P.W.2, Shankabrit Das recorded the minutes of the meeting and because the computer failed, it was typed and not written by hand. The 1st part of the 4th page of Ex.P204 is in handwriting and the 2nd part of it is a typed one. Even then, the evidence given by P.W.2





cannot be outstretched to say that it was completely typed, ignoring the fact that he gave evidence after 24 years. Hence, the written arguments filed for defendants in that respect is difficult to accept. It is also pertinent to take note of the fact that even though P.W.1 is cross-examined at length, the fact that there is not even a solitary suggestion tendered to him either disputing or questioning Ex.P204 does not escape the notice of anybody. If it were a concocted or a created document, there should have been a suggestion to that effect tendered to P.W.1. But as already said above, because the defendants have not even tendered a suggestion in that respect, it is not possible for me to accept the voluminous arguments addressed for them, as rightly pointed out Sri.S.K.V.Chalapathy.

76. In addition to the above, it is also interesting to note that even D.W.1 to 4 have not whispered anything about Ex.P204, although they have given very lengthy evidence. The fact that there is not even a reference to it is striking. However, in the cross-examination, D.W.4 has admitted that he is told that it bears his supposed signature, denying a suggestion that there is neither fabrication nor forgery. But, it is necessary to note that he has no where made it clear that his signature is forged in it. This coupled with his camouflaged admission would probablize the plaintiff's claim that Bhanuswamy and he were members of the governing body of the plaintiff. In my view, it would also nullify the

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arguments addressed for the defendants subjecting Ex.P204 to a caustic comment and severe criticism. In the absence of any evidence capable of supporting the arguments addressed for the defendants, I cannot accept it for the simple reason that a mere argument cannot establish any fact, as it has to be established independently with the help of the requisite evidence. In view of this, I cannot find any ratiocination in the arguments of Sri.Yoganarasimha and Sri.D.R.Ravishankar. As such their argument cannot lead the defendants 1 to 9 anywhere.

77. As could be seen from Ex.P204, there were only six full-time missionaries recognized as the general body members under the class of full-time selected missionaries at the time of the inception of the society in May 1978, in addition to fourteen well-wishers desirous of becoming life/patron members. It also points out that all the twenty members were asked to tender their signatures at the office of the registrar of societies indicating their subscription to the rules and regulations of the society. It is also clear from it that out of the full time selected members, Shankabrit Das, Ananthapadmanaba Das, Amiya Vilas Das and Bhakta Das only tendered their signatures and out of the fourteen life/patron members, Bharati Devi, S.R. Ramakrishna and P.W.2 tendered their signatures and all the fourteen life/patron members had not paid their subscription within the time stipulated.

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78. Coming down heavily upon the very text and the narration of Ex.P204, Sri.D.R.Ravishankar vehemently contended that the very text of it drives home the fact that the plaintiff was not validly constituted and it was not in existence. But, the contentions of Sri.Yoganarasimha and Sri.D.R. Ravishankar were countered by Sri.S.K.V.Chalapathy by contending that payment of membership fee is not necessary to qualify for membership of an association, placing reliance on a decision reported in Workmen of sawmills and wood working factory of Madras sapper ex-servicemen's rehabilitation association vs. Messrs Bangalore timber industries, ILR 1990 Kant 3013. The principle laid down the decision speaks that the membership may be on payment of fee or may be free and that will depend on the agreement reached by the members. The payment of fee is not a necessary ingredient to qualify the membership of the association. Thus, the principle fully endorses the contention of Sri. S.K.V.Chalapathy. In addition to it, I should add that the rights of the members of a society are determined by the contract between the society and them and also the rules and regulations formulated. Hence, no member can be permitted to go beyond the rules and regulations or contend contrary to the same. At this juncture, it is necessary to take note of what is contained in Ex.D1.

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79. Clause VI of Ex.D1 provides for procedure to admit members. As could be seen from it, any person who has attained the age of majority and is of sound mind and not convicted by any court for any offences or not involved in the acts of moral turpitude and who agrees to abide by the bye-laws of the society in force, can become a member, of course, subject to the procedure mentioned therein. Clause VII provides for four classes of members viz., full time selected missionaries, patrons, life members and followers, about which there is no dispute. Further, it provides the amount of subscription payable by patrons and life members. But, in relation to the followers, an indication that the subscription is permitted to be paid in instalments, is available. But it is also clear from it that as per the amended bye-law, the plaintiff has two types of memberships, namely full-time selected missionaries and society members. The 1st class of members are selected from the full time missionaries based on norms laid by the bureau. The society members are to be enrolled by nomination or election. But there is nothing contained in Ex.D1 about the consequences that flow out of the non-payment of subscription and non-signing the roll or list of members thereof. Even the Act does not throw any light to dispel the darkness surrounding the said situation. Hence, on the premise that except P.W.2 and Bharathi Devi, none-else had paid the subscription and signed the roll cannot be said to affect the continuance of their

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membership or the validity of the constitution of the plaintiff, as pointed out by Sri.S.K.V.Chalapathy. Because, if at all there is any contravention or violation of the provisions of the Act, as already said above, it is for either the registrar or the government to take appropriate action. But, it cannot afford a ground to say that the plaintiff became defunct or non-functional.

80. Reproducing the evidence of P.W.2 found in page 10 and 14 of his deposition, it is argued for the defendants that because the members had not paid their subscription nor had they signed the roll of members, they are not members. It is true that P.W.2 has admitted that a list of member has to be prepared. But, he has continued his answer by saying that it is not mandatory to obtain the signatures of members to it. Further, in regard to the documents that come into existence, when a person is enrolled as a member, some evidence is elicited from him. But there is no definite evidence produced in that respect by either of the parties, giving an indication that they have not maintained the records properly. When they are sinking in the same boat, one cannot blame the other for poor maintenance or non-maintenance of records and try to take any undue and unfair advantage over the other.

81. Drawing inspiration from what is elicited from P.W.1 and P.W.2 (vide page 60 and 10

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respectively), it is also argued for the defendants that as P.W.1 and 2 have not signed the roll of members, they are not members as per S.2(b) of the Act and they have no right to contest the post of office bearers as per clause VIII(f) of Ex.D3. As per the said clause, the patrons and life members cannot hold the office of the office bearers of the society. However, they can become members of the general body and sub-committees constituted for special purposes by the governing body. Of course, in page 60, it is brought out from P.W.1 that in his case, his application and his acceptance are the only proof of having admitted him as a member and there is no letter of communication of his membership issued to him. It is also brought out from him that apart from the application and the endorsement made thereon, the society does not maintain any other record with regard to the membership. His evidence gives an indication of the fact that records are not maintained properly or no records are maintained. The case of the 1st defendant is no way different from that of plaintiff. Because, at so many places and with regard to so many matters, it is succinctly brought out from D.W.1 that the 1st defendant has not maintained the records. In page 93, even though he has admitted that the 1st defendant has maintained the membership register and there is a document to show that P.W.1 and C.P.Das were members of it, curiously enough, they are not brought before the court, like other documents in the custody or

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possession of the 1st defendant, as asserted by him. When the 1st defendant has claimed to be the head office and what is functioning at Bangalore is its branch, there was more onerous duty of maintaining pakka records on the part of the 1st defendant. When it has not maintained records required of it, it cannot be permitted to exploit the situation brought out from P.W.1 and 2. In view of this, the fact that except P.W.2 and Bharathi Devi, the other members had not paid subscription and they had not subscribed their signatures, as entered in Ex.P204, cannot benefit the defendants 1 to 9 to contend that Ex.P204 is a created and fabricated document, more so, in the light of what is ruled in ILR 1990 Kant. 3013 and the categorical evidence given by D.W.1 that any devotee recommended by either the member of the bureau or temple president will become a member of the 1st defendant. When that the procedure or practice followed by the 1st defendant, the defendants cannot employ a different yardstick to the plaintiff. I mean to say, the defendants cannot be permitted to approbate and reprobate at the same time.

82. Further, Sri.Yoganarasimha, inviting my attention to page 18 of Ex.P204, contended that as Shankabrit Das had abandoned the service in 1980 and after that, he left without informing the governing body, the rest of the office-bearers also abandoned their service and moved over to other parts of India and thus, it makes it clear that the

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plaintiff was not functioning at all. But, I find it really difficult to endorse his contention for the contents of subsequent pages of Ex.P204 do not even indicate support to his contention, let alone making it palatable. On the other hand, what I find from the totality of the facts narrated in Ex.P204 is a clear picture of plaintiff's functioning. In view of this, I have to repel the contention of Sri. Yoganarasimha and Sri.D.R.Ravishankar advanced with reference to Ex.P204.

83. It is also argued for the plaintiff that P.W.2 has given evidence on the 1st annual general body meeting of the plaintiff held in September 1979 and it very much points out the fact that the plaintiff was functioning and it was carrying on activities. In para 11 of his examination-in-chief, P.W.2 has mentioned that in 1979, he reminded that the 1st annual general body meeting will have to be held within 18 months from the date of registration and thereafter, Shankabrit Das convened annual general body meeting in September 1979. In the cross-examination, of course, as rightly pointed out by Sri.D.R.Ravishankar, he has feigned ignorance as to who was the vice-president, when Shankabrit Das was president of the plaintiff and who was the treasurer then. Further, he is also unable to recall who was the secretary after the resignation of Amiya Vilas Das. Looking at the time gap in between 1979 and the date of his deposition viz., 20.6.2008, his evidence is some what

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understandable, more so, on the face of the fact that he is away from the activities of the plaintiff right from 1988. Hence on the strength of his ignorance and inability, it is difficult to disbelieve his testimony. Of course, the plaintiff could have produced records of the annual general body meeting held in 1979 to lend credence to his testimony. But when his testimony is not disputed, much less specifically, I find it really difficult to disbelieve it. Moreover, when P.W.2 is allowed to mention that in September 1979, he had received the notice of 1st annual general body meeting and prior to 1979, Amiya Vilas Das and Ananthapadmanabha Das attended the meetings, I do not see any good reason to disbelieve his testimony and discard it, for the simple reason that as already said above, not only the plaintiff, but also the 1st defendant has not maintained pakka records of their activities and functioning. Perhaps, that must be the reason why the plaintiff is not able to lay on record the records relating to annual general body meeting held in 1979.

84. Leaning upon the evidence of P.W.2 found in page 8, it is argued for the defendants that no documents are produced by the plaintiff to show that the general body meeting was held in 1979. It is also argued that Ex.P88 and P204 do not support the convening of general body meeting in 1979. His contention looks plausible at sight. But a simple probe into it would bring out the fallacy in it, as

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Ex.P88 cannot be made the sole criterion to say that there was no annual general body meeting held in 1979, because, the 2nd entry of it dated 24.9.1987 shows that accounts and the list of members of the executive committee were filed till 31.3.1987. As it does not refer to the meetings held from time to time, I cannot accept the said contention. Of course, Ex.P204 does not make a reference to the annual general body meeting held in 1979. Thus, there is no positive and cogent evidence produced by the plaintiff to establish the annual general body meeting held in 1979. It coupled with the paltry evidence produced by it, even if it is said that there was no annual general body meeting held in 1979, endorsing the defense raised and accepting the arguments advanced in support of it, I am afraid, the defendants cannot leap forward to contend that the plaintiff was not in existence and was not carrying on any activities. On the other hand, it has to be judged by reading and assessing the evidence brought on record in its entirety, in the light of the fact that the plaintiff has to face the consequences of not holding general body meetings as per the Act and the jurisdiction to judge it and to take appropriate action lies with the registrar and the government.

85. As could be seen from Ex.D2, names of 22 members are entered in it. Whereas in Ex.P204, the names of 17 members only are entered. Hence, the written arguments filed for the defendants that the

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very same names of 22 members are carried forward to Ex.P204 cannot be accepted, more so, when the names found in both of them do not tally with each other completely. As such, another face of argument that Ex.P204 does not support the meeting taken place in 1979 cannot also be accepted.

86. Referring to para 4 of page 14 of the deposition of P.W.2, it is also argued for the defendants that as per the said evidence, a non-member cannot become an office-bearer of the society and it has come out from Ex.P204 that no members were enrolled and the statements contained in it are destructive of the testimony of P.W.1 and 2 and vice versa. But when it is not pointed out in so many clear words as to which of the statements contained in Ex.P204 destruct the testimony of P.W.1 and 2 and vice versa, really I find it difficult even to appreciate the said argument. It is also argued that Ex.P206 is not referred to in Ex.P204 giving an indication that Ex.P206 is created during the pendency of the proceedings, after the issue of membership was raised. But, I should say that it is also difficult to accept for the simple reason that there is no evidence tendered by the defendants touching upon Ex.P206, let alone calling it a creation made during the pendency of the proceedings.

87. Even in the course of lengthy cross



examination, P.W.1 is not questioned with reference to Ex.P206. When it is allowed to remain intact, I find it difficult to accept the stand assumed by the defendants. Ex.P206 is a letter dated 15.6.1984 written to the then president of the plaintiff by Shankabrit Das, as spoken to by P.W.1. A bare look at it would disclose that it was written to M.P.Das by Shankabrit Das. When it is of the year 1984, it is not possible for me to call it a creation of the plaintiff, as it could not have been created after the institution of the suit. Moreover, when Shankabrit Das, who is not a party to the suit and is sailing with the defendants, its creation is even difficult to imagine, as the plaintiff could not have created Ex.P206 bearing the signature of Shankabrit Das. As such, I have to brush aside the said argument as bereft of any reason or force.

88. It is further argued for the defendants that as AGM of the plaintiff was not held within 18 months of its registration, it is deemed to have been unregistered in accordance with ILR 1985 Kant. 1230. I must say that the said argument is not happily worded. The principle laid down in the decision speaks that the 1st annual general body meeting should be convened within 18 months of the registration of the society and if such meeting is not convened within the said period, the governing body constituted at the inception of the registration of the society shall hold the reins of the management of the society till a regularly

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constituted governing body is established in accordance with the provisions of the rules and regulations of the society. On the face of it, I do not think, the defendants can reap any benefit out of the ratio of the decision.

89. Even then, to counter the said argument, Sri. S.K.V.Chalapathy pressed into service AIR 1987 Kant.122 and contended that as it is a later precedent, it shall prevail over the decision referred to above and as such, the ratio laid down in the said decision cannot be applied to the suit on hand. His contention was not disputed for the defendants. Even otherwise, there cannot be second opinion that later decision will prevail over the earlier decision. As such, the defendants cannot obtain any help out of the decision cited for them. It is also contended for the plaintiff that the defendants have not pleaded that because of non-holding of AGM within 18 months, the suit cannot be maintained. Focusing my attention on the evidence given by P.W.2, it is also argued for the plaintiff that he has spoken on the general body meeting held in 1979 and there is not even a suggestion tendered to him in the cross-examination disputing it. As such, the defendants cannot obtain any help out of ILR 1985 Kant. 1230. For any reason, even if the general body meeting of 1979 is disbelieved, AIR 1987 Kant. 122 certainly goes to the rescue of the plaintiff.

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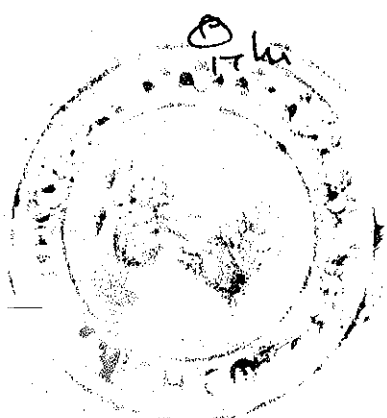
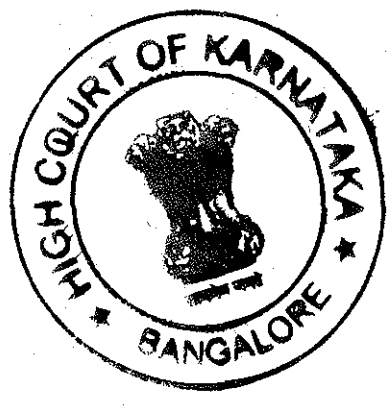
90. Nevertheless, leaning rather heavily upon Ex.D247 and D248 and the evidence given by D.W.1, Sri.D.R.Ravishankar strenuously contended that they very much demonstrate that M.P. Das was very much in Calcutta on 1.7.1984 and therefore, Ex.P204 is a created document. Ex.D247 is a letter dated 17.6.1984 written to Dvija Prabhu by M.P. Das and it speaks that M.P. Das and Sattvik Prabhu would visit Calcutta on 26th and return in the 1st week of July. Ex.D248 is a letter dated 18.6.1984 addressed to Shankabrit Das by M.P. Das and it shows that M.P. Das would visit Kolkata to attend rathyatra. Reliance is also placed on Ex.D249 to support the argument addressed for the defendants that M.P.Das was in Kolkata on 1.7.84. Ex.D249 and D250 are copies of the minutes of south and east zone of the 1st defendant as spoken to by D.W.1. Of course, D.W.1 has deposed that M.P. Das travelled to Bangalore during the last week of June,1984 and stayed at west of chord road, Bangalore, attended rathyatra and zonal meeting at Kolkata and reached Bangalore in the 2nd week of July, 1984. His evidence is certainly bald and laconic, for he is not sure of the dates of the visit of M.P.Das to Bangalore and Kolkata. However, his testimony makes it very clear that M.P.Das was in Bangalore in the last week of June, 1984.

91. Further, when the say of D.W.1 is questioned by suggesting to him that Ex.D247 and





D248 are not signed by M.P.Das and he had not attended the meeting referred to in Ex.D249 and it is a cooked up document, the defendants should have produced positive and cogent evidence capable lending credence to Ex.D249. But in the absence of supportive documents, on the strength of his doubtful and dubious testimony, it is not possible to say that M.P.Das was at Kolkata on 1.7.84. More over, when D.W.1 has categorically mentioned that the 1st defendant has no record to show who all had attended rathyatra and zonal meeting at Calcutta and he has not maintained any record of it, there cannot be a different opinion other than the one already formed on it.

92. D.W.4, by giving similar evidence, has tried to add chorus to that of D.W.1 He has also added that rathyatra festivities lasted for a period of 9 days from 30.6.84 and M.P.Das attended it and the zonal meeting held on 3.7.84 in his capacity as president of Trivandrum center of the 1st defendant. In the cross-examination, even though, he has asserted that he is in possession of the proceedings of said meeting, the same is not brought before court. Thus, he himself has made it very difficult to believe his testimony.

93. Countering the arguments addressed for the defendants, Sri.S.K.V.Chalapathy contended that the contents of the said documents do not indicate or suggest that M.P.Das was in Kolkata on 1.7.84,

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let alone establishing it. A careful reading of their contents supports the contention of Sri.S.K.V.Chalapathy. As such, I cannot accept the arguments addressed for the defendants with reference to the same.

94. The marriage day of M.P.Das is also made a part of the controversy. D.W.1 has said that the marriage of M.P.Das took place some time in the middle of July, 1984 and he was present on the occasion of his marriage. But here again, I have say that his evidence is not definite and when it is not supported by any proof, I find it difficult to believe and act upon it. It is curious to note that D.W.4 is in possession of the news letter containing the date of marriage of M.P.Das. But the production of the same is also withheld for reasons best known to the defendants. Even then, D.W.4 has denied a suggestion that the marriage of M.P.Das took place in June, 1984. Of course, the plaintiff's stand is also uncertain, as that of the defendants and it is also not supported by any document. But nevertheless, as the defendants have maintained that only after his marriage, he was made the president of Bangalore branch, they should have produced requisite evidence in proof of it. It is also interesting to note the argument addressed for the defendants going a step ahead of the evidence. According to it, M.P.Das had got married on 23.7.84 and by the end of July,1984, he assumed the charge of the Bangalore temple. It that be so, then, the

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defendants should have documents capable of showing the same. But unfortunately for them, D.W.1 has made it clear that he has not seen any letter from the 1st defendant designating M.P.Das as president of the temple. The assertion of D.W.4 that he designated M.P. Das as president of Bangalore branch, but it was not in writing goes a long way in unfolding the falsity in the stand now assumed.

95. The 4th ground urged relates to the identity of the name of the plaintiff with that of the 1st defendant and with it, another limb is added to the controversy generated by the defendants. But the fact that the 1st defendant is a society registered under Societies Registration Act, 1860 and plaintiff is a society registered under Karnataka Societies Act, 1960, cannot be lost sight of. Neither it can be ignored. Thus, the fact that they are registered under different Acts and operating in different states, becomes evident. As such, I find it difficult to reconcile with the stand assumed by the defendants in that respect and the evidence produced in support of it. Nevertheless, laying emphasis on Sec.31 of 1960 Act, Sri. Yoganarasimha contended that although the 1st defendant is registered under 1960 Act, there is no prohibition for it to extend its activities beyond the territory of the state in which it is registered.

96. But seriously disputing the said argument,

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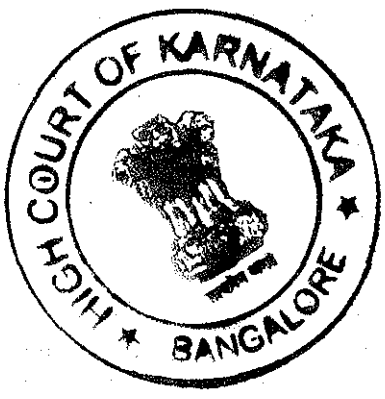
Sri. S.K.V.Chalapathy contended that as it is advanced by placing wrong construction or interpretation of S.37 of the Act, it cannot be accepted. To appreciate their rival contentions, it is necessary to take note of the phraseology adopted or employed in the said section. According to it, Karnataka Societies Registration Act 1904, as in force in the Karnataka area, Societies Registration Act, 1860, as in force in Bombay area, Madras area and Coorg district and Public Societies Registration Act, 1350, as in force in Hyderabad area are repealed. On a plain reading of the section would not give rise to any doubt to say that societies registered under 1860 Act and in force in Bombay area, before re-organization of the states effected in 1956, would come within the purview of 1960 Act and not societies registered outside the territory of Karnataka. Further, the proviso to the section dispels the doubt entertained by anybody about its purport and meaning.

97. According to S.7 of 1960 Act, no society shall be registered by a name which, in the opinion of Registrar, is undesirable. A name which is identical with, or too nearly resembles, the name by which a society in existence has been previously registered, may be deemed to be undesirable. But to understand its purport, it has to be read in conjunction with the definition of 'registered society' found in S.2(d) of the Act. According to it, a registered society means a society registered or





deemed to be registered under the Act. When the 1st defendant is not a society registered under the said Act, I am not hesitant to say that S.7 has no application and the defendants cannot press it into service. But in spite of it, as they have pressed it into service, it cannot help them to any extent. In view of this, the contention of Sri.S.K.V. Chalapathy that the arguments addressed for the defendants that the 1st defendant must be deemed to have been registered under 1960 Act, is absolutely baseless, does merit consideration. Precisely for the same reason, I have to set aside the arguments addressed for the defendants in relation to it, as not only misconceived, but also untenable.

98. Placing reliance on a decision reported in Shimoga Zilla madivala sangha and another vs. The District Registrar, for societies and associations, Shimoga district and another, ILR 2003 Kant. 2906, it was also argued for the plaintiff that the registrar cannot review his order under S.7 of the Act and therefore, S.7 is not available to the defendants for any purpose. The dictum laid down in the decision fully endorses the contention of Sri.S.K.V.Chalapathy. Thus, it too eliminates the application of said section. This would take me to the consideration of the next question whether the plaintiff has succeeded in establishing that it is an independent entity.

99. When the plaintiff has categorically claimed

that pursuant to its registration, it was engaged in the propagation of Iskcon movement and has been continuing it tirelessly to spread and expand the movement as per the principles enunciated by its founder Acharya Srila Prabhupada, denying the same, the defendants 1 to 9 have raised a stiff and stout defense that in July 1980, it went to the notice of the 1st defendant that a person who had taken the lead in organizing Bangalore branch has got a society registered with name similar to it, but by then, as it had become defunct without having undertaken any activity connected with the movement with no members or managing committee and there was none to be proceeded against to question it, the 1st defendant, not willing to create any unpleasant situation, left the matter at that.

100. P.W.1 has given elaborate evidence on the functioning of the plaintiff and the various activities carried on by it subsequent to its registration. The plaintiff has also relied upon very many documents to corroborate the testimony of P.W.1. It is, therefore, necessary to subject them to a careful scrutiny in their chronological order to find out the truthfulness in his testimony. The first and foremost document inducted into evidence by the plaintiff is Ex.P1 which is a copy of the letter dated 22.12.1972 addressed to Karandhara by Prabhupada. A bare look at it would show that it had been written by A.C. Bhaktivedanta Swami

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under the title Prabhupada letters :: 1972. But how does it help the plaintiff is not pointed out by P.W.1.

101. Of course, in the very beginning of the cross-examination directed against P.W.1, it is brought out from him that his date of birth is 14.06.1966 and he was given diksha on 23.06.1984, making it abundantly clear that on attaining the age of majority only, he was initiated. But nonetheless, subjecting it to a caustic comment, Sri.Yoganarasimha contended that P.W.1 had become a member on the very date, he attained the age of majority. It is also brought out from him that since 1984, he has been associated with plaintiff as a missionary and he applied for its membership by the end of May 1984 and he was admitted as its member on 15.06.1984. Yet, in another place, he is allowed to reiterate his stand that in 1984, he became missionary. It is also brought out from him that to become a member, a person should be a missionary of Iskcon and there is no time fixed for a missionary to qualify himself to be a member. But he has denied a suggestion that the 1st defendant should have certified missionary, before he is considered for membership. In the absence of any evidence that supports the said suggestion, I cannot say that it is true to facts. Moreover, when it is denied, it cannot constitute any evidence. With regard to the manner in which he became a member, of course, some evidence is elicited from him. But in my view, it cannot question his

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competency to depose on behalf of the plaintiff. However, subjecting it to a caustic comment, the learned counsel for the defendants Sri.Yoganarasimha contended that he could not have been initiated and he could not have become a member. It is really perplexing to take note of his contention, for when the law provides a right to any person to become a member of society on attaining the age of majority, no body can question it nor can he be permitted to question it. As such, his contention has to recede to the background as of no consequence.

102. Further, P.W.1 has admitted that Ex.D1 is a certified copy of the bye-laws of the plaintiff and the aims and objectives contained in it are similar to those found in Ex.P235. It is elicited from him that while he was secretary of the plaintiff, he had admitted missionaries as members without certificate issued by any other authority, negativing the contra stand assumed by the defendants. It is also extracted from him that the governing council of the plaintiff certified him as a missionary, before he was admitted as member. Denying a suggestion that either the president or the executive has no power to certify anybody to be a missionary, he has also asserted that Ex.D1(a) is the source of power to certify anybody to be a missionary. But he has admitted that apart from Ex.D1(a), there is no other provision in Ex.D1 that empowers the president or executive to certify. In the next breath, he has

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denied a suggestion that Ex.D1 cannot be understood to have given any power either to the president or to the executive to certify any person as a missionary. But the next answer taken from him only to the effect that Ex.D1(a) confers power on the executive to allow or reject the application for membership and nothing beyond that, endorses the denial made by him.

103. P.W.1 has also given elaborate evidence showing that the plaintiff is an independent entity and plaintiff has relied upon documentary evidence also to obtain support to or corroborate the testimony of P.W.1. It is curious to take note of the evidence brought out from him in the cross-examination to the effect that Hamsadoota swamy conceived the idea of opening an independent entity in India for the first time in 1977, apart from Srila Prabhupada, but he did not establish any such entity. Even then, it contributes some help in its own way in probablizing the establishment of the plaintiff as an independent entity. Ex.P4 and P5 are a certified copy of the plaint and its copy, presented in OS 1936/79 filed by Shankabrit Das. Further, Ex.P3 is a certified copy of the suit register pertaining to it. A perusal to the same would disclose that Shankabrit Das had filed it in his capacity as its president against Poornaiah and others for permanent injunction. The registration number of the plaintiff finds a place in it. Further, it is clear from it that then, the plaintiff was functioning

at No.39, Crescent road, now known as No.40, Hare Krishna road, Bangalore-1. P.B.No.5181 allotted to the plaintiff is also entered in it. The said facts undoubtedly endorse the contention of Sri.S.K.V. Chalapathy that the plaintiff was active and it was not defunct as alleged by the defendants.

104. Nevertheless, the learned counsel for the defendants 1 to 9, Sri.D.R.Ravishankar strenuously contended that because there is no pleading with reference to the said suit, it cannot be relied upon. Of course, there is no specific pleading on it. But when the plaintiff has claimed that it did exist and function, any evidence necessary or capable to prove it would be relevant. As such, Ex.P4 and P5 cannot be brushed aside as not founded upon pleading. Even P.W.2, who is an advocate who drafted the memorandum and rules and regulations of the plaintiff as per Ex.D1, has also given evidence that it is he who filed O.S.1936/79 on behalf of the plaintiff and obtained an order of injunction. In the cross-examination, because his testimony is not disturbed, it too, has also lent some more credence to that of P.W.1. Thus, an indication that plaintiff was in existence in 1979 and was carrying on activities emerges from Ex.P4 and P5. This would tend to negative the repeated assertion of D.W.1 that the plaintiff did not exist to very many questions posed to him.

105. Ex.P6 to P50 are the next documents relied

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upon by the plaintiff in sustaining its claim. As spoken to by P.W.1, Ex.P6 is a copy of the application dated 27.9.1978 given to Bangalore Telephones by the plaintiff, Ex.P7 is a copy of inspection report dated 29.8.1978 given by Indian Posts & Telegraph department and it mentions that telephone number 77242 was temporarily working in the premises referred to in Ex.P6, Ex.P8 is a copy of an endorsement dated 13.9.1978 issued by telephone department, intimating the plaintiff that the plaintiff's application is in waiting list, Ex.P9 is a copy of the letter dated 29.9.1979 addressed to general manager, Bangalore Telephones by the plaintiff, for shifting of telephone No.77664 as mentioned therein and P.B.No.5181 alloted to the plaintiff finds a conspicuous place at the top of it, Ex.P10 is a copy of the letter dated 28.8.1980 addressed to the general manager, telephones, by private secretary to Ministry for Finance & Planning and it bears testimony to the effort made by the plaintiff to obtain shifting of telephone number 34206 from Malleshwaram to Rajajinagar, Ex.P11 is a copy of the letter dated 10.9.1980 addressed to private secretary by general manager and it also bears testimony to the said fact, Ex.P12, P15, P18, P19, P21 to P23, P26, P28, P30 and P31 are copies of 11 work orders issued by Bangalore Telephones, Ex.P13 and P.14 are copies of letters dated 22.2.1980 and 2.7.1980 written to general manager by the plaintiff and they speak of the desire of the plaintiff to remove telephone No.34206

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and to reinstall it, Ex.P16 is a copy of the letter dated 8.7.1980 written to the plaintiff by Bangalore Telephones, intimating the plaintiff that telephone No.34206 is disconnected for non-payment of outstanding dues, Ex.P17 is a copy of the letter dated 8.3.1985 written to general manager by the vice-president of the plaintiff, for shifting the telephones to No.210, Bellary Road, Bangalore, Ex.P20 is a copy of the letter dated 16.4.1987 written to the officer in charge/general manager, Telephone Exchange, Bangalore by the plaintiff, for disconnecting STD facility attached to telephone No.361539, Ex.P24 and P25 are copies of applications to Bangalore telephones by the plaintiff for shifting telephone No.321956 to Hare Krishna Hill, Ex.P27 is a copy of the application dated 28.4.1993 given to general manager by the plaintiff to provide hunting facility with 321956 as the principal number, Ex.P29 is a copy of the letter dated 22.11.1996 issued to commercial officer by the plaintiff for inclusion of four telephone numbers listed therein in the hunting group with 3321956 as the principal number, Ex.P32 is a carbon copy of the letter dated 18.3.2002 issued to the plaintiff by BSNL furnishing information requisitioned by the plaintiff, Ex.P33 and P34 are true copies of letters dated 28.1.2003 and 20.3.2003 written to the commercial officer by Shankabrit Das and Madhu pandit Das, as founder president and president of Iskcon, Bangalore, respectively, for furnishing certified copies of the documents mentioned and

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listed therein, Ex.P35 is a letter written to the plaintiff by BSNL and it gives an epitome of the change of telephone number 77664 and the premises to which the telephone was shifted, Ex.P36, P37 and P39 are copies of three letters dated 1.7.1989, 3.8.1989 and 9.8.1989 issued to commercial officer by Manohar D.Naik, Ex.P38 is a copy of the undertaking dated 3.8.1989 given to area manager by the plaintiff, Ex.P40 is a copy of the letter dated 22.8.1989 issued to area manager by the plaintiff in respect of telephone No.322346 and it contains the registration number of the plaintiff, Ex.P41 is a copy of the check list dated 28.8.1989 prepared by Bangalore telephones and it also refers to the registration number of the plaintiff, Ex.P42 is a copy of the letter addressed to the plaintiff by the department of telecommunications requesting furnishing of a power of attorney authorizing the president to sign the documents, Ex.P43 is a copy of general power of attorney dated 16.10.1989 issued to telephone department in respect of the very same telephone number, Ex.P44 is a copy of the resolution dated 3.10.1989 passed by the plaintiff to take steps to get the telephones shifted, Ex.P45 is a copy of the letter dated 15.11.1989 issued to area manager by the plaintiff, Ex.P46 is a copy of declaration dated 14.11.1989 given by the plaintiff, Ex.P47 is a copy of receipt issued for having paid charges and they relate to the shifting of telephones, Ex.P49 is a copy of the letter dated 2.11.1989 issued to the plaintiff by the

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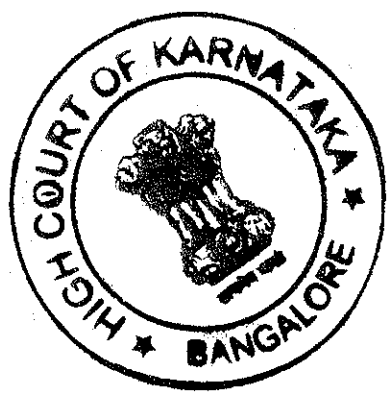
department of telecommunications approving the transfer of telephone No.322346 in the new name subject to the conditions stipulated therein and Ex.P50 is a copy of the affidavit dated 8.12.1992 furnished by the plaintiff and it discloses not only the acquisition of three telephone numbers, but also the desire to acquire 8 more telephone connections whose description is entered in it.

106. The evidence given on Ex.P6 to P50 by P.W.1, it is interesting to note, is not disputed in the cross-examination, although it is very much lengthy and elastic. Furthermore, there is no evidence given by the defendants touching upon the same, let alone challenging it. As such, the undisputed Ex.P6 to P50, I should say, have corroborated the unchallenged testimony of P.W.1. On the other hand, it is also curious to note that the defendants have nowhere claimed that the telephones that are entered in them do belong to 1st defendant or its so called branch.

107. A careful scrutiny of the said documents would profusely endorse the claim projected, as they make it manifest that it was the plaintiff who had applied for telephone connections, got them shifted from time to time and there was change in the telephone numbers allotted. Taking me through the aforesaid documents in detail, Sri.S.K.V.Chalapathy contended that Shankabrit Das had given the original of Ex.P6 entering the





registration number of the plaintiff and enclosing a copy of the bye laws and registration certificate of it and the same would project the claim advanced profusely, besides sustaining it, because they bear testimony to the fact that it was the plaintiff who applied for telephone connections, their shifting from one place to another at its instance, as they bear not only the registration number of the plaintiff, but also the P.B.No.5181 allotted to the plaintiff. Further as rightly pointed out by Sri.S.K.V.Chalapathy, if Bangalore branch of the 1st defendant were the allottee of the telephones that find a place in the said documents, there was no need or necessity of entering the registration number of the plaintiff and the P.B.No.5181 allotted to the plaintiff, in them. Inviting my attention to column 9 of Ex.P6, Sri.S.K.V.Chalapathy also pointed out that to carry on the activities of the plaintiff, as telephone was found essential, the plaintiff applied for it. He also contended that telephone number allotted to it temporarily was 77242 as reflected in Ex.P7. It was also argued by him that as reflected in Ex.P8 telephone connection was kept in waiting list. As rightly pointed by him, the plaintiff shifted itself to N.S. Iyengar street, Sheshadripuram, Bangalore and a request to shift the telephone to the said address and it was changed as 34206 could be gathered from Ex.P9. The efforts made by the plaintiff for the removal of telephone 34206 and to shift it to No. 34/A, 9th B cross, west of chord road, Rajajinagar, Bangalore,

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to which the plaintiff had shifted itself, are borne out in Ex.P10 to 14 as pointed out in the written arguments filed the plaintiff.

108. It is argued for the plaintiff that as per Ex.P16, telephone 34206 was disconnected for non-payment of outstanding bills and ultimately, it was shifted and it was alloted a new No.350418. It is also argued that under Ex.P17, the plaintiff, represented by vice-president, Chanchalapathi Das, applied for shifting it to No.210, Bellary road, Bangalore and it was shifted accordingly and a new No.361539 was alloted as reflected in Ex.P18 and P19.

109. Ex.P24 shows the shifting of the plaintiff to premises No.210, Bellary road, Bangalore and then, it was shifted to Hare Krishna Hill, Chord road, I 'R' Block, Rajajinagar, Bangalore-10, as reflected in Ex.P25, as pointed out in the written arguments. It is also argued that when the plaintiff applied for hunting facility to telephone 321956, it was provided as could be seen from Ex.P28 and P29. As argued by Sri.S.K.V. Chalapathy, it is clear from Ex.P30 that hunting facility was ordered to be provided to the said telephone numbers and under Ex.P31, disconnection of STD facility was ordered. He also argued that in Ex.P33, Shankabrit Das has described himself as founder-president, Iskcon, Bangalore. It is also argued that telephone 322346 belonging to Manohar D. Naik was purchased by

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the plaintiff , as reflected in Ex.P27, P36, P37 and P39 and Ex.P39, which contain the registration number of the plaintiff and it conclusively shows that the said telephone belongs to the plaintiff. It is also argued that Ex.P40 and P41 also bear the registration number of the plaintiff and Ex.P44 is a resolution passed by its governing body authorizing Madhupandit Das to take steps to obtain shifting of telephone. It is further argued that during 1992, the plaintiff wanted to acquire 8 additional telephones and as required by telephone department, Madhupandit Das gave an affidavit as per Ex.P50 and after sanction, they were installed in the 1st item of A schedule and they are functioning even today.

110. Even though very lengthy oral arguments were addressed, it is pertinent to note that Ex.P6 to P50 are not referred to in them. However, in the written arguments filed, referring to Ex.P13 and P14, it is argued for the defendants that they bear the signatures of Gauranga Das, who was not a functionary of the plaintiff, but branch president of the 1st defendant. It is also argued that the documents produced by the plaintiff and the evidence given by P.W.1 have conclusively established that Gauranga Das was branch president of the 1st defendant. It is also argued that the registration number of the plaintiff entered in them is in different handwriting and therefore, it is not safe to rely upon those documents. It is,

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indeed, difficult even to appreciate the said argument, let alone accepting it, for it does not enjoy the support of any evidence. As it is advanced off the evidence, it cannot be accepted, since a mere argument cannot establish any fact.

111. Of course, drawing inspiration from the evidence of P.W.1 reproduced, it is also argued for the defendants that there is no scheme for appointment of an acting president. But if at all Gauranga Das was a functionary of the 1st defendant, the defendants should have disclosed the capacity in which he was functioning. As admitted by D.W.1, the 1st defendant has maintained a list of its members. If Gauranga Das was one of its members or a functionary, without any hesitation even in the least, the 1st defendant would have produced the register of members or any document capable of showing that Gauranga Das was its functionary. But its failure to do so, I should say, has recoiled on the credibility of its stand. However, his assertion presupposes the fact that Gauranga Das was functioning as a president at Bangalore. Even otherwise, had he been appointed as president of Bangalore branch and he functioned in such capacity, the defendants should have documents in evidence of it and they would not have withheld their production. But the very fact that no such document is brought before the court would stultify the evidence of D.W.1, even though he has denied a suggestion tendered to the

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contra. Further, the evidence extracted from him in the cross-examination that the 1st defendant has no application to show that it had applied for telephone connections and the telephone connections referred to in para 37 of his affidavit refer to telephone numbers found in Ex.P20 and P27 would also falsify his evidence. Instead, it has thoroughly probablised the evidence of P.W.1. Even if the evidence of D.W.1 is assumed as true for a moment, the defendants should have at least something to offer to erase the effect of Ex.P6 to P12 and P15 to P50, if not to eliminate it. But the defendants have nothing to place on record. This would also expose the falsity in their stand.

112. In addition to the above, I should say that a bare look at Ex.P13 and P14 would render the arguments addressed with reference to them for the defendants simply unpalatable, for they do not contain the registration number of the plaintiff in a different handwriting. On the other hand, what is conspicuously found in them is telephone number 34206 which, as already said above, belongs to the plaintiff. Moreover, when the defendants have not produced anything to show that the said telephone was applied for by the 1st defendant for its branch and it was allotted to its branch, the arguments advanced in that respect for the defendants cannot be accepted. In addition to it, it is also necessary to take note of a striking dissimilarity in the signatures contained in Ex.P13 and P14. I mean to say that

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the signature contained in Ex.P14 cannot be said to be that of Gauranga Das, though his name is typed under the signature. One another dissimilarity found in Ex.P13 and P14 does not escape the attention of anybody. When Gauranga Das has subscribed signature to Ex.P13 as acting president, it is not so in Ex.P14, for somebody else has signed, perhaps on his behalf, as president and not as acting president. Thus, the facts narrated above would undoubtedly bolster the contention of Sri.S.K.V.Chalapathy.

113. Notwithstanding the above, Sri.D.R. Ravishankar repeatedly contended that there is no pleading regarding telephone connection, shifting etc., Of course, as rightly pointed out by him, there is no specific pleading on obtaining telephone connections, their shifting etc., But without any hesitation, I may say that the analogy applied to Ex.P4 and P5 applies to Ex.P6 to P50, for the simple reason that they do operate on the activities carried on by the plaintiff. Hence, the said evidence cannot be thrown out as not founded upon pleading. On the other hand, their appreciation in their correct perspective would further the ends of justice. As such, I cannot accept the contention of Sri.D.R.Ravishankar. But I should agree with the contention of Sri.S.K.V.Chalapathy that by taking a number of telephone connections, the plaintiff was carrying on its activities and it offers a befitting reply to the defense taken up to the contra.

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114. The next documents upon which reliance is placed by the plaintiff are Ex.P78 to P105. P.W.1 has spoken that Ex.P78 to P81, P84 and P103 to P105 are 8 receipts, Ex.P82, P85 and P101 are 3 acknowledgments issued by District registrar, Ex.P86 is a copy of letter dated 20.6.89 issued to the registrar of societies by the plaintiff, Ex.P83 and P88 to100 are certified copies of 14 lists of members of governing council, Ex.P84 is a receipt dated 4.4.89, Ex.P87 is certified extract of register issued by the registrar and Ex.P102 is a notice dated 1.8.01 issued to the plaintiff by the registrar of societies. But it is curious to note that as their accuracy and authenticity are not questioned in the cross-examination, I find it difficult to disbelieve and discard them in one stroke, more so, when many of them bear the registration number of the plaintiff. Thus the unchallenged testimony of P.W.1, supported by them, has also demonstrated that the plaintiff was in existence and it was functioning, negativing the defense raised to the contra. Even otherwise, there is no evidence worth consideration tendered by the defendants to counter the said evidence. Focusing my attention on the same, it is argued for the plaintiff that the said records show that the plaintiff was functioning right from the date of its registration. I cannot repel it for it enjoys the support of the evidence.

115. Ex.P107 is a certified copy of the decree

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drawn in O.S.506/82. As could be seen from it, it had been filed by M/s Bharath Travels against the plaintiff and it was decreed. Ex.P109 is a receipt dated 27.11.1986 issued by Bharat Travels to the plaintiff, as spoken to by P.W.1. It is needless to say that the decreetal debt of OS 506/82 was discharged under Ex.P109 by issuing a cheque bearing No.629718 and dated 27.11.1986 drawn on Palace orchards branch of Bank of Baroda, Bangalore. For two reasons, I have to say that the plaintiff was in existence and was functioning, because it had discharged the decreetal debt by issuing its own cheque, as the defendants are not able to lay on record any evidence to show that either its branch at Bangalore or it had any account in the said bank. Further, when the same is not disputed in the cross-examination, I cannot form any other opinion other than the one already formed. Adverting my attention to it, it is argued for the plaintiff that it, represented by Mahashringa Das in his capacity as its acting president , had been sued and Shankabrit Das discharged the decretal debt as reflected in Ex.P108. It is a copy of letter dated 25.11.86 written by the plaintiff. A perusal of it would endorse said argument, lending some more credence to the view already taken up. In contrast, it is just argued for the defendants that Ex.P107 is off the pleadings. Even though it is so, the fact that it forms an integral part of the existence of the plaintiff cannot altogether be ignored. Hence, the said argument cannot make any headway in

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questioning the claim put forward.

116. The plaintiff has also sought to obtain the help of Ex.P172 to P183 and P188, 13 letters addressed to it by chartered accountant, Ex.P184, an auditor's report dated 6.7.87, Ex.P185 to 187, 3 balance sheets for the year 1984-85 to 1986-87, Ex.P149 to P160, 12 certified copies of the auditor's report for the year 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999 and 2000 respectively, Ex.P161 to P163, 3 receipts issued by auditor, Ex.P189 and P190, 2 auditor's report for the year 1980-89 which should have been 1988-89 and 1989-90, as spoken to by P.W.1. By making a categorical reference to the registration number of the plaintiff, Ex.P189 and P190 had been written. The very presence of registration number of the plaintiff in them goes a long way in substantiating the plaintiff's claim that it was in existence and functioning. The same is not controverted in the cross-examination. Inviting my attention to the same, Sri. S.K.V.Chalapathy contended that Ex.P185 to P187 show that the accounts were audited by M/s. Kannan and Ram and P.W.3 has spoken on it. P.W.3 has given candid evidence that as a partner of the said firm, he had audited the accounts of Iskcon, Bangalore, registered under Karnataka Societies Registration Act and Ex.D9 to D11 bear his signatures as per ExD9(b) to D11(b). Even though, he has not made a direct reference to the plaintiff, his say does not leave any doubt to

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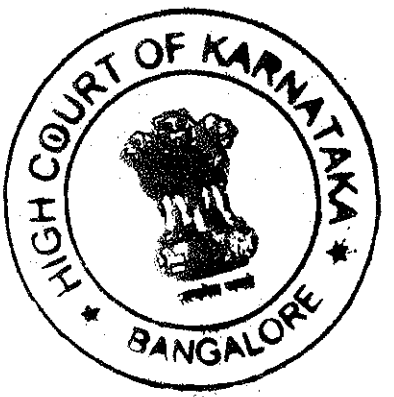
linger in the mind of anybody to say that the accounts, he had audited, were of the plaintiff only, because there is no dispute that the plaintiff is registered under the said Act. The defendants have not succeeded in impeaching his testimony. Instead, when they themselves have inducted Ex.D9 to D11 into evidence, they could not move even an inch against their credibility. Thus, the testimony of P.W.3 has also strengthened the view that the plaintiff was very much functioning.

117. However, focusing my attention on the contents of para 3(b) of page 2 of Ex.P189, Sri.D.R. Ravishankar strenuously contended that the said contents do not leave any doubt to creep into the mind of anybody to say that Bangalore branch of the 1st defendant was in existence and its closing balances of assets & liabilities as on 31.3.1988 were donated to Iskcon, Bangalore and the same was taken as balances of Iskcon, Bangalore, as on 1.4.1988. Of course, it bears the signature of M.P.Das. But the fact that it is a part of the auditor's report of the plaintiff cannot be lost sight of. It is curious to note that P.W.3 is not questioned with reference to it. When there is no adequate evidence to show that a Bangalore branch was established and was functioning, on the strength of a stray and solitary mention made in the said para, it cannot be said that the defense raised by the defendants is probable. Further, when para 3(a) speaks that as per the desire of Srila





Prabhupada and the recommendation of GBC, the general body had decided to make Bangalore center autonomous, it, instead of helping the defendants, I should say, has helped the plaintiff, for if Bangalore center were only a branch of the 1st defendant, there is nothing on record even to suggest why general body was selective in making plaintiff alone autonomous. On the other hand, even if the transfer of assets and liabilities of Bangalore branch is taken to be true for a moment, it tends to project the fact that they were transferred to the plaintiff which is not the case of either of the parties. In view of this, the contention of Sri.D.R.Ravishankar cannot help the defendants.

118. The plaintiff has also relied upon the records of sales tax registration, which are at Ex.P125 to P138. Ex.P125 is an acknowledgment issued by Karnataka sales tax office for having received an application in Form 1, Ex.P126 to P128 are 3 declarations issued in Form 3, Ex.P129 and P130 are two receipts issued for having received money, Ex.P131 is a copy of the letter dated 18.6.1990 addressed to ACTO by the plaintiff, Ex.P132 and P133 are two assessment orders dated 29.8.1990 and 17.9.1990, Ex.P134 is a copy of the application dated 8.7.1988 issued to ACTO and Ex.P135 to P138 are 4 receipts, as spoken to P.W.1. His testimony is not questioned in the cross-examination and thus it, supported by the documentary evidence, has also bolstered the claim.

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projected, for the said documents also furnish a pointer to the fact that the plaintiff was not defunct, but was very much engaged in business activities, in addition to other activities.

119. Laying stress on the aforesaid documents, it is argued for the plaintiff that as Ex.P125 and P134 contain the registration number of the plaintiff, they make it lucid that the plaintiff was very much functioning and carrying on activities. It is also argued that as the said documents had come into existence at an undisputed time, when there was no dispute whatsoever between the parties, there is no reason to disbelieve them. I find considerable force in the said argument, as the plaintiff could not have got them concocted or created, anticipating litigation in 2001. In addition to it, when there is no evidence worth its name produced by the defendants to challenge that of P.W.1, let alone impeaching it, I do not see any reason at all to disbelieve and discard the evidence produced by the plaintiff. Even in the course of lengthy arguments addressed for the defendants, the fact that the said documents were not controverted or disputed would add to the view already taken up.

120. Reliance is also placed on the records relating to registration under Foreign Contribution Regulations Act, by the plaintiff in sustaining its claim. They are at Ex.P114 to P124. As spoken to by P.W.1, Ex.P114, P118, P119, P120, P121,

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P122, P123, and P124 are copies of applications and letters addressed to the secretary for Home affairs and Home ministry, Ex.P115 is an application dated 30.11.1987 addressed to him, Ex.P116 is a postal acknowledgment, Ex.P117 is a letter dated 27.11.1987 addressed to the plaintiff by grind lays bank, Ex.P118 and P120 to P124, are copies of letters addressed to the secretary of Home ministry and the Ministry of home affairs, and P120(a) is a copy of Form FC 3 sent with P120 and P119 is a letter dated 20.4.1998 addressed to the plaintiff by Home ministry.

121. The evidence given by P.W.1 in relation to Ex.P114 to P124 is left undisturbed in the cross-examination, lending some more credence to them. Further more, it is necessary to note that D.W.1 and 4 have not given any evidence worth its name to challenge that of P.W.1. However, in the cross-examination, D.W.4 has feigned ignorance whether plaintiff is registered under Foreign Contributions and Regulations Act and slipped away by merely saying that he has to check whether Bangalore center was receiving foreign contributions, making it manifest that he was not willing to speak out the truth as it is. Thus, when the defendants have not given any contra evidence questioning the reliability of the said documents, I cannot disbelieve the testimony of P.W.1.

122. A careful scrutiny of Ex.P114 to P124 would

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drive home the fact that the plaintiff had applied for its registration under Foreign Contributions (Regulation) Act 1976, its application was granted and it was registered under S.6 (1) (A) of the Act and was allotted registration No.094420488 and pursuant to it, the plaintiff opened a current account No.094604 in Grind lays bank and filed returns under the Act. Inviting my attention to the said documents, Sri.S.K.V. Chalapathy contended that they bear the registration number of the plaintiff and it, receiving contributions from foreign sources, has filed its returns regularly in evidence of the receipt of the same. Per contra, there was no argument addressed for the defendants, barring a reply argument to the effect that there is no pleading about FCRA. It is true that the plaintiff has not laid on record specific pleading on foreign contributions received by it. But when it has maintained that it was carrying on business activities in addition to activities for which it was registered, I should apply the analogy applied to Ex.P4 and P5. Thus viewed, the fact that Ex.P114 to P124 also do not lag behind in strengthening the claim advanced, becomes evident. Even deriving help from Ex.P164, Sri.S.K.V.Chalapathy contended that the very opening of an account by the plaintiff in Grindlays Bank, as reflected in page 39 of it would also greatly support the plaintiff's claim. A bare look at page 39 of Ex.P164 would show that on 31.3.1989, balance of Rs.23,856/- was carried forward. This would squarely answer the

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contention advanced by Sri.D.R. Ravishankar to the effect that there is no evidence even to speak that to receive foreign contribution or funds, the plaintiff had any account with Grindlays Bank. In other words, I may say that if the plaintiff were not an independent entity, the question of it registering itself under Foreign Contributions (Regulation) Act, is beyond the comprehension of anybody.

123. The plaintiff has also pressed into service Ex.P111 and P112 which relate to its registration under Income Tax Act. As spoken to by P.W.1, Ex.P111 is a letter dated 9.12.1987 issued to the plaintiff by ITO and Ex.P112 is a certificate of registration issued under section 12A. Further, Ex.P139 is a copy of annual return dated 4.10.1996 filed in Form No.26C, Ex.P140 is an order dated 3.12.1996 of A.C.I.T, Ex.P141 is a notice of demand dated 3.12.1996 issued by the plaintiff, Ex.P142 to P144 are orders dated 3.12.1996 of A.C.I.T, Ex.P145 is a demand notice dated 3.12.1996 issued to the plaintiff, Ex.P146 and P147 are two demand notices dated 3.12.1996 issued to the plaintiff and Ex.P148 is a challan, as spoken to by P.W.1. His evidence is not disputed in the cross-examination and furthermore, there is no contra evidence produced by the defendants either to challenge his testimony or Ex.P111 and 112 and Ex.P139 to P148. On the other hand, it is interesting to note the ignorance feigned by D.W.4 whether plaintiff is registered under Foreign Contributions and

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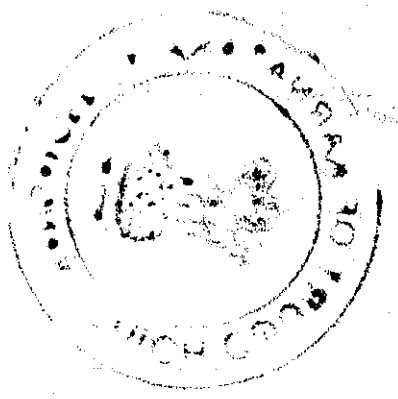
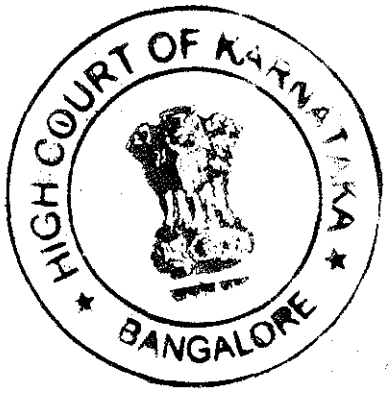
Regulations Act, even on the face of enough evidence produced by the plaintiff in that respect. This would necessarily point out that he had no inclination to admit the truth as it is. Even though he has tried to conceal the truth, the cat is out of the bag. Further, the manner in which he has slipped away in saying that he has to check whether Bangalore center is receiving foreign contributions would also endorse the view already taken up. Because, the defendants have not brought on record any evidence even subsequently to dispel the doubt surrounding the credibility of evidence of D.W.4. A bare look at Ex.P112 would succinctly point out that the plaintiff had been registered under section 12A of Income Tax Act. If it were not an independent entity, it could not have been so registered, as rightly pointed out by Sri.S.K.V. Chalapathy. To brush aside his contention, there was no argument addressed for the defendants, barring a feeble reply that there is no pleading about section 12A registration. But as plaintiff's registration under S.12A squarely falls within the circumference of its claim, the defendants cannot stick on to a stand that there is no specific pleading on it. Even otherwise, what the principles of pleading stipulate is that only material facts should be pleaded and not every fact which is ancillary or incidental to the material pleading. As such, the reply argument cannot have any effect and it has to recede to the background quietly.





124. Opening bank accounts is undoubtedly a part of the edifice of the plaintiff's claim, as it is built upon it too. In that behalf, the plaintiff has relied upon Ex.P110. It is a true copy of the account opening Form issued by Canara Bank, as spoken to P.W.1. A plain reading of it would disclose that by giving an application as per Ex.P110, Madhupandit Das and Chanchalapathi Das, in their capacity as president and vice-president respectively, of Iskcon Bangalore, had requested the bank to open an account styled 'Iskcon'

125. P.W.1 has, indeed, given evidence in detail on the opening of various bank accounts, their maintenance and operation. He has also given evidence that the name of D.W.4 appears in many of the accounts of the plaintiff. In the cross-examination, it is brought out from him that there was an account standing in the name of the plaintiff in K.G. Road branch of Indian Overseas bank in 1984. As it is left to remain intact, the ignorance feigned by him, whether it was the only account in 1984 and what was the balance in it, cannot pose any challenge to his testimony. It is also brought out from him that the new management that took over the charge of the affairs in Bangalore on 1.7.84, opened an account in Bank of Baroda and Madhupandit Das was operating it. Because, it is not questioned, the ignorance exhibited as to who else was operating it, cannot be of any avail for the defendants. It is pertinent to note that his evidence

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that D.W.4, as governing council member of the plaintiff, was a signatory to some of the accounts in Bangalore, has also remained intact. Thus the feeble and ineffective cross-examination has failed to make any dent into the credibility of the testimony of P.W.1.

126. Of course, except Ex.P110, no other documentary evidence is produced to appraise the court of the fact whether the bank accounts stood or stand in the name of plaintiff or the 1st defendant. There is no reason forthcoming as to why they could not lay on record such evidence. But as already said above, since the testimony of P.W.1 is not impeached by producing contra evidence, I do not see any reason to disbelieve his testimony.

127. It is necessary to note the evidence given by D.W.1 to the effect that the bank accounts in the name of Iskcon were operated in different banks at Bangalore right from 1977 and they belong to the 1st defendant and they were operated by its various functionaries. He has also given evidence that though they were opened in the name of 1st defendant only, at or immediately before the filing of the suit, Madhupandit Das and other functionaries, using their clout and huge amount of financial transactions with the banks, have managed even to meddle with the bankers by replacing the bank documents like account opening forms and supporting evidence. He has gone to the extent of

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saying that Stoka Krishna Das informed him that at the instance of Madhupandit Das, the entire records of the banks were changed and played fraud in the name of the plaintiff using the accounts of Bangalore branch. But it is pertinent to note that no suggestion covering the said facts is tendered to P.W.1, giving an indication that it must be an afterthought of the 1st defendant. In addition to it, it is not possible to believe his evidence for the simple reason that Madhupandit Das could not have meddled with the bankers and replaced the bank documents. Even otherwise, collusion with banks to that extent is just beyond the imagination. But, even if it is assumed that there was such collusion, the defendants are not able to lay on record any documents in proof of it. Further, if it were true, the 1st defendant would have undoubtedly taken strong and stern action against M.P.Das for meddling or tampering with the bank records, as he was only the president of its branch as claimed by it. But there is nothing on record even suggest the course of any such action, giving enough indication of the fact that there is not even a semblance of truth in the stand assumed. Because, the 1st defendant could not have been a mute spectator to the fabrication or manipulation of a serious magnitude. Further, when he himself has said that he has given evidence that the 1st defendant has opened the bank accounts of the branches only on the basis of the accounts, it is not possible to believe his testimony.

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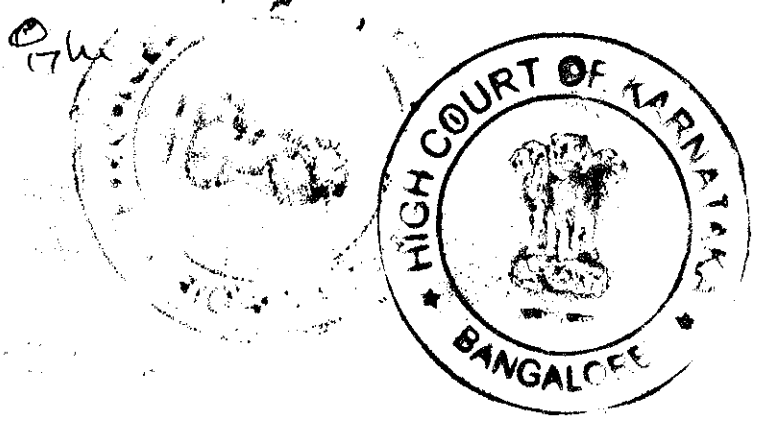
128. Further, in the cross-examination, even though D.W.1 has reiterated his stand that the 1st defendant opened the bank accounts and it has documents to show it, curiously enough the said documents are not brought before the court necessitating the drawing of an adverse inference, for no party would withhold the best evidence available with him. In addition to it, when he has pleaded his inability to say whether the opening of accounts is supported by a resolution of the bureau and he is unable to recall whether he has seen any other document apart from the accounts of Bangalore center, it is extremely difficult to believe his uncorroborated evidence and rely upon it, more so, when he personally did not verify his statement visiting banks. Of course, he has also asserted that Bangalore branch had a bank account between 1977 and 1981. But when he cannot say in which bank it was there, I cannot believe it and act upon the same, as his say is simply based upon correspondence available and the words of D.W.4, more so, in the absence of the production of the said correspondence. In addition to it, when he has pleaded his inability to deny the suggestion whether the 1st defendant had not passed any resolution for opening a bank account and is just unable to recall whether he had come across any resolution, when he inspected the minutes book from 1971 to 1996 in respect of the said matter, it is well-nigh impossible for me to believe his testimony and rely upon it.



129. The categorical admission given out by D.W.1 to the effect that any final decision to open an account is to be taken by the bureau would not leave any doubt linger in the mind of any body to say that with the permission of bureau only, any bank account has to be opened. But when there was no resolution made by the bureau authorizing the opening any bank account at Bangalore, it is not possible to believe the defense raised and the evidence given in support of it that the 1st defendant had opened bank accounts in the name of its branch at Bangalore.

130. Of course, D.W.1 has also asserted that the 6th and 8th defendant authorized by the 1st defendant had complained it to higher officers of the bank. But he has slipped away by pleading his inability to say whether the authorization and complaint were in writing inducing me to say that his testimony does not inspire any confidence to rely upon. Further more, curiously enough, he did not take it to the notice of bureau in writing, making his testimony undoubtedly difficult to believe. Further, if he had instructed his counsel about it many times, there should have been at least a solitary suggestion tendered to P.W.1 in that behalf. But as already said above, there is not even a suggestion to P.W.1 in that respect falsifying his assertion. It is curious to note the reply given by him to a pertinent suggestion tendered to the effect that the bank

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accounts referred to in para 36 of his affidavit belong to the plaintiff. If they were not of the plaintiff, without any hesitation, he should have denied the suggestion, instead of merely saying that the plaintiff never existed. Thus, the very fact that he has had no courage to deny the suggestion would go a long way in exposing what was operating in his mind, while answering the said suggestion. It is also necessary to note his inability to say whether there is anything in writing showing M.P.Das authorizing persons operate bank accounts of the 1st defendant. It would necessarily indicate that the 1st defendant has no records to show that it had opened bank accounts at Bangalore and authorized M.P.Das and others operate them.

131. It is also necessary to take note of the evidence given by D.W.3 to the effect that he is aware of the bank accounts of the temple of the 1st defendant at Hare Krishna Hill, Bangalore and trusts referred to by him. He has also proceeded to point out the number of bank accounts which he personally opened and all those bank accounts were opened and operated as bank accounts of the 1st defendant only and the plaintiff was not in the picture at all. Departing from the same, he has also said that those bank accounts were the bank accounts of the Bangalore temple of the 1st defendant, giving an indication that he is not sure whether those accounts stand in the name of either

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the branch of the 1st defendant or the 1st defendant itself. But it is pertinent to note that there is no documentary evidence produced to support his assertion. In the absence of any such evidence, I cannot believe his uncorroborated evidence and say that the bank accounts at Bangalore belong to the branch of the 1st defendant or the 1st defendant, ignoring the voluminous evidence produced by the plaintiff.

132. In giving evidence that in 1971, Srila Prabhupada had permitted bank accounts to be opened at centers, D.W.4 has, by contradicting the say of D.W.1, added a different dimension to the credibility of the very defense raised. Further, when he cannot give definite evidence that the said permission is in writing, I cannot just believe his testimony, more so, when no document is forthcoming to corroborate it.

133. The evidence extracted from D.W.4 has added another dimension to the stand assumed by the defendants, making it further vulnerable. He does not know how was the 1st account of Bangalore center opened and he is unable to recall who opened it. It is also brought out from him that the bank accounts referred to in his affidavit were opened by area representatives of the bureau and the bureau had authorized their opening and the said authority is in writing. If it were true, I find myself unable to understand why the defendants

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were reluctant to produce the said records. Further when he is not able to name the area representative who opened the accounts, I find myself unable to believe his self-serving and uncorroborated testimony. It is curious to take note of his evidence that there was a resolution passed by the bureau authorizing Bhakti Anand Swaroop swamy and him to open bank accounts, some accounts of Bangalore branch are in Indian Bank and two accounts referred to in para 16 of his affidavit were opened by them. If that be so, without any hesitation, the 1st defendant should have produced documentary evidence in support of it. But its non-production has to result in an inference that there was no such resolution and his testimony is far from sooth. Further, when he had held the post of treasurer and vice-chairman, he could not have pleaded his inability. Because he has pleaded his inability, I cannot say that it is understandable. Thus, his evidence has shrouded the say of D.W.1 and 3 with doubt or suspicion. I mean to say their evidence has also come under cloud of doubt, rendering it unreliable.

134. Laying stress on the evidence of D.W.4 which is wrongly mentioned as D.W.1 in para 50 of page 27 of the written arguments filed for the plaintiff, it is contended for it that even according to Ex.D262, a resolution dated 13.11.1991 was passed by the bureau and the resolutions are required to be signed by two representatives and a

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copy of it is to be sent to the bureau, but there is not even a single resolution of the bureau or its area representative produced to prove that the 1st defendant had passed a resolution to open even a single bank account in Bangalore. If that is read in conjunction with the evidence of D.W.1 that he cannot say whether the bureau had passed any resolution for opening an account at Bangalore, what emerges is that there is no substance in the stand assumed by the defendants that it was the 1st defendant which had opened bank accounts at Bangalore. Thus, the falsity in their stand is exposed on their own evidence which has, in turn, not only probablised the plaintiff's claim, but also rendered it worthy of belief.

135. Nevertheless, turning my attention to Ex.P189, it is also argued for the defendants that as on 1.3.1989, all the bank accounts were of the branch of the 1st defendant and in all the previous suits filed by M.P.Das, it is clearly stated that all the bank accounts are of the branch of the 1st defendant at Bangalore (vide para M VI at page 82 of the written arguments). To appreciate it, examination of Ex.P189 is necessary. As spoken to by P.W.1, it is an auditor's report for the year 1980-89. But it is not pointed out as to how does it help the defendants in establishing their defense or stand. Even the written argument has not pointed it out. On the other hand, the very fact that Ex.P189 bears the registration number of the plaintiff supports the

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plaintiff's claim rather than helping the defendants. In view of this, I should say that Ex.P189 is unhelpful to the defendants.

136. Notwithstanding the facts and the evidence borne on record, it is argued for the defendants that Ex.D262 points out the procedure for opening bank accounts by area representatives, as reflected in page 68 of the written arguments filed for the defendants, although the sentence is grammatically not correct. Because both the plaintiff and the defendants have placed reliance on Ex.D262, it is necessary to appreciate it in its correct perspective. It is nothing, but a resolution and M.P.Das has signed it in his capacity as general secretary of Iskcon Bureau. It points out the procedure to be adopted in opening and closing bank accounts or altering signatories to the existing accounts. It makes it obligatory on the part of the area representative to send a copy of all documents signed by him to the office of bureau at Bombay. As could be seen from it, D.W.4, M.P.Das and Stephanus were assigned Karnataka, in addition to Kerala and Tamilnadu as areas of supervision and they were authorized to pass resolutions jointly or with any one of the executive member of the bureau. On the face of it, if at all, either the 1st defendant or its branch had opened any account at Bangalore, there should have been resolutions signed by either D.W.4 or Stephanus and the 1st defendant should have produced it. But the very

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fact that no such resolution is brought before the court will have to result in an inference that the stand assumed by the defendants is far from truth and a far fetched one.

137. Leaning upon the evidence of P.W.1 reproduced in the same page, it is also argued for the defendants that there were bank accounts at the time, when the management was taken over on 1.7.1984, but P.W.1 is unable to give details of it. The evidence reproduced therein reiterates the fact that the plaintiff had bank accounts and D.W.4 was a signatory to many of them. Of course, he is ignorant about the persons who were operating the bank accounts, when he took over the management. But I am afraid, the defendants cannot take advantage of his ignorance, forgetting the fact that the evidence of ignorance cannot assume the character of positive evidence. Even otherwise, the defendants cannot turn it to their advantage to contend that it was the 1st defendant which had opened bank accounts and they were in the name of its branch.

138. Taking the assistance of the evidence given by D.W.3 , it is also argued for the defendants that as per his evidence, he joined Bangalore temple in 1989 and he was dealing with banks and bank accounts were opened with the rules and regulations of the 1st defendant only. Of course, as could be seen from para 23 of his affidavit, D.W.3

has mentioned that all the bank accounts were opened and operated as accounts of the 1st defendant only and plaintiff was not in the picture at all. In para 24 also, he has reiterated that all the bank accounts were of Bangalore temple of the 1st defendant. In the cross-examination, it is brought out from him that when he joined Bangalore center in 1989, it had already opened several bank accounts and P.W.1, D.W.4, M.P.Das, C.P.Das and Stephanus were operating the said accounts. But he was not able to recall whether the 4th defendant and Stephanus were signing the cheques. However, in the next breath, he has mentioned that as per the papers and the accounts, he came to know that both of them were authorized signatories. But, he had not seen any account opening Forms. He has also mentioned that he had opened accounts in Corporation Bank and City Bank and M.P. Das had signed the account opening Forms. Even though, he has denied a suggestion that the account opening Forms, handed over to him for the purpose of opening accounts by M.P.Das, were accompanied by memorandum of association of the plaintiff and not of the 1st defendant, the next answer taken out from him to the effect that he did not intimate either D.W.1 or any member of the bureau at any time that the account opening Forms were accompanied by memorandum of association of the 1st defendant would go a long way in exposing the fact that he was reluctant to speak out the truth. But, even though he has tried to conceal

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the truth, he has failed in his attempt.

139. In view of the above and the striking fact that no documentary evidence is laid on record by the defendants even to show that the bank accounts were opened and operated by the 1st defendant, I find myself unable to disbelieve the evidence produced by the plaintiff in that behalf and discard it. Precisely for the same reason, I cannot accept the conclusion found in para 68 of the written arguments filed for the defendants that with the said evidence, it can safely be concluded that all the bank accounts in the name of Iskcon belong to the 1st defendant only. Leaning upon Ex.P189 and the previous suits filed by M.P. Das, it is also argued that as per it, all the bank accounts were the accounts of the 1st defendant as on 1.3.89. When Ex.P189 does not point out that all the bank accounts were of the 1st defendant, I fail to understand how the said argument was advanced. Further, as already said above, the statement made by M.P.Das in suits filed by him cannot bind the plaintiff and evidence on record points out to the contra, I cannot accept the said argument. On the other hand, I do find considerable force in the written arguments filed for the plaintiff that the overwhelming and uncontroverted evidence produced by the plaintiff shows that it, after its registration, continued to function carrying on various official acts.

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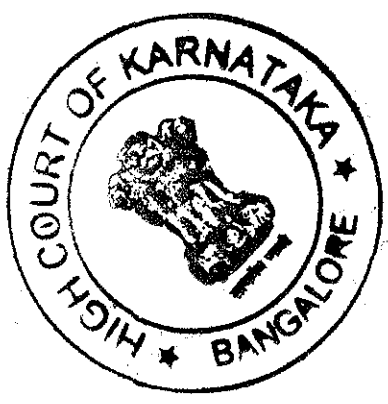
140. It is also pertinent to note that the acquisition of land from B.D.A. has also contributed its might in clinching the issue. When the plaintiff has maintained that it acquired the 1st item of the 'A' schedule of the plaint, denying the same stoutly, the defendants have asserted that the B.D.A. alloted it to the 1st defendant through its Bangalore branch and funds to acquire the same came from the collections made by its branch. Thus, a dispute of a serious magnitude is brought out by them for the resolution. P.W.1 has given evidence thereon. Ex.P51 is a certified copy of the application given to B.D.A. by the plaintiff, Ex.P51(a) to (c) are certified copies of the certificate of registration, memorandum of association and a paper cutting appended to the original of Ex.P51, Ex.P52 is an acknowledgment issued for having received the application, Ex.P53 is a certified copy of the application dated 1.8.87 given to B.D.A. by the plaintiff and P53(a) to (c) are certified copies of 3 paper cuttings annexed to the original of Ex.P53, Ex.P54 is a letter dated 31.5.88 given to the plaintiff by B.D.A., ExP55 and P56 are challans obtained for having paid Rs.2,75,000/- and Rs.5 lakhs, Ex.P57 and P58 are certified copy of the letter dated 20.7.88 and 2.8.88 issued to B.D.A. by the plaintiff, Ex.P59 is a letter issued to the plaintiff by B.D.A., Ex.P60 is a receipt dated 10.8.88 issued by the sub-registrar, as spoken to by him.

141. It is also in the evidence of P.W.1 that



Ex.P61 is a copy of letter dated 1.8.88, Ex.P62 is a certified copy of letter dated 21.10.88 issued to B.D.A. by the plaintiff, Ex.P63 is a challan obtained for having paid Rs.27,471/- Ex.P64 and P65 are letter dated 6.7.92 and 17.4.97 issued by B.D.A., Ex.P66 is a challan issued for having remitted Rs.1,16,506/-, Ex.P67 is a khata certificate, Ex.P68 is a certified copy of the letter dated 10.6.88 issued to B.D.A. for exemption, Ex.P69 is a certified copy of the sketch issued by B.D.A., Ex.P70 is an intimation dated 8.8.02 issued by B.D.A., Ex.P71 is a challan issued for having remitted the amount.

142. It is also in the evidence of P.W.1 that Ex.P72 is a certified copy of letter dated 15.5.89 for exemption, Ex.P73 is a certified copy of Form 4, Ex.P74 is a notice dated 16.5.89 issued to the plaintiff, Ex.P75 is a certified copy of the order dated 27.5.89 passed by Special Deputy commissioner, Ex.P76 is a letter dated 8.6.84 written to the plaintiff by Krishnaiah Setty, Ex.P77 to P81 are 5 receipts, and Ex.P82 is an acknowledgment issued by district registrar and Ex.P170 is a registered sale deed executed in favour of the plaintiff by B.D.A., Ex.P191, P193, P194, P195, P198 and P199 are a certified copy of the property register, report of change, public notices issued by charity commissioner, paper publication, letter dated 3.6.1997 addressed to the superintendent of public trusts and a letter dated 9.2.99 addressed to charity commissioner by the 1st defendant. Further, as

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admitted by D.W.1, Ex.P242 and P243 are certified copy of reports of changes filed before charity commissioner by the 1st defendant. It is also brought out from him that Ex.P244 to P248 are certified copies of 5 returns filed before charity commissioner and Ex.P249 is a book published by BBT.

143. With reference to the above, although, P.W.1 is cross-examined at page 87, it is conspicuous to note that the correctness or validity of any of the said documents is not even touched, let alone questioning it. Thus, in my considered view, nothing is extracted from him capable challenging his testimony. On the other hand, it is interesting to note that he is allowed to reiterate his evidence. Of course, to some of the questions posed to him, he has pleaded that he does not remember. But I am afraid, the same cannot be outstretched to say that his testimony is rendered unreliable, more so, when it is corroborated by the unchallenged documentary evidence. Especially, when Ex.P191, P193, P194, P195, P196 P198, P199 P242 and P243 bolster the claim projected on one hand and militate against the defense raised on the other hand, I cannot disbelieve his testimony. Because, if the 1st item of the 'A' schedule were the property of the 1st defendant, it should have found a place in Ex.P242 and P243. Added to it, when it is brought out from him that the property at Srirangapatna was purchased out of the funds of Goloka Enterprises which was a partnership firm

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and the office bearers of the plaintiff were partners of it, it cannot not go unnoticed without leaving its own impact in strengthening the claim advanced. The further evidence that the advance, it had got from the orders to export incense sticks, was its initial capital would also lend some more credence to the claim that the plaintiff was an independent entity and was carrying on its activities out of its own funds. This would, in turn, necessarily bear some more testimony to its claim that it purchased the land.

144. Even then, in an attempt to obtain some help from the testimony of P.W.1 found in para 72 and page 33 of his deposition and reproducing the same, it is argued for the defendants that P.W.1 does not know anything about the allotment of the land and therefore, his statement that he followed up the process of allotment is proved to be false. It is also argued that as the persons who had admittedly followed up the matter namely M.P.Das, is not examined, an inevitable adverse inference has to be drawn against the case of the plaintiff. I am afraid, the said argument is rather misdirected, besides misconceived, for the simple reason that on the ground that M.P.Das is not examined, the voluminous evidence produced by the plaintiff cannot be dismissed as a bundle of lies or a false story woven by the plaintiff. For any reason, if such a course is adopted, I am sure, the course of justice gets derailed. Further, as already said above, it

cannot be said that the defendants have had no opportunity of examining M.P.Das. Of course, I am conscious of the fact that as M.P.Das is president of the plaintiff, even if the defendants had examined, they had to move on a difficult terrain and the possibility of he giving evidence supporting the defense raised is difficult to see. But the avenue of extracting the truth from his mouth was always open to the defendants. In view of this, I am persuaded to say that with it, the plaintiff has demonstrated the acquisition of the 1st item of 'A' schedule by the plaintiff.

145. To counter the evidence of P.W.1, D.W.1 has just stated that after the land was obtained from B.D.A., the land consecration ceremony was held an 4.9.88 in the presence of zonal secretary and other dignitaries of the 1st defendant and GBC and nothing more. (vide para 8 of his examination-in-chief) Yet in para 11, he has mentioned that when M.P.Das informed D.W.4 about the failure of his efforts to obtain land, with the help of S.K. Jain, a disciple of D.W.4, Indubhai patel, who was a senior leader of the ruling party in Karnataka and he, in turn, requested the then chief minister Ramakrishna Hedge who assured the allotment of a big plot. He has also stated that then a member of the bureau supervising the Bombay branch of the 1st defendant, instructed M.P.Das to file an application in the name of the 1st defendant for allotment of land and to pursue the matter with

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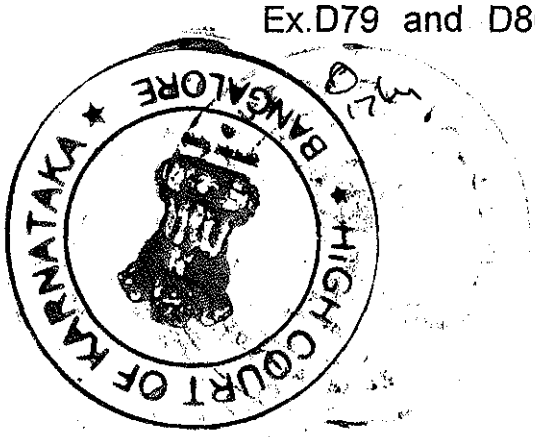
B.D.A. It is also in his evidence that the land was conveyed to the 1st defendant through its Bangalore branch. However, his categorical evidence given out in the cross-examination to the effect that any final decision to purchase a property is to be taken by the bureau would undoubtedly falsify his evidence that the 1st defendant purchased the land for its branch at Bangalore and terribly question the credibility of the defense raised, in the absence of the production of the decision of the bureau. D.W.4 has also given almost similar evidence. However, in the cross-examination, D.W.4 has admitted that except the say of the 5th to 7th defendants, there is no record or document to show that they contributed their personal funds to the 1st defendant for the purchase of land from BDA and they donated any amount for purchasing land at Bangalore. Thus, their own evidence has negatived the defense that out of its own funds, the 1st defendant acquired the land.

146. But it is important to note that the testimony D.W.1 and 4 does not have the support of documentary evidence. Of course, the defendants have relied upon Ex.D78, a certified copy of office note issued by B.D.A., Ex.D79, a certified copy of the letter dated 10.3.87 written to chief minister by Indubhai patel and Ex.D80, a certified copy of letter dated 14.8.87 written to M.P. Das by Indubhai patel, in sustaining their defense. Laying much thrust on Ex.D79 and D80, both Sri. Yoganarasimha and



Sri.D.R.Ravishankar strenuously contended that with them, there cannot be any doubt or hesitation to say that the land was alloted to the 1st defendant only. I find it really difficult to fall in line with their contention. No doubt, as reflected in Ex.D79, Indubai C.Patel, enclosing a copy of the letter dated 6.3.1987 addressed to Ramakrishna by M.P.Das, had requested Ramakrishna to look into the matter personally and allot the land to the society as early as possible. Thus, it does not furnish even any clue that the 1st defendant through M.P.Das had made the application referred to in it. However, it presupposes the fact that it was M.P.Das who had given the said application. Further in the absence of the production of a copy of the said application, it is not possible to say that it had been given by M.P.Das in his capacity as a president of Bangalore branch of the 1st defendant. More over, to pertinent question, when D.W.4 has merely said the he has to check whether the 1st defendant is in possession of any letter containing directions given to M.P.Das regarding the property at Bangalore, D.W.1 has discussed with him about the production of the documents in the case and he presumes that D.W.1 must have checked the documents with the 1st defendant, I cannot say that as president of the Bangalore branch of the 1st defendant, M.P.Das had made the application for allotment of land. Thus, the falsity in defense raised is exposed by the evidence of D.W.4 himself.

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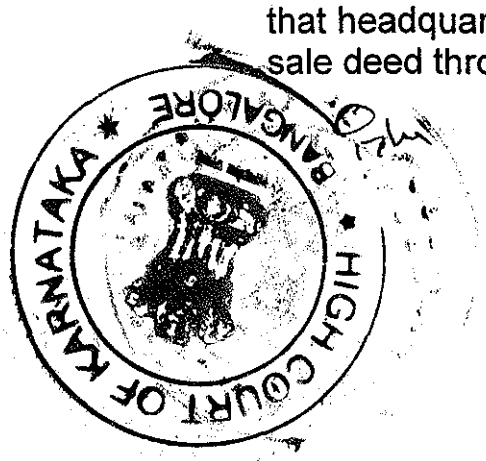
147. It becomes evident from Ex.D80 that chief minister was pleased to instruct the chairman of B.D.A. consider the allotment of land identified for Iskcon. Thus, it too does not bring out the requisite proof to say that Indubhai Patel had spared his service or wielded his influence for allotment of the land to and in favour of the 1st defendant. For any reason, agreeing with the arguments addressed for the defendants, it is said that for the allotment of land to the 1st defendant only, Indubai Patel used his good office and requested the chief minister to allot the land, I fail to understand why Ex.P170 came to be executed in favour of the plaintiff and why the 1st defendant failed to take any action against M.P.Das in that behalf. I mean to say, after having come to know of it, the 1st defendant should have initiated necessary action to undo it or to obtain a fresh sale deed to its name. But, the evidence brought on record speaks otherwise. In my considered view, it has certainly negatived the defense raised.

148. When questioned with reference to the allotment of land, of course, D.W.1 has asserted that it was conveyed to the 1st defendant in 1988 and the 1st defendant obtained its sale deed, only to be dismissed as not meriting any consideration, as it has run counter to Ex.P170. It is curious to take note of another assertion made to the effect that headquarters at Bombay is in possession of the sale deed through its Bangalore branch. If it were in



the custody of Bangalore branch, then the 1st defendant should have secured it from Bangalore branch and produced it. But as admitted by him only, when the 1st defendant did not try to secure the sale deed from its Bangalore branch, it is not possible for me to believe his testimony and rely upon it, more so, on the face of its very production by the plaintiff. It is also note worthy to mention about the ignorance feigned by D.W.2 whether the 1st defendant has not received the title deeds from Bangalore till today, adding strength to the fact that it did not try to secure the sale deed from Bangalore. If the sale deed were in custody of Bangalore branch, it is not known how and when, it went to the custody of the plaintiff. Its custody with the plaintiff, needless to say, goes a long way in strengthening the plaintiff's claim.

149. It is also brought out from D.W.1 that all the properties are owned by the 1st defendant, but it has registered some properties with the commissioner of charity. But to the next question, he has pleaded his inability to say which are all the properties of the 1st defendant that are not registered with the commissioner of charity. However, he is fair enough to admit that the non-registration of some properties is a lapse on the part of the 1st defendant. But retracing his steps on it, he has again said that they are not registered by oversight. In particular, he is categorical in saying that the properties at Bangalore are not registered, questioning the very

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credibility of the defense raised. If the 1st item of the 'A' schedule was the property of the 1st defendant, the 1st defendant would have and should have got it registered with the commissioner of charity. The inaction or dubious silence on its part has succeeded in exposing the falsity in its defense. Inviting my attention to page 2 of Ex.D187 which is a letter dated 27.11.1991 written to H.C.Madhupandit Das by D.W.2, Sri.D.R.Ravishankar contended that it had been written to Bangalore center relating to the land and it does bring out enough proof that the land had been purchased by the 1st defendant. What could be gathered from para 3 of page 2 of it is that D.W.2 had requested M.P.Das to forward purchase agreement and all other documents evidencing Iskcon's ownership over the land as it was required to get it registered in Iskcon's name with the charity commissioner, Bombay. But there is no evidence at all even to speak that M.P.Das had responded to his request, much less, favourably. On the other hand, the evidence on record is clear enough to say that the 1st defendant could not even secure Ex.P170. Furthermore, it is on record that uptil now, the 1st item of A schedule is not registered with the charity commissioner, Bombay. As such, his contention cannot go to the rescue of the defendants.

150. The plaintiff has relied upon Ex.P200 which is a certified copy of a public notice issued by

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charity commissioner as spoken to by P.W.1. It is a public notice of enquiry issued calling upon the public to file objections, if any, to the change report contained in it. Of course, it does not relate to the schedule properties. Even then, it is strange to find that the defendants did not take any steps to see or ensure that the 1st item of the 'A' schedule is registered with the charity commissioner. Further, Ex.P201 is a certified copy of the letter dated 3.6.1997 addressed to the superintendent of public trusts. But as it is incomplete, it cannot be appreciated. Notwithstanding the insurmountable difficulty posed by the non-registration of the land with the Charity commissioner or to wriggle out of it or to reconcile with it, taking shelter under S.22, 66 and 67 of Bombay Public Trusts Act, it is argued for the defendants that S.22 is only directory, as entires can be changed even subsequently by paying a penalty of Rs.1000/-. But I find myself unable even to appreciate the said argument, let alone accepting, for the simple reason that the 1st defendant could not have left out or omitted to register the land with the Charity commissioner, if it did belong to it. When it has registered some of its properties, there is no reason forthcoming for it to adopt a course of discrimination or to be selective. As such, the said argument cannot make any head way in helping the defendants to any extent.

151. Whereas D.W.4 has stated that he had suggested to M.P.Das to take vigorous steps to

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secure allotment of suitable land to have a full fledged center of the 1st defendant. He has also stated that M.P.Das and he met the chief minister who assured them of all help to obtain land for the 1st defendant. His evidence proceeds to say that M.P.Das sought his approval to undertake all expenditure to pursue the allotment of land and he had asked all his disciples to donate money for the purchase of the land and many of them including defendants 5 to 8 made substantial contributions which constituted a major portion of the purchase funds. But the fact that the said evidence is quite inconsistent with his own previous evidence cannot be forgotten. The very inconsistency brought about by him has rendered his evidence simply lamentable. Further, when it is perfectly clear that his evidence does not reconcile with that of D.W.1 and the fact that they do not match, it has rendered their say unreliable.

152. In the cross-examination, it succinctly brought out from D.W.4 that without his recommendation and consent of the bureau, no property can be purchased by any center in south India, with the consent of bureau, he will take the decision of purchasing property and he had taken its consent for purchasing property at Bangalore. But it is curious to note that he has slipped away by saying that he is not sure whether the said consent is recorded in the minutes book, inducing me to say that he was reluctant to speak out the truth and put



the records straight. Of course, in the next breath, he has asserted that his decision and the consent of the bureau are recorded in the correspondence. But he has not referred to the same in his evidence. Even then, I find myself unable to believe his say and rely upon it, for without the decision of the bureau and its resolution, the 1st defendant could not have purchased the land.

153. Even though, D.W.4 has denied another suggestion that the bureau was not even aware of the allotment of land for several years after its allotment, the evidence on record unfolds the credibility in the suggestion and demonstrates that his denial is far from truth. Because the 1st defendant would have taken timely action against M.P.Das for obtaining Ex.P170 in the name of the plaintiff, soon after its registration or within reasonable time. But it is amazing to note that uptil now, the 1st defendant has not raised even its little finger against it, as rightly pointed out by Sri. S.K.V.Chalapathy.

154. Whereas D.W.1 has stated that without seeing the records, he cannot say whether there was a resolution passed by bureau authorizing the purchase of the property and spending on the construction of building at Bangalore. Thus, his testimony does not reconcile with that of D.W.4. However, in the next breath itself, by asserting that the 1st defendant has records indicating the

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authorization to purchase the property, spending on construction of building and remittance of amount to Bangalore for construction, even though, D.W.1 has tried to play smart, it, instead of helping the defendants, has recoiled on the credibility of his testimony. The withholding of the production of the said records has undoubtedly stultified his assertion. Further, his assertion that the sale deed and the statements of M.P.Das and C.P.Das in the suits are the material that shows conveying of the property to the 1st defendant by B.D.A. would also make it point blank that he has no personal or definite knowledge about the transaction, but he has deposed of the records to oblige or help the 1st defendant.

155. The very fact that M.P.Das, as president of the plaintiff, had made an application to B.D.A. as per Ex.P51 accompanied by documents of the plaintiff would also falsify another assertion he had made an application in his capacity as president of Bangalore branch. His evidence that before he gave evidence, he had seen the application and the correspondence produced by the plaintiff would profusely point out that he has had no regard for truth. It is also necessary to note his further evidence that in April,2003 and February,2007, Stoka Krishna Das and Vasudevapran gave him the information that the seal of plaintiff is affixed on the application filed by the 1st defendant to make it look like the application of the plaintiff. It is another white

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lie uttered by him, for if it were true, the dubious silence assumed by the 1st defendant without raising its little finger against it, let alone initiating necessary action thereon and his questionable failure to pass it on to his advocate at the time of cross-examination of P.W.1, is really un-understandable, besides unthinkable too. Further, the timing of the information, that is long after the institution of the suit, cannot altogether be ignored or belittled. The ignorance feigned by him whether the documents produced here had been produced in SLP would induce me to say that either he was reluctant to speak out the truth or he had an inclination to conceal it.

156. Taking me through the evidence on record, Sri.S.K.V.Chalapathy advanced rather lengthy argument to drive home the plaintiff's claim that it is the plaintiff who acquired the 1st item of the 'A' schedule. In particular, he drew my attention to the registration number entered in Ex.P51 and contended that it evidences the fact that the plaintiff had applied for allotment of land and not the 1st defendant through its branch. Further Ex.P51(a) to (c) lend thorough support to his contention, for they are documents pertaining to the plaintiff. Ex.P113 is a letter dated 2.9.1988 issued to the plaintiff by the governor, as spoken to by P.W.1. A plain reading of it would disclose that the invitation extended to the governor by the plaintiff to perform land consecration ceremony on 4.9.1988 was

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accepted by him. It is addressed to M.P.Das, president, Iskcon, Bellary road, Bangalore-80. In the cross-examination, the evidence given on it by P.W.1 is not disputed and thus, Ex.P113 too, has lent its own credence to the plaintiff's claim and helped nurturing the same. The documents referred to above also support his contention that the plaintiff had paid the amount due and payable towards allotment of land. With regard to the controversy raised over the affixing of seal, he also argued that having regard to the fact that the registration number of the plaintiff is entered in Ex.P51, the affixing or not affixing the seal becomes irrelevant. It is also contended that D.W.1 has admitted that he has seen Ex.P51 made for allotment of the land and he has not disputed its correctness and thus, Ex.P51 is proved to its hilt.

157. In regard to Ex.P53, it is also argued for the plaintiff that as it makes a reference to Ex.P51 and other documents and the evidence given thereon by P.W.1 is not disputed in the cross-examination, it also lends enough credence to the testimony of P.W.1. It is further argued that Ex.P57, P58, P61 and P68 are correspondence made regarding allotment of land and Ex.P62 is a letter under which the assistant executive engineer of BDA handed over possession of the land to the plaintiff and as the correspondence bears registration number and the seal of the plaintiff, it does not leave any doubt to creep into the mind of anybody to say that they

do not pertain to the plaintiff. Inviting my attention to what D.W.1 has mentioned (vide para-5 of page 60 of his cross-examination), it is also argued that in spite of the fact that the said documents had been produced in SLP, there is not even a single word found in the written statement to speak that seal is affixed subsequently. It is also argued that if at all D.W.1 had received any information from Stoka Krishna Das and Vasudeva Pran Das, as asserted by him, there should have been cross-examination made on P.W.1 in that behalf. But there is not even a suggestion made to P.W.1 and thus, it becomes clear that the theory that seal is affixed subsequently is invented by D.W.1 at the time of filing his affidavit, as rightly argued for the plaintiff.

158. Ex.P69 also lends some more credence to the plaintiff's claim, as rightly pointed out by Sri.S.K.V. Chalapathy, because it bears the seal of the plaintiff. If the land had been allotted and sold to the Bangalore branch of the 1st defendant or the 1st defendant, the visualization of the presence of the seal of the plaintiff in Ex.P69 is certainly difficult to seek. Even then, in an attempt to reconcile with the presence of the plaintiff's seal on Ex.P69, Sri.D.R.Ravishankar vehemently contended that by affixing the seal of it subsequently, Ex.P69 is brought before the court. I fail to see any reason or force in his contention, for the simple reason that Ex.P69 is only a certified copy of the sketch. After obtaining certified copy, the plaintiff could not have

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put its seal and taken out xerox copy of it and produced it here, even though the possibility of doing it cannot be ruled out cent percent. But in the absence of any evidence capable of speaking on the manipulation alleged, it is hazardous to draw such a conclusion.

159. Further coming to Ex.P170, it is also argued for the plaintiff that as could be seen from para-2 of it, it was the plaintiff which had applied for allotment of bulk land. A scrutiny of the evidence and the documents upon which the plaintiff has placed reliance would profusely endorse the contention of Sri.S.K.V. Chalapathy. But disputing his contention, Sri.D.R. Ravishankar strenuously contended that Ex.P170 shows the name of the purchaser as president, 'International Society for Krishna Consciousness' (Iskcon), residing at No.210, Bellary Road, Bangalore. Further, leaning upon what is elicited from P.W.2 and reproducing the same in the written arguments, it is also contended for the defendants that when the plaintiff never functioned from No.210, Bellary Road, the said entry is definitely not of the plaintiff. Though the argument is not worded happily, its appreciation in its correct perspective cannot be avoided. As could be seen from page 18 of the deposition of P.W.2, he has stated that in 1985, the temple was shifted from West of Chord Road to No.210, Bellary road. In between 1978 and 1988, the temple had been shifted four times. The plaintiff did not

function from the changed addresses. Inviting my attention to the said evidence, Sri.S.K.V. Chalapathy contended that his evidence does not leave any scope for anybody to conclude that the plaintiff never functioned from No.210, as is sought to be contended for the defendants. P.W.2 has no where spelt out, much less in so many clear words that the plaintiff did not function from No.210. His evidence can only mean and convey the one and the only fact that the plaintiff did not function from the previous addresses after change, as rightly and forcefully contended by Sri.S.K.V.Chalapathy. In view of this, I cannot find any merit or substance in the written argument filed for the defendants.

160. In particular, emphasizing an entry made in Ex.P164, Sri.S.K.V.Chalapathy also contended that it was the plaintiff which paid the stamp duty of Ex.P170 and it was M.P.Das who presented Ex.P170 for registration and the registration expenses paid under Ex.P60 was borne by the plaintiff. Taking the assistance of Ex.P164(a) and P165(a) to (d) also, it is argued for the plaintiff that the registration number of the plaintiff is scribed on the 1st page of the same and as they are not challenged in the cross-examination, they are proved by the plaintiff. Next turning to Ex.P67, it was also argued that the khata of the land was made out in the name of M.P.Das and it pertains to the plaintiff, as he was its president.

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161. In relation to Ex.P72, P73, P75 and P76, it is also argued for the plaintiff that it is the plaintiff who applied for exemption under Urban Land Ceiling Act, entering its registration number and enclosing its memorandum of association, that column 6 of Ex.P73 says that except the land, no other land is held giving out enough proof that it was the plaintiff that had applied for exemption, because, the 1st defendant who had owned and possessed large extent of urban lands all over India could not have made that application. I find considerable force in the said argument. It is also argued that after hearing the plaintiff, the authority passed an order as per Ex.P75 granting exemption to the plaintiff. Sri.S.K.V.Chalapathy also argued forcefully that the 1st defendant could not have made an application to B.D.A. for allotment of land and it is, indeed, an important circumstance that thoroughly probablises the plaintiff's claim on one hand and negatives the defense raised by the defendants on the other hand. Emphasizing Ex.D187 which is dated 27.11.1991 and the fact that it was written by D.W.2 to M.P.Das long after the allotment of land and delivery of its possession to the plaintiff and laying stress on the evidence taken out from D.W.1 (vide page 18 of his cross-examination), it is contended for the plaintiff that he wrote it as instructed by the bureau and he was not aware of even the allotment of land and payment of the consideration and the fact being so, the defense raised that it was the 1st defendant which had



applied for allotment of land needs to be negatived.

162. The letter of approval to purchase the land from B.D.A. spelt out by D.W.4, is also not produced, as rightly pointed out by Sri.S.K.V.Chalapathy. In the light of the evidence taken out from D.W.4 to the effect that he does not remember whether the consensus of the bureau members referred to in para 23 was in writing, the non-production of any document in relation to it is understandable. I mean to say that there is no such document, as otherwise, the defendants would not have lost any time in bringing it before the court, as it is a document of tremendous importance in nourishing the defense raised.

163. In his endeavor of countering the lengthy argument addressed for the plaintiff, Sri.D.R. Ravishankar also advanced very lengthy arguments in an attempt of demonstrating that the defense is established. But I should mention here itself that the fact that a mere argument cannot establish any fact and it has to be established with the help of positive and cogent evidence was perhaps lost sight of. Even then, it is necessary for me to appreciate very many contentions advanced by him to find out whether they have helped the defendants and if at all they have helped, to what extent.

164. Leaning upon Ex.D152, D154 and D156 which are certified copy of the plaints presented by

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M.P.Das in O.S.2180/99, O.S.1483/01 and O.S.4467/00 firstly, it is contended for the defendants that they clearly state that Bangalore branch of the 1st defendant obtained the sale deed of the 1st item of the 'A' schedule from B.D.A. But, as Ex.P170 stands executed to the name of the plaintiff, I cannot say that the said contention merits any consideration. Further, as already said above, when Ex.P170 stands in the name of the plaintiff, the said contention has to give way to Ex.P170. Even otherwise, a mere argument cannot challenge the evidence, more so, the documentary evidence. In addition to it, for the reasons already recorded, the statements contained in Ex.D152, D154 and D156 cannot bind the plaintiff. Moreover, when the so called admission is shown to be erroneous or wrong by the plaintiff, the defendants cannot extract any help out of them.

165. However, drawing my attention to Ex.P207 to P211, Sri.S.K.V.Chalapathy contended that they do point out in unequivocal words that the statements made by M.P.Das in the suits were wrong and it would, in turn, lend some more credence to the stand assumed by the plaintiff. Ex.P207 to P210 are minutes of the meeting dated 10.8.01, 12.8.01 and 13.8.01, Ex.P211 is an enquiry report dated 5.11.01 given by governing council and Ex.P212 is a notice dated 25.5.84 issued to the members. Because, they are not disputed or questioned in the cross-examination, their



importance cannot be ignored. As could be seen from Ex.P207, a resolution was passed to form a committee consisting of C.P. Das, C.C. Das and Stoka krishna Das to conduct an internal enquiry and investigate into statements made by M.P.Das before various courts. Whereas, Ex.P208 points out that M.P.Das had filed the suits in his personal capacity making statements adverse to the interest of the plaintiff and because, C.P.Das had also joined him in filing the suits, it was resolved to drop his name from the committee. For the facts narrated in it, under Ex.P209, it was resolved to authorize Stoka krishna Das to institute court proceedings to safeguard the properties of the plaintiff from the 1st defendant, as could be seen from it only. Under Ex.P210, the committee had taken a decision to initiate an internal enquiry into the incorrect statements made M.P.Das.

166. Under Ex.P211, after having studied the files of the suits mentioned therein, the committee was of the view that M.P.Das had made wrong and unauthorized statements in his personal capacity in the said suits and therefore, it submitted a report of it to the governing council for further action. On the face of it, the fact that predominantly stands out is that the wrong doing of M.P. Das was taken cognizance of by the committee constituted to go into it and it was the subject matter of its meetings. Resolution made under Ex.P210 goes to show that only strictures were passed against M.P.Das

restraining him from making any such statements connected to the plaintiff in future and resolving not to initiate any other disciplinary action. Even Sri.D.R.Ravishankar pointed out the laudable service extended to the 1st defendant by M.P.Das. Taking note of the same and precisely for the same reason, when plaintiff did not chose to take coercive steps against M.P.Das, it cannot be found fault with. This would naturally and necessarily strengthen the plaintiff's stand that in his personal capacity only, M.P. Das had instituted the said suits and as such, they cannot bind the interest of the plaintiff. Thus, Ex.P207 to P212 do not lag behind in supporting the plaintiff's claim in their own way. In view of this, I do find some force in the contention of Sri.S.K.V.Chalapathy advanced with reference to it.

167. Nevertheless, inviting my attention to the time of Ex.P207 to P211, Sri.D.R.Ravishankar contended that they were prepared subsequent to the filing of the suit. I do not find any force in his contention, for they are anterior to the date of the institution of the suit, because the suit was filed on 15.10.2001. Of course, their date is very close to the institution of the suit. But in the absence of any evidence capable of speaking that keeping in mind institution of the suit, they were prepared, I cannot infer it. In other words, I cannot say that anticipating the filing of the suit, they were prepared to suit the convenience of the plaintiff. Even otherwise also, it is not possible to agree with the



contention of Sri.D.R.Ravishankar, for the simple reason that the plaintiff could not have anticipated or foreseen the defense to be raised by the defendants.

168. It is also in the evidence of P.W.1 that Ex.P214 to P220 are seven water bills issued by Maruthi water supply, Ex.P221 to P227 are acknowledgments issued in respect of them and Ex.P228 to P233 are six bills issued by Group 4 Securitas Guarding Limited. Laying stress on the same, Sri.S.K.V.Chalapathy contended that as the evidence of P.W.1 given thereon is not questioned, they necessarily lend some more credence to the plaintiff's claim and I cannot brush aside his contention, more so, when the authenticity of Ex.P214 to P233 is not questioned in the cross-examination. In view of this, I have to say that Ex.P214 to P233 have also contributed in their own way to sustain the claim.

169. As brought out from D.W.1, Ex.P237 is a certified copy of the auditor's report relating to Ex.D40 and there is no reference made to the auditor's report from Bangalore. In relation to the auditor's report of Ex.P237 and D39, it is also brought out from him that the period of Ex.D12 and D16 corresponds to Ex.D39 and P237 respectively. His evidence makes it clear that the defendants did not choose to produce auditor's report relating to Ex.D40, for the reasons best known to themselves,

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as rightly pointed out by Sri.S.K.V. Chalapathy. To an another pertinent suggestion tendered to the effect that because the plaintiff objected to the incorporation of Ex.D12 and D16, the same was not incorporated in Ex.D39 and P237, as already said above, DW1 has slipped away by merely saying as 'plaintiff did not exist'. The very fact that he has had no courage to deny the suggestion, coupled with his evasive answer would clearly indicate that he was not inclined to admit the truth as it is. But I should say that he has not succeeded in concealing the truth in spite of an attempt made to do so. In the next breath, he himself has admitted that the auditor's reports connected to Ex.D24 to D37 are not produced. Nevertheless, by giving an identical answer to another pertinent suggestion without denying it, he himself has brought-forth enough testimony to the fact that he had no inclination to admit the truth. Even though, he has asserted that Bangalore center had submitted auditor's reports pertaining to them and denied a suggestion that on the ground that if they are produced, they will go against the interest of the 1st defendant, they are not produced, it is not difficult to see reason in the suggestion, for a party would not withhold the production of evidence favourable to him.

170. D.W.1 has admitted that Ex.P239 and P240 are a certified copy of the auditor's reports filed before and after the revised assessment, respectively. Drawing my attention to para 2 of

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Ex.P239, Sri.S.K.V. Chalapathy argued that it does point out that plaintiff was operational, but it had not been submitting its audited final accounts since the accounting year 2000-01 onwards. Whereas Ex.P240 points out the audit of the accounts of various branches/centers mentioned therein. Unlike Ex.P239, in Ex.P240, Bangalore branch/center finds a place and it is 7th one in the list. When questioned with reference to it, D.W.2 has, no doubt, denied a suggestion that the 1st defendant used the word 'branch' for the first time in Ex.P240. But it is necessary to note that the defendants have not laid on record any document that supports his denial. However, focusing my attention on Mumbai branch found at the bottom of the second row of branches, Sri. S.K.V.Chalapathy pointed out that even the 1st defendant is a branch or a center only and as such, it cannot lie in its mouth to contend that there was or is its branch at Bangalore. I do find some force in his contention in the light of the evidence taken out from D.W.1. As could be seen from para 5 at page 64 of his deposition, D.W.1 has asserted that the 1st defendant has three centers in Bombay and their accounts are that of the 1st defendant, because every center is a branch of it. But it is pertinent to note the evidence given out by D.W.2 to the effect that 1st defendant is Bombay center and because Bombay center is also 1st defendant, it did not pay him the salary directly. This, supported by Ex.P240, would fortify the contention of Sri.S.K.V.Chalapathy.

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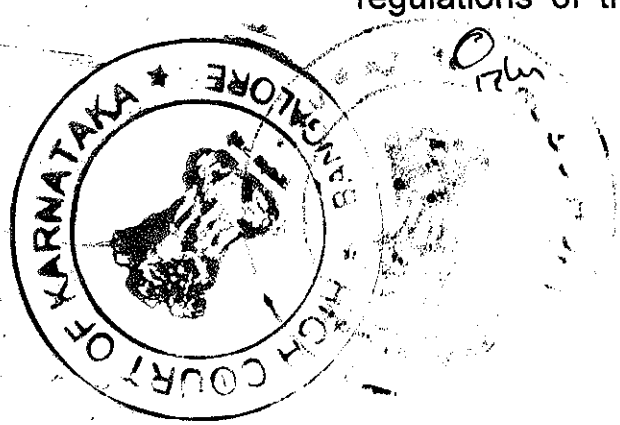
171. As brought out from D.W.1, Ex.P241 is a letter dated 23.11.1993 written to all the temple presidents of Iskcon India with an annexure by D.W.2. With it, D.W.2 had intimated all the presidents of temples of Iskcon in India that they have to deposit TDS amount with the government immediately or within a couple of days, when they deduct tax at source. This, coupled with his admission that Ex.D38 to D52 are signed by the bureau member on behalf of Iskcon India, would necessarily bring out not only the existence of Iskcon India, but also securing accounts from Iskcon centers for the purpose of consolidation, as rightly pointed out by Sri.S.K.V.Chalapathy. When questioned with reference to Iskcon India, in the first breath, when D.W.3 has denied a suggestion that D.W.2 was representing Iskcon India, in the next breath, he has admitted that D.W.2 has described himself as representing Iskcon India and he has seen the letters addressed by him. Thus, the two versions given out by him are irreconcilable and therefore, in between the two, the one that enjoys the support of other evidence needs to be believed and accepted.

172. Deriving help from Ex.D81 to D86, it is also contended for the defendants that they clearly establish that the request made to D.W.2 by M.P. Das to send the certified copies of the rules and regulations of the 1st defendant for fixing rates of



B.D.A. and pursuant to it, D.W.2 sent them for allotment and fixation of price. As could be seen from Ex.D81, it is a letter dated 28.11.87 written to D.W.2 by M.P.Das requesting D.W.2 to send certified copy of memorandum and rules and regulations of the society and certificate from commissioner of Income tax as they were urgently required for submission to the government of Karnataka in connection with the fixing of rates by B.D.A. for the land recently allotted. As per Ex.D82, which is a letter dated 4.12.88 written to M.P. Das by D.W.2, the documents requested for were sent. However, Ex.D83, which is a letter dated 17.12.1987 addressed to D.W.2 by M.P.Das, points out that M.P. Das had not received the letter of D.W.2. Whereas Ex.D84 which is a letter dated 15.12.87 addressed to M.P.Das by D.W.2 discloses that a certified true copy of memorandum of association and rules and regulations amended up to date was sent. Ex.D85 is only a carbon copy of the letter dated 29.12.1987 said to have been addressed to M.P.Das by D.W.2 and not a letter, as spoken to by D.W.1. D.W2 has also referred to it. But the fact that it does not bear the initials of D.W.2 does not escape the notice of anybody. Further, the fact that it makes a reference to Ex.D83 becomes evident from it only. It also becomes clear from Ex.D85 that D.W.2 had not sent the documents requested for. Ex.D86 is a letter dated 17.3.1988 written to D.W.4 by M.P.Das, as spoken to by D.W.1. A plain reading of it would disclose the

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narration of the efforts made by M.P.Das in connection with procuring land from B.D.A. But, how does it help the defendants is not pointed out.

173. D.W.2 is none other than chief accountant of the 1st defendant and therefore, his evidence assumes importance in clinching the controversy, as rightly pointed out by Sri.D.R.Ravishankar. Hence, by subjecting his evidence to a careful scrutiny only, truth has to be extracted, if all it contains. As spoken to by him, Ex.D81(a), D83(a) and D86(a) are the signatures of M.P.Das and Ex.D82(a) and D84(a) are identified to be as his signatures, about which no dispute is raised. In the cross-examination, D.W.2 has denied a suggestion that he never sent memorandum of association and rules and regulations to M.P.Das, on the face of the evidence available, only to be disbelieved. Of course, he has also denied another suggestion that Ex.D84 is concocted for the purpose of this case. But when he is not sure whether the postal receipt and acknowledgment pertaining to it are preserved or not, it is difficult to fall in line with his evidence and say that he had written a letter to M.P. Das as per Ex.D84 enclosing a certified true copy of memorandum of association and rules and regulations of Iskcon amended up to date. Further, on the face of date of Ex.D83 which is 2 days after the date of Ex.D84, I find it rather difficult to believe his evidence that he had written a letter as per Ex.D84 sending with it the

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memorandum of association. It is also interesting to note his evidence that the statement of M.P.Das to him that land is sought to be alloted to the 1st defendant is the basis for his statement made in para 14 of his affidavit. In the next breath, going back on the same, he has again said that M.P.Das had written to him to that effect and he is in possession of the said letter. But curiously enough, when the said letter is not brought before the court, despite his assertion that he will produce it, his doubtful and dubious evidence needs to be disbelieved. Of course, he has also denied the next suggestion that B.D.A. alloted the land to the plaintiff. But in my considered view, his denial certainly causes shock and dismay in the light of the clinching evidence brought on record.

174. Conceding the fact that Ex.P51 and P53 show that the plaintiff had made the application, it is next contended for the defendants that they do not find a place in Ex.D78 which is a notes sheet of B.D.A. under which land was allotted. It is also contended that certified copies are obtained from Ravinarayan Reddy which is another factor which makes Ex.P51 and P53 doubtful. It is also contended that D.W.1 and 4 have specifically stated the circumstances under which an application was made by M.P.Das. Further subjecting Ex.D78 to a great deal of criticism, Sri.D.R.Ravishankar repeatedly and strenuously contended that it reveals many serious anomalies, for page 1 and 2

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of it are replaced and the contents of the substituted page 1 and 3 are identical. After page 7, page 6 starts. Placing reliance on para 4 at page 5 and reproducing the same, it is also argued that when it is the specific case of the plaintiff, as reflected in para 6 of the plaint, that it gained international recognition only after the temple complex was inaugurated in 1997 and hence, it was the 1st defendant which was internationally famous in 1987 and that is why, the Chief Minister of Karnataka agreed to allot a big chunk of land to the 1st defendant. After appreciating the evidence brought on record with reference to Ex.D78 only, I have to find out whether the said contentions have helped the defendants in sustaining their defense.

175. No doubt, a careful scrutiny of Ex.D78 would reveal that it is not in order, as rightly pointed out by Sri.D.R.Ravishankar. But on the strength of the said fact, the other evidence brought on record by the plaintiff cannot automatically be disbelieved. In addition to it, even if it is eliminated from consideration, the other evidence on record cannot altogether be ignored. Laying emphasis on it, it is argued for the plaintiff that it contains 48 pages and the 1st defendant has not produced 82 pages of correspondence which is a part of the allotment file. It is also argued that all the inconsistencies are not worth any reply, without reference to the entire allotment file. I do find some force in the said argument, for on the premise that there are



inconsistencies in Ex.D78, the other evidence on record cannot be belittled and discarded in one stroke. It is also contended for the plaintiff that Ex.D78 does not say anywhere that the file was missing at any point of time and it is a story imagined by the defendants. In the absence of any evidence, much less clinching evidence, I am afraid the defendants cannot lean upon Ex.D78 to sustain their defense, more so, when it is an incomplete document and there is no positive evidence to show that file was missing.

176. As rightly argued for the defendants, it is true that there is no reference made to Ex.P51 and P52 in Ex.D78. But when it is already said that it is an incomplete document and is not maintained properly, on the strength of the fact that it has not made any reference to Ex.P51 and P52, Ex.P170 cannot be pushed to the background of no consequence, for without an application for allotment by the plaintiff, the execution of Ex.P170 is just beyond the imagination of anybody.

177. Placing reliance on Ex.D333, a letter dated 17.6.1979, it is also contended for the defendants that with it, the president of Bangalore branch informed the 1st defendant that B.D.A. has rejected the application of the Bangalore branch of the 1st defendant. Right at the moment, I should say that D333 is dated 12.6.1979 and not 17.6.1979. It is a letter written to the president, Iskcon, Bangalore, by

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B.D.A. requesting to furnish the particulars listed therein within a week from the date of its receipt, to take further action in the matter. It is necessary to note that it makes a reference to representation dated 28.4.1979 for allotment of C.A. site for construction of preaching mandir. But no evidence is forthcoming on either side as to who had given the said representation. In the absence of any such evidence and in the light of the fact that it had been given for allotment of a C.A. site, it cannot be said that Ex.D333 is of any assistance. It is also argued that its very custody with the 1st defendant would clearly indicate that the 1st defendant had previously made an attempt for allotment of land and a reference is made to it in Ex.P51. It is true that Ex.D333 was produced by the 1st defendant and its production was objected to by the plaintiff. But when it is already said that it relates to the allotment of a C.A. site, it cannot be of much consequence. Even otherwise, if it is assumed for a moment that the 1st defendant had made a previous attempt for allotment of land, even then, it cannot alter the situation or turn it in favour of the 1st defendant, more so, in the absence of connected evidence capable of showing that it was the 1st defendant which had filed the application for allotment of a C.A. site.

178. It is true that Ex.D333 is referred to in Ex.P51 amongst 3 other letters. But reference to Ex.D333 in it, instead of helping defendants, in my

considered view, has helped the plaintiff, for an indication that Ex.D333 must have been addressed to plaintiff would necessarily emerge, for the simple reason that admittedly the plaintiff had given application as per Ex.P51. In addition to it, as rightly pointed out by Sri. S.K.V.Chalapthy, the very fact that Ex.P51 bears the telephone number of the plaintiff would strengthen the plaintiff's claim further. On the face of it, I cannot accept the written argument filed for the defendants, as it is advanced, not only overlooking the date of Ex.D333, but also its contents.

179. With reference to Ex.D333, it is also argued for the defendants that its production was opposed by the plaintiff by filing objections and its very custody with the 1st defendant would indicate that the 1st defendant had made an attempt for allotment previously and even Ex.P51 refers to it.

180. Of course, the very arrangement of the pages of Ex.P78 would tend to make anybody, who takes a look at it, entertain a doubt whether the original of it is maintained properly or not. Laying stress on Ex.D78, Sri.S.K.V.Chalapathy contended that page 45 and 46 of it show that an application had been filed for copies of the same. The entries made in the said pages would support his contention, for it is clear from the same that the entire file consisting of 81 sheets was put up for taking further action and the request for issue of

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certified copies of the letters available in the file. This would squarely answer the contentions of Sri.D.R. Ravishankar that the defendants could not get the copies of the original pages. But, what I have to find out from it is whether it was the plaintiff or the 1st defendant who had made the application for allotment of the land, for it is not uncommon to find haphazard maintenance of records in any public office and considerations for the same are too many to list.

181. However, maintaining that the entire records pertaining to Ex.P51 and P53 are not produced by the plaintiff, it is argued for the defendants that they do not find any place in Ex.D78 and under which the land was alloted. Further drawing inspiration from the evidence of D.W.1 reproduced, it is also argued for the defendants that earlier applications were filed only by the 1st defendant and Shankabrit Das was acting as the president of Bangalore branch. I am afraid the said argument is, indeed, very feeble and as such, it cannot lead the defendants anywhere, for, when there is no document worth its name at all even to indicate that the bureau of the 1st defendant had taken a decision to purchase land and there was a resolution made to that effect, the said argument cannot merit any consideration. But, the immediate task to be accomplished is to find out which of the two versions is probable and believable, by assessing the evidence on record.

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182. It is next contended for the defendants that the plaintiff has produced two possession certificates, Ex.P72 and P203. But how and under what circumstances, they were issued in respect of the very same land is not explained (vide page 70 of written arguments) But as already said above, Ex.P72 is only a certified copy of the letter dated 15.5.1989 issued for exemption and it is not a possession certificate. As such, I have to brush aside the said contention as fallacious, as it is advanced overlooking the said fact. In view of it, the reply given for the plaintiff that they are, indeed, two different documents, not only endorses the view already taken up, but also gives a befitting reply to the arguments addressed for the defendants. It is also argued for the defendants that the grant of exemption under ULC Act does not vest any title in the plaintiff. It is a matter of nous that a person who is the owner of land can only apply for exemption under the Act. Thus viewed, it becomes evident that the said argument is nothing, but a sophism.

183. The evidence produced by the plaintiff shows that it is the plaintiff which paid the sale consideration and bore registration expenses and in that behalf, it has relied upon Ex.P60 and P164 and 165. A perusal of Ex.P60 points out the payment of registration charges. Whereas Ex.P164(a) and P165(a) to (d) lend enough credence to the plaintiff's claim, besides endorsing the contention of

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Sri.S.K.V.Chalapathy advanced with reference to same. Ex.P164(a) speaks of land account maintained by the plaintiff and evidences the payment of the market value of the site and bearing the expenses of stamp duty and the registration, Ex.P165(a) to (d) also point out the payment of the land value to B.D.A., stamp duty and registration expenses. Further, they being ledger and cash book thoroughly corroborate the testimony of P.W.1 given with reference to it. In the cross-examination, neither his testimony nor Ex.P164 and P165 is/are questioned. Further, either to counter the said evidence or eliminate it, it is pertinent to note that the defendants have not brought on record any evidence worth its name.

184. Of course, it is in the evidence of D.W.1 that the donations collected towards purchase of land from B.D.A. were paid to it. But, I should say that as his assertion is not supported by documentary evidence, it is hard it believe. Further, when he himself has admitted in the cross-examination that any expenditure above one lakh can be incurred only after the resolution of the bureau as per Ex.P202, in the absence of the production any resolution authorizing spending lakhs of rupees, I have to say that there is no evidence worth its name produced by the defendants to show that either the Bangalore branch of the 1st defendant or the 1st defendant had paid the land value and borne the stamp duty and registration expenses. No doubt, he

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has asserted that apart from the funds referred to in Rule 9 of Ex.P236, the 1st defendant has other funds not reserved by the bureau. But he has not made clear which are those funds. Further, as mentioned by him only, with the permission of the bureau, the branches can lend their funds and a branch can lend its funds to another as per the arrangement made by the bureau. It it were true, certainly, the 1st defendant should have clear cut and clinching documents in evidence of it. But the very fact that it does have any such documents would render its defense that with the help of the funds collected for it by its branch, the land was was purchased, simply lamentable. Hence, it is not possible for me to disbelieve the evidence produced by the plaintiff and discard it.

185. In regard to the collection of funds also, there is a great deal of controversy generated by the parties. Because, when the plaintiff has maintained that at the commencement of the activities by the plaintiff in 1978, the corpus if it was hardly anything and its monthly budget which was Rs.10,000/- was raised by way of local donations for its charitable activities. But there is no pleading, much less specific pleading on the source of money or funds that enabled the plaintiff acquire the 1st item of the 'A' schedule. In answer to it, the defendants have asserted that the funds for the acquisition of the property and every asset, construction of temple, for the day to day activities

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and for all projects and programs came from the collections made by the Bangalore branch of the 1st defendant using the exemption under S.80G of Income Tax Act,1961 and therefore, they belong to the 1st defendant only.

186. P.W.1 has not spoken on the source of funds worth mention, except making reference to the donations collected and its own funds. He has also referred to foreign contributions and obtaining central and sales tax registration to engage in business to generate more funds. Further, as spoken to by him, Ex.P169 is a donation collection book. In the lengthy cross-examination, it is necessary to note that Ex.P169 is not even touched at all. He has also spoken that Ex.P166 to P168 are three guest registration books. They are also not questioned in the cross-examination. A perusal of the same would disclose that they relate to the plaintiff, because they bear the telephone numbers allotted to the plaintiff. Ex.D5 is a receipt passed by P.W.1 as brought out from him only. It is a permanent receipt dated 15.7.1993 and it is in the same Form as the receipts of Ex.P166 to P168 are. But it is not pointed out how does Ex.D5 help the defendants. Of course, it came from the custody of the defendants. When P.W.1 had passed it, there is no evidence to speak as to how, why and when it went to the custody of the defendants. But when the receipt books viz., Ex.P166 to P168 are with the plaintiff, a single and solitary receipt like Ex.D5

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cannot out-weigh Ex.P166 to P168. Of course, Ex.D5 bears the seal of Iskcon. But as it is put twice and they overlap on each other, it is made difficult to ascertain whose seal it is. Thus, they also lend some more credence to the fact that the plaintiff was an independent entity, as otherwise, they should have been in the name of branch of the 1st defendant.

187. To controvert the same, no evidence has come out from the defendants. Instead, the defendants themselves have brought on record Ex.D106 to D142. As spoken to by D.W.1, they are carbon copies of 37 receipts. Sri.V.Ramesh Babu, learned counsel for the plaintiff objected to their marking on the ground that they have not come from proper custody. He is justified in objecting to their marking, because as admitted by him only, after collecting them from the donors, they were produced. As such, their custody with the defendants cannot be said to be proper. For the said reason, I have to say that they are not admissible, for they do not satisfy one of the twin requirements of law that enables the induction of documents into evidence. It is also necessary to note his assertion that the 1st defendant is in possession receipts evidencing the collection of donations. But they are not brought before the court. However, it is interesting to note his say that the branches of the 1st defendant remitted the amount collected by them to the 1st defendant and

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even Bangalore branch remitted the amount collected by it and it was deposited in the accounts of the 1st defendant. It has remained a question unanswered by the defendants. But the conduct of the defendants in not producing the documents evidencing the same makes his testimony simply incredible.

188. Yet in para 2 of page 79 of his deposition, D.W.1 has stated that because every Iskcon center functioning in India is a branch of the 1st defendant, the word 'branch' is not entered in Ex.D106 to D150, denying a suggestion that the seal of S.80G was put on them, before they were produced. Of them, Ex.D143 to D150 are 8 applications given to the 1st defendant as spoken to by D.W.1. Of course, they point that their authors had desired to become life patrons. But it is necessary to note that the defendants have not produced further evidence to show that they were admitted as life patrons. In view of this, the defendants cannot derive any help out of Ex.D106 to D150. Nevertheless, it is argued for the defendants that donations were collected by the branch in the name of the 1st defendant and the donors are given the benefit of approval obtained the 1st defendant under S.80G(5). As there is no concrete evidence to show that the donations were collected by the branch of the 1st defendant, the said argument cannot lead the defendants anywhere.

189. Dwelling upon Ex.D106 to D150, it is argued for the plaintiff that a perusal of the same would show the address and telephone numbers of the plaintiff printed on them pointing out that they pertain to the plaintiff, as none of them refers to the 1st defendant and indicates that they are issued by Bangalore branch of the 1st defendant. Hence, it is argued for the plaintiff that the donations were collected by the plaintiff. I cannot repel that argument, as it has got some force to reckon with. In addition to it, it is worth while to take note of the categorical admission given out by D.W.2 to the effect that all the funds collected by Iskcon, Bangalore were credited to its account at Bangalore. When there is no evidence even to suggest that Bangalore branch of the 1st defendant had a bank account at Bangalore, the one and only inference to be drawn is that Iskcon, Bangalore, referred to by him is plaintiff only. Even then, it is not known how could D.W.2 deny a suggestion that the said funds belong to the plaintiff.

190. In serious departure to what D.W.1 has said, D.W.4, in addition to what is already said above, has deposed that he had asked many of his disciples who were serving as full time devotees in other centers in India to go to Bangalore and join the team to ensure that adequate funds are generated for the project and he had authorized them to collect or generate funds from all possible sources and possible places. In the cross-

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examination, of course, he has denied that his statement that he helped his disciples to collect funds is false. It is true that a denied suggestion is no evidence in the eye of law. But the evidence extracted from him in the cross-examination that various Iskcon centers in India were collecting funds, that they were not remitting the funds collected by them to the 1st defendant and the funds collected by them did not come to head quarters provides a clear pointer to the fact that the plaintiff was collecting funds and they were not being remitted to the 1st defendant. Still, it is interesting to note the rider added by him that the funds were being put in the account of the 1st defendant at their places. But unfortunately for the defendants, there is no evidence to show that the 1st defendant had its own account at all places, where the funds were being collected. Further as admitted by him that he does not have any document to show that the defendants 5 to 8 had donated any amount for purchasing land at Bangalore. It has certainly betrayed the reliability of his evidence, more so, in the absence of any documentary evidence worth consideration produced in support of his statement. Hence, I find it difficult to believe his uncorroborated evidence and act upon it. In view of this and in the light of the evidence produced by the plaintiff, I am persuaded to say the the plaintiff has proved that it acquired the 1st item of 'A' schedule out of its own funds and defendants have failed to prove that the 1st defendant had generated funds and 1st item of

the 'A' schedule was acquired out of the said funds. This would, in turn, lend credence to the view taken up already that the plaintiff was very much in existence and pave way to a conclusion that it was very much functioning carrying on various activities.

191. With the establishment of the fact that plaintiff was, in fact, functioning, carrying on its activities and it is continuing its activities, the next face of the controversy is whether a branch of the 1st defendant was in existence and was it functioning, would crop up for consideration. To find out whether the 1st defendant has succeeded in bringing it home, not only the facts placed on record, but also the evidence produced in support of the same, are to be analyzed and appreciated.

192. The defense placed on record speaks that sometime before Srila Prabhupada attained his mahasamadhi, a few of his followers in Bangalore, commenced group activity poojas, sankeertans and other religious and charitable practices on a regular basis. At about the time of, or immediately after his mahasamadhi, the group in Bangalore became organized into a branch of the 1st defendant (hereinafter referred to as the Bangalore branch of the 1st defendant, the Bangalore branch or its Bangalore branch depending on the context) and was functioning at the premises of Hanuman temple, crescent road, Bangalore. Thus, the defendants themselves have made it abundantly

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clear that the 1st defendant had not established its branch at Bangalore. But on the said premise, a conclusion that there was no branch of the 1st defendant at Bangalore cannot be reached abruptly. On the other hand, the one and the only course open to the court is to reach a conclusion only on the strength of the evidence brought on record.

193. But it is interesting to note that going back on the defense raised, in his examination-in-chief itself, D.W.1 has stated that sometime in 1975-76, some full time devotees of the 1st defendant attached to its Hyderabad branch started the activities of the movement in Bangalore and within a short span of time, the preaching in Bangalore grew and for the purpose of performing spiritual obligations of full time devotees, a temple was established at No.40, 6th floor, Marshalling building, Infantry road, Bangalore-1 and subsequently, it was shifted to No.39, Crescent Road, and Shankabrit Das was designated as the branch president at Bangalore in 1977. Thus, the departure made by D.W.1 is quite striking and it cannot escape the notice of anybody. As his evidence is not just founded on defense, I find it difficult to believe and rely upon it.

194. At page 49, D.W.1 has categorically stated that branches were being opened on the strength of consensus of the bureau members of the 1st defendant and their consensus is recorded in the

minutes of the meeting sometimes. He has also made it clear that the opening of a branch is reflected in the records in possession of the 1st defendant. Yet at page 53, he has asserted that the 1st defendant has maintained the books of the minutes of the meetings of the bureau and in 1996, he had seen the minutes book from 1971 to 1996. But curiously enough, the defendants have not brought those records before the court and the failure on their part to produce them, has, in my considered view, boomeranged on them. However, the say of D.W.1 given to the effect that he does not remember to have come across the resolutions passed for opening branches would tend to point out that there was no resolution passed for opening Bangalore branch. As otherwise, the defendants would not have withheld the production of the books of the minutes of the meetings, if available. Yet, in para 55 of his cross-examination, D.W.1 has asserted that by the end of 1977, Bangalore branch was opened, but there was no resolution of the bureau for opening it, falsifying his own earlier evidence. The inconsistency in his stand, which is of serious ramifications, has certainly questioned the credibility of not only the defense raised, but also his evidence.

195. In page 57 of his cross-examination, it is brought out from D.W.1 that the correspondence showing the working of Bangalore branch between 1977 and 1981 and the appointments made by the

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bureau is available. But curiously enough, the same is not brought before the court rendering his testimony simply lamentable. Further, in the light of his inability to say whether the bureau had directed Bangalore branch in writing to send its accounts to Hyderabad and there was no legal impediment for Bangalore branch to send its accounts to the 1st defendant would also tend to negative the defense raised that Bangalore branch of the 1st defendant was functioning at Bangalore, for the simple reason that if at all there were a branch functioning at Bangalore, it would have certainly sent its accounts to the 1st defendant or the 1st defendant would have secured them.

196. It is also brought out from D.W.1 that the 1st defendant strictly followed the rules in opening the branches. If that be so, it should necessarily have documents to evidence the opening of its branch at Bangalore. Hence, the very fact that no such documents are brought before the court would go a long way in rendering his testimony simply hanky-panky. It is also pertinent to note his another assertion that the correspondence showing the working of Bangalore branch is available, but he has not made any specific reference to the same,where ever necessary.

197. Ex.D9 to D.37 are balance sheets, statement of income and expenditure, receipts and payments of Bangalore branch, auditor's report,

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audited balance sheets and Ex.D9(a), 10(a), 11(a) and D23(a) and 13(a), 14(a), 15(a), 17(a), D18(a), D.19(a), D.20(a), D21(a), D22(a), D24(a), D25(a), D.26(a), D.27(a) and D28(a) are the signatures of Mahashringa Das, M.P.Das and V.L. Varadaraju respectively, as spoken to by D.W.1. Ex.D9 to D37 relate to the period between 1982 and 2000. But a bare look at them would not support the testimony of D.W.1 that they relate to the Bangalore branch of 1st defendant, as no indication of the said fact is found in them. Further in the cross-examination, it is brought out from him that earlier to Ex.D9, no separate balance sheets were prepared by Bangalore branch and the accounts of Bangalore branch are not separately shown in the accounts of Hyderabad branch. Of course, he has denied a suggestion that Ex.D9 pertains to the plaintiff and asserted that the name 'International society for krishna consciousness' and the signature found in Ex.D9 indicate that it pertains to Bangalore branch (vide page 62 of the cross-examination). But when he is simply ignorant whether there was any reason for not mentioning 'Bangalore Branch' in Ex.D9, his denial and assertion are really difficult to believe.

198. D.W.1 has made another assertion that generally 'branch' is not used by Iskcon centers. But when a center is a branch, I find myself unable to believe his testimony and act upon it, more so, in the light of the argument addressed for the plaintiff that Iskcon, Ahmedabad is a branch of the 1st

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defendant as reflected in Ex.P197 which is a certified copy of auditors report pertaining to said branch as spoken to by P.W.1. It is not known why the 1st defendant was selective in using the word 'branch'. Further, it is also argued for the plaintiff that the fact that Ex.P197 is in the format prescribed by B.P.T. Act and there is a reference made to S.36 of the said Act in it and none of the audit reports of Iskcon, Bangalore that were consolidated by Iskcon India, is in the said format and therefore, it clearly establishes that the accounts sent from Bangalore were never the accounts of the so called branch of the 1st defendant. I cannot repel the said argument as devoid of any truth or force. Of course, he has denied another suggestion that Iskcon centers that are branches of the 1st defendant have specifically used the word 'branch' in their statement of accounts, without any rhyme or reason, as he has, in the next breath itself, admitted that in Ex.P197, the said word is used. As could be seen from Ex.P197, it is a certified copy of the auditors report pertaining to the branch of Ahmadabad and P.W.1 has spoken on it. Thus, the use of the very word 'branch' would expose the fact that what D.W.1 has given in that respect is not the whole truth, but a distorted version of it.

199. It is also brought out from D.W.1 that as on the date of Ex.D38 which is an assessment order for the year ending on 30.6.1982, all the Iskcon centers existing were the branches of the 1st

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defendant and they were submitting the audited statement of accounts to the 1st defendant and those accounts were audited by the chartered accountant of the 1st defendant. He has also mentioned that all the branches of the 1st plaintiff, which should have been the 1st defendant, have prefixed 'Iskcon'. But when it was suggested to him that schedule 8 of it discloses 30 Iskcon centers, without denying it, he has asserted that it discloses only 11 Iskcon centers. But a bare look at it would disclose that it contains only 15 Iskcon centers and therefore, in suggesting that there are 11 Iskcon centers to D.W.1 and his assertion that it contains 30 Iskcon centers in it, both of them are wrong. Further the fact that does not escape the notice is the absence of Bangalore center in Ex.D38. D.W.1 has also mentioned that some of the places shown in the 8th schedule prefixed by Iskcon were not full-fledged Iskcon centers. But he has not pointed out, out of 15 Iskcon centers entered in it, how many of them were not full fledged Iskcon centers. Further, his inability to say whether the use of the words 'associated center' and 'institutions' in the 8th schedule also paints a picture of lack of complete knowledge about Ex.D38.

200. Yet in another place, D.W.1 has offered an explanation by saying that because branch means center, the word 'branch' is not used for other centers. He has proceeded to say that in relation to Delhi, both branch and center are used. But he

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has no explanation to offer as to why a course of discrimination was adopted in relation to Delhi branch /center. According to him, associated centers mean activities of the 1st defendant only to be dismissed as not meriting any consideration. In his anxiety to say something about it, even though he has come out with it, in my considered view, it has certainly betrayed his ignorance lending credence to the view already taken up. However, as already said above, apart from associated centers which, he has claimed as part of the 1st defendant, his say that other entities are independent bodies lend some more support to the plaintiff's claim.

201. In the cross-examination dated 7.8.2008, D.W.1 has asserted that there is a yardstick to determine whether a particular center is a full-fledged center and in case of full fledged center, there would be office-bearers. He has also proceeded to say that when the 1st defendant appoints office-bearers, the center would be a full fledged one. Thus, he has made it point blank that with the appointment of office-bearers to the center by the 1st defendant, it becomes a full fledged one. But unfortunately for the defendants, they are able to produce any concrete or clinching evidence to show the appointment of office-bearers to the Bangalore branch or center. On the other hand, as categorically admitted by D.W.4, the decision of establishing a branch of Bangalore with the consent

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of the other members of the bureau is not recorded in the minutes book. Even though, he has claimed that he himself appointed Shankabrit Das as president of the Bangalore temple with the consent of the bureau on the ground that Shankabrit Das was overseeing the activities of the Bangalore, the order appointing him is not in writing. To add some more consternation or to cause shock and dismay, D.W.1 has said that, that is how the Bangalore branch of the 1st defendant came into existence. In my considered view, his assertion has effectively uprooted the very credibility of the defense raised.

202. Laying stress on the sum shown on liabilities side viz., 1,41,299.87 and Rs,1,41,299.88, Sri.D.R. Ravishankar repeatedly and strenuously contended that the 1st defendant received the accounts from Bangalore and treated them part of Hyderabad branch till 1981 and after 1981, when the activities of the Bangalore grew, Bangalore accounts were audited and sent to Bombay directly as per Ex.D9 to D37. But I find it difficult even to appreciate his contention in the light of Ex.P184, the argument addressed in support of it and the evidence extracted from D.W.1 which is already referred to above. The sum total of building fund and library fund as on 30.6.1982 was Rs.2,82,599.75. But as Sri.S.K.V.Chalapathy rightly pointed out, it represents the balance as reflected in Ex.P184 as on 30.6.1983. Ex.P184 is an auditor's report dated 6.7.87 and Ex.P185 to P187 are 3

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balance sheets for the year 1984-85 to 1986-87 as spoken to by P.W.1. They were prepared by a chartered accountant by name K.Shivaprabhu. But as already said above, Ex.D9 to D11 bear the signature of P.W.3 and as per his evidence, he audited the accounts of the plaintiff and the defendants have not succeeded in impeaching it.

203. Despite the evidence of P.W.1 and the fact that the defendants are not able to impeach it, an attempt is made to generate some controversy with regard to the appointment of the internal auditors and statutory auditors. Of course, there is no specific pleading on it placed on record by the plaintiff and neither there is evidence given. Even in the course of cross-examination, nothing is brought out from P.W.1 to 3 with regard to the same. However, when questioned with reference to it, D.W.1 has categorically admitted, without mincing any words, that there is no resolution passed by the bureau of the 1st defendant for appointment of statutory auditors for branches. Further, he has pleaded his inability to say whether the minutes books of 1971 to 1996 refer to their appointment.

204. Whereas, D.W.2 has come out with his say that the bureau of the 1st defendant was not directly appointing statutory auditors for its branches and centers. It was not appointing them by its own resolutions, but with the knowledge of local bureau members, the branches and centers were

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appointing statutory auditors. Further, when he has asserted that the 1st defendant has material to find out whether a report sent by any branch or center is of an internal auditor or statutory auditor and to his knowledge, internal auditors are not appointed for branches or centers, it is really difficult to believe the defense that the 1st defendant had appointed any auditors for its so called Bangalore branch. It is also necessary to note his further evidence that on the basis of covering letters sent by branches and centers, he came to know that the reports sent with them were of statutory auditors and he has claimed to be in possession of those letters. In the absence of their production or reason for failure to produce them, I cannot believe his testimony certainly given to subserve the interest of the 1st defendant. Further, when he has not seen any correspondence with regard to it and his oral interaction with the bureau members is the basis for his statement, I really find difficult to believe his uncorroborated testimony and rely upon it.

205. The evidence extracted from D.W.3 that he does not remember whether Sudarshan and Pradeep had given audit report in respect of Bangalore center, Sudarshan was an internal auditor and Pradeep was a statutory auditor, statutory auditors were appointed by the 1st defendant and internal auditors were appointed by the presidents, coupled with his inability to recall whether there was any official communication with

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regard to the appointment of statutory auditors and the information given to him by M.P.Das is the source of his knowledge, has stood contradicted by the say of D.W.1 and 2. Hence, I cannot believe it, more so, when his knowledge on the appointment of internal and statutory auditors is not definite. Even though he has denied a suggestion that Sudarshan was never an auditor of Bangalore center, the defendants have not placed before court any record that supports his denial. In view of this, I have to accept the contention of Sri. S.K.V.Chalapathy that plaintiff had appointed its own auditors and P.W.3 is one them.

206. Inviting my attention to Ex.P188, it is argued for the plaintiff that R.Shivaprabhu had been appointed as statutory auditor for the plaintiff. It is a letter of acceptance dated 10.10.1986 given by R. Shivaprabhu accepting his appointment as statutory auditor for the plaintiff. Because it bears the registration number of the plaintiff, there cannot be any doubt in saying that plaintiff had appointed him as its statutory auditor. It is also argued that P.W.3, who has signed Ex.D9, gave no objection certificate as per Ex.P253 to R.S.Prabhu and company, who audited the accounts for the next period of five years ending on 30.6.1987. Ex.P253 is a letter dated 22.8.1986 written to the president of the plaintiff by P.W.3 which bears his signature as per Ex.P253(a). A copy of it was marked for M/s.R.S.Prabhu and company, as indicated therein.

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It speaks of his resignation as a statutory auditor and he has no objections to M/s.R.S.Prabhu and company to take up the audit. Just like Ex.P188, Ex.P253 also bears the registration number of the plaintiff making it abundantly clear that P.W.3 had been appointed as statutory auditor and he resigned and pursuant to his resignation, R.S.Prabhu and company took over the audit of the accounts of the plaintiff. As already said above, P.W.3 has spoken thereon and besides that, he has also spoken that Ex.D9 to D11 bear his signatures as per Ex.D9(b), Ex.D10(b) and Ex.D11(b). His testimony is not discredited in the cross-examination. In view of this, I am not hesitant to say that Ex.D9 to D11 are the balance sheets of the plaintiff and such, the controversy generated by the defendants has to recede to background as of no consequence.

207. As rightly pointed out by Sri.S.K.V.Chalapathy, D.W.1 has admitted that earlier to Ex.D9, no separate balance sheets were prepared by Bangalore branch, giving enough indication of the fact that prior to 30.6.1982, balance sheets had not been prepared by Bangalore branch. However, he has also said that prior to 1.7.1981, every year, the accounts of Bangalore branch were being sent to Hyderabad branch for audit. But in the absence of reason why the accounts of Bangalore branch were sent to Hyderabad, it is difficult to believe his say. The fact being so, it is not possible

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to believe the defense raised that in 1977 or early part of 1978, Bangalore branch had been established. In addition to it, when Ex.D9 has come out to be the balance sheet of the plaintiff and there being no balance sheets of the so called Bangalore branch prepared even posterior to 30.6.1982, I cannot, but accept the contention of Sri.S.K.V.Chalapathy that when once Ex.D9 is accepted as belonging to the plaintiff, there ends the matter and with it, the defense raised dies on its own. In other words, I may say that the very evidence of D.W.1 has also questioned the reliability of the defense that there was a branch of the 1st defendant established at Bangalore. It is also in his evidence that by that time, because some disputes had arisen between the members of the bureau of the 1st defendant and M.P.Das, he was asked by the bureau to finalize the balance sheets of the 1st defendant without waiting for the audited accounts of the Bangalore center of the 1st defendant. If Bangalore center were its branch, it could not have ignored or overlooked the instructions of the 1st defendant to send its accounts.

208. D.W.2 is chief accountant of the 1st defendant and therefore, his testimony naturally assumes importance. He has given evidence that from the financial year commencing from 1.7.1981 and onwards, Bangalore center has been consistently sending the audited accounts along

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with auditors' reports to the head office of the 1st defendant and he has been preparing balance sheets and the statements of income and expenditure of the 1st defendant. He has also given evidence that for the financial year ending on 31.3.2001, the audited accounts were not sent by Bangalore center.

209. Of course, D.W.2 has referred to Ex.D9(a), Ex.D10(a), Ex.D11(a) and Ex.D23(a), Ex.D13(a) to Ex.D22(a), Ex.D24(a) to Ex.D29(a), Ex.D30(b) and Ex.D31(a), Ex.D32(a), Ex.D33(a) and Ex.D34(a) to Ex.D37(a) as the signatures of Mahashringa Das, president of Bangalore branch, M.P.Das and P.W.1. He has also identified Ex.D81(a), Ex.D83(a), Ex.D86(a), Ex.D88(a), Ex.D179(a), Ex.D182(a), Ex.D184(a), Ex.D216(a), Ex.D217(a), Ex.D220(a), Ex.D263(a), Ex.D265(a), Ex.D266(a), Ex.D271(a), Ex.D272(a) and Ex.D274(a) as the signatures of M.P.Das. Whereas Ex.D82(a), Ex.D84(a), Ex.D177(a), Ex.D185(a), Ex.D187(a), Ex.D189(a), Ex.D196(a), Ex.D199(a), Ex.D200(a), Ex.D202(a), Ex.D205(a), Ex.D207(a), Ex.D209(a), Ex.D218(a), Ex.D221(a), Ex.D222(a) and Ex.D225(a) are his signatures, as spoken to by him. It is also in his evidence that Ex.D171(a) is signature of Gauranga Das. Ex.D174(a), Ex.D175(a), Ex.D176(a) are the signatures of Gauranga Das, Devaiah and Dasheswari Devi Das respectively, Ex.D180(a) is the signature of his secretary Sandra Jacinto, Ex.D186(a) is signature of C.P.Das, Ex.D188(a) to

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Ex.D190(a) and Ex.D194(a) are the signatures of Geetha Gopal Das, Ex.D191(a), Ex.D192(a), Ex.D195(a), Ex.D198(a), Ex.D219(a), Ex.D224(a), Ex.D226(a), Ex.D227(a) and Ex.D273(a) are the signatures of A.D.Das and Ex.D193(a) is the signature of his secretary S.S.Polekar as spoken to by D.W.2.

210. In the cross-examination, when D.W.2 has categorically mentioned without mincing any words that after the receipt of audited reports from the centers, he does not scrutinize them, as scrutiny of the accounts is not his job, he himself has tended to weaken his evidence. It is also brought out from him that he is acquainted with the provisions of Bombay Public Trust Act and under the said Act, the 1st defendant is required to maintain its accounts in the prescribed form. Even though, he has said that the audited reports of the 1st defendant are required to be in a particular form, those of its branches need not be in such form. However, he has added that he had written to various centers requiring them to keep their audited reports in the Form prescribed by the Act, giving an indication that the audited reports sent from Bangalore were not of the branch of the 1st defendant, but of the plaintiff, for the simple reason that they were not in prescribed Form. When he himself has said that just to bring uniformity in the income tax returns, he had written to the centers, the 1st defendant should have insisted upon preparation of the audited

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reports in the prescribed Form.

211. When questioned with reference to Ex.D197 which should have been Ex.D196, as Ex.D197 is only a postal acknowledgment pertaining to it, D.W.2 has mentioned that because the case set out in it was an isolated case, he wrote it. But he did not follow it up, because he was not instructed by the bureau. The dubious silence on the part of the 1st defendant or its bureau goes a long way in rendering his testimony unreliable, as if Bangalore branch were guilty of indiscipline or recalcitrance to the extent narrated in Ex.D196, the 1st defendant would not have tolerated it. Furthermore, it is necessary to note that such inaction of serious magnitude does not brook delay in taking action against the erring centers.

212. Further as admitted by D.W.2, his knowledge on whether particular center is a branch of the 1st defendant or not is based upon the audited accounts and also verbal information furnished by the bureau, as already said above. When Ex.D9 has come out to be the balance sheet of the plaintiff and D.W.2 has not denied the suggestion and instead, the answer given by him would, indeed, suggest that the schedule 20 of Ex.D38 to D50 is similar, bringing out some more credence to the fact that Ex.D38 to D50 belong to the plaintiff.

213. D.W.2 has claimed to have seen the

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audited final accounts of the 1st defendant to know the number of branches it has. But he is ignorant whether the 1st defendant has maintained register of its branches and centers. Further, to a pertinent suggestion that except the receipt of accounts from the centers and their consolidation for the purpose of audit, he does not know anything about the 1st defendant and its centers, without denying it, he has given an answer that he knows a few more things which he has not spelt out. But the very fact that he has not denied the suggestion would go a long way in bringing out the truth in it.

214. The defendants have also relied upon Ex.D158 to D166 in an attempt of sustaining their defense. They are a certified copy of plaint presented in O.S.4169/01 filed by Anand samanth, an order dated 14.8.01 passed in A.O. 709/01, order sheet maintained in it, objections filed by M.P.Das in C.P.492/04, affidavit filed by the plaintiff in SLP 14649/02, IA 13 filed by the 1st defendant in CP 492/04, rejoinder affidavit filed by D.W.1 in the same petition, IA 14 filed in it by the 1st defendant and objections filed to it by M.P.Das. Of course, the same is not disputed in the cross-examination. But, how do they assist the defendants in sustaining their defense is not pointed out by him.

215. A perusal of Ex.D158 would disclose that Anand Samant had filed against Adridharan Dasa and others for a declaration that the perpeted action



of the bureau of the 4th defendant in amending the rules and regulations of it in 1978 and 1993 are void abinitio, the executive committee or bureau of the 4th defendant has no power or authority to remove the temple president or any other office-bearers of the 18th defendant, who is plaintiff herein and permanent injunctions. Thus, the very nature of the suit and the relief claimed in it tends to support the claim projected by the plaintiff, for M.P. Das is shown to be the president of the plaintiff herein. In para 6 of it, it is mentioned that Srila Prabhupada did not want a centralized legal organization binding every center under one roof or legal entity. That is what the plaintiff has maintained and putforth. Further, the various averments made in it which are carried forward to the plaintiff on hand, undoubtedly support the plaintiffs claim. Nevertheless, pointing out that the said suit came to be dismissed, it is argued for the defendants that having sufferred a failure in the said suit, M.P. Das has invented the suit on hand. But the dismissal of the said suit cannot have any impact on the suit on hand, for it has to be decided and disposed of on its merit only.

216. Nevertheless, adverting my attention to them, Sri. D.R.Ravishankar repeatedly argued that the plaintiff has used the interim order granted in the appeal arisen from O.S.4169/01 as a spring board to launch the suit, even though the appeal was dismissed chastising the appellant and M.P.Das for forum shopping. As rightly pointed by him, there

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was no direction issued by Bombay High court, the filing of the suit is based on it, as could be seen from para 25 of the plaint. But nevertheless, when the suit is filed to safeguard its interest, after suffering a failure, the absence of any such direction cannot be made much of.

217. Of course, D.W.2 has also spoken for and on behalf of the defendants. But his evidence does not touch upon either the establishment of a branch of the 1st defendant at Bangalore or its functioning barring his evidence on the maintenance and submission of accounts and their audit. He has also given evidence that for the financial year ending 30.6.1982, the head office of the 1st defendant received audited accounts and reports from Bangalore center for the first time in 1983 and thereafter, the Bangalore center delayed sending audited accounts and reports for the subsequent years.

218. In the cross-examination, it is brought out from D.W.2 that 2 to 3 times, the bureau had asked him to check the financial discipline of Bangalore center. He is definite about the fact that the accounts are to be maintained in a particular form. But the fact that the accounts of Bangalore center were not maintained properly and he had written to Bangalore once requiring it to maintain its accounts in a particular form becomes evident from his own say. The said piece of evidence, although does not



clinch the issue, it is capable of weakening the defense raised, for if the so called Bangalore center were the branch of the defendant, there is no point or reason why it deviated from the maintenance of the accounts in a particular form and showed scant respect for the instruction or direction issued to keep and maintain the accounts in particular form.

219. It is also brought out from D.W.2 that Bangalore center started functioning in 1977-78 and he received information of its commencement in writing from the bureau for his information. But his next answer that till 30.6.1981, the accounts of Bangalore were merged with that of Hyderabad goes a long way in questioning the credibility of his testimony, for when Bangalore center was an independent center, the merger of its accounts with that of Hyderabad center is un-understandable. Further, when his knowledge whether a particular center is a branch of the 1st defendant or not is based upon the audited accounts and also the verbal information furnished by the bureau, his evidence cannot be taken to be positive in saying or concluding that there was a center working at Bangalore as the branch of the 1st defendant. Added to it, when he does not know whether the 1st defendant has maintained a register of its branches and centers, it is highly difficult to believe his testimony and say that he had received audited accounts and reports from the Bangalore center.

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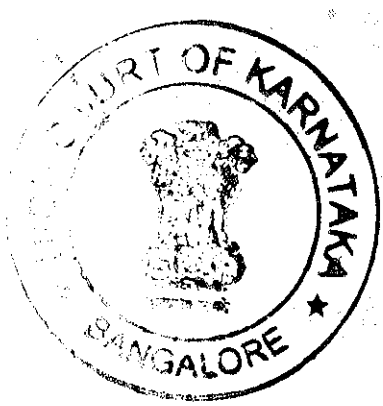

220. It is also curious to take note of the assertion of D.W.2 that even though the auditor's report of Bangalore center pertaining to Ex.D38 is received, the same is not consolidated and it is in possession of the 1st defendant. In the next breath itself, changing his version, he has mentioned that if it is available, he shall produce it. On the top of it, it is necessary to note that he has had no enough courage to deny a suggestion that because no such auditor's report was sent, it is not consolidated. Instead, by merely making a remark 'may be', he himself has given ample indication of the fact that he is not sure of certain facts. Even then, he has tried to conceal the said fact, but in vain. It is also brought out from him that in 2001, when the Bangalore center did not send its statement of accounts, he had written to it and the 1st defendant has records evidencing the correspondence in that behalf. But strangely enough, when Bangalore center did not comply with his request, he did not take any coercive steps. If there were a branch of the 1st defendant at Bangalore and when it had failed to comply with the request made by head office, then the 1st defendant should have taken coercive steps against its branch. But the very fact that he did not take any steps has recoiled on the credibility of its defense. It is also amazing to note that D.W.2 had not collected any amount from the Bangalore center for the services, he had rendered and instead, he was spending amount from his pocket and getting reimbursement from the

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respective center of the 1st defendant. If that were true, then the defendants should have produced documents evidencing reimbursement of amount spent by him for the services rendered to the Bangalore center. In view of this, I am not persuaded to say that his evidence helps the defendants in bringing home the defense raised that the branch of the 1st defendant was/is functioning at Bangalore.

221. D.W.3 has also given evidence that M.P.Das acted only in his capacity as the branch president of the temple of the 1st defendant at Bangalore, even though he has not spelt out in so many clear words that a branch of the 1st defendant was/is at Bangalore. Referring to Ex.D152, Ex.D154 and Ex.D156 and O.S. 6189/99, he has also stated that M.P.Das and C.P.Das were president and vice-president of the Bangalore branch of the 1st defendant. But for the reasons already recorded and the fact that they cannot bind interest of the plaintiff, the defendants cannot make use of his evidence in sustaining its defense that a branch of the 1st defendant was functioning at Bangalore. More over, when the defendants have not produced any evidence capable of showing the appointment of M.P.Das and C.P.Das as president and vice-president, respectively, there cannot be any change in the opinion already formed. It is also in his evidence that M.P.Das and the other office-bearers of the Bangalore branch of the 1st

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defendant established various trusts as ancillary units of the branch and those trusts always functioned as the organs of it. But, there is no documentary evidence produced to substantiate it.

222. In the cross-examination, of course, it is brought out from D.W.3 that various correspondences prepared by him on behalf of M.P.Das, balance sheets, S.80G and S.15 AA certificates are the basis for his statement that every Iskcon temple in India is a branch of the 1st defendant and functioned as such. The said evidence gives an indication that he has no definite knowledge about the branch of the 1st defendant. Moreover, when he is unable to recall whether in the correspondence, it is specifically mentioned that Bangalore center is a branch of the 1st defendant and whether he had mentioned it to D.W.1 at the time of discussion with him, I find it really difficult to believe his testimony and rely upon it. Furthermore, when he does not exactly know the number of Iskcon centers in India, it is not known, how did he speak on the Bangalore center. It is also brought out from him that he has seen correspondences, balance sheets, S.80G exemption and S.15 AA certificate and memorandum of association and rules and regulations to show that Bangalore temple is the temple of the 1st defendant only. But curiously enough, the defendants are not able to lay on record any of the documents amongst them capable of clinching the issue.

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223. When questioned with reference to Ex.D340 which is a letter addressed to M.P.Das by him, D.W.3 has denied a suggestion that on his instructions Ex.D340 was sent to him which should have been sent by him. However, in the next breath, he has admitted that he gave a letter in terms of it in 2001 and he does not remember to have complained to anybody that he was forced to sign it. A plain reading of Ex.D340 would reveal that it had been written by way of a clarification to email sent. In particular, D.W.3 has mentioned that he had not made any allegations against M.P.Das on his financial impropriety to anyone at any time. If that is read in conjunction with the other suggestions tendered to him, the suggestions cannot be brushed aside as devoid of any truth or force. Of course, he has denied a suggestion of serious magnitude tendered to the effect that he was accused of molesting the mentally retarded sister of Ravinarayan and further, he was caught red-handed, while watching pornography on computer and he was reprimanded by M.P.Das. Even then, the suggestion cannot be belittled, more so, when D.W.3 has slipped away by merely saying that he does not remember whether he was assisting the mother and mentally retarded sister of Ravinarayan to obtain VISA to go to America and he had accompanied them several times. Of course, the plaintiff has not brought on record any evidence capable of establishing the subject matter

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of the suggestions tendered to D.W.3, as rightly pointed out by Sri.D.R.Ravishankar. But as already said above, on the premise that there is no evidence produced in support of the said suggestion, the said suggestions cannot be ignored or belittled, as a reading of his evidence between the lines would indicate that there is some truth in the suggestions.

224. As admitted by D.W.3, Ex.P250 is his letter of resignation. Even though, he has denied a suggestion that he had left Bangalore fearing action against him for his misconduct, the same cannot be brushed aside as devoid of any force. Moreover, when he himself has said that the three letters referred to in para 18 of his affidavit were given simultaneously, it is curious to note his voluntary statement that one of them is back dated. In the next breath, even though he has added a rider that he back dated it on the request of M.P.Das, the very fact that he did not find any reason to back date it and he has not brought it out in any correspondence would go a long way in showing that his testimony does not inspire any confidence to rely upon it. Further, when he has not specified which of the 3 letters is back dated, it is not known how he denied a suggestion that Ex.P250 is not back dated. In view of this, I cannot alter my opinion that his testimony is not worthy of belief and as such, no reliance can be placed on it.

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225. Coming to the evidence of D.W.4, in relation to the existence of the branch of the 1st defendant at Bangalore, what he has got to say is that the activities of the defendants commenced in Bangalore in or about the year 1977 and the functionaries of the Hyderabad center and M.P.Das were initially taking care of the activities at Bangalore also. Thus, the evidence given by him does not reconcile with the defense raised on one hand and the evidence of D.W.1 on the other hand, making it simply vulnerable to believe and rely upon it. Moreover, when he himself has admitted that the decision, he had taken of establishing a branch at Bangalore with the consent of the other members is not recorded in the minutes book, I find it very difficult believe his self-serving testimony and proceed to say that a branch of the 1st defendant was established at Bangalore. But it is astonishing to note that in the next breath itself, he has asserted that the said decision is reflected in the correspondence. As the correspondence capable of showing it is not brought before the court, I have to say that self-interested testimony has suffered a lot for want of corroboration.

226. D.W.4 has also mentioned that in later part of 1977 or early 1978, with consent of the other members of the bureau, he designated Shankabrit Das as the president of the Bangalore branch of the 1st defendant. But in the cross-examination, he has categorically admitted that the procedure for

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establishing the branches consists of the appointment of presidents by zonal secretaries, before or after obtaining the consent of the bureau by zonal secretaries and both the bureau and the zonal secretary take the decision for establishing branches. In the absence of any document corroborating his evidence, I just cannot believe his self-serving testimony and act upon it. Further by giving a different version to the effect that as Shankabrit Das was over seeing the activities of Bangalore, with the consent of the other members of the bureau, he appointed Shankabrit Das as the president of the Bangalore temple and that is how the Bangalore branch of the 1st defendant came into existence, he has contradicted his own previous evidence. Thus, his evidence is simply irreconcilable as it does agree with the defense raised and the say of D.W.1 on one hand and contradicts his own earlier evidence. Added to it, when he has also admitted that the order appointing Shankabrit Das as the president of Bangalore branch is not in writing, it is well-nigh impossible for me to believe his self- interested testimony, because the 1st defendant could not have acted so casually without maintaining the records of important events and developments taking place in it.

227. Yet in another instalment of his cross-examination dated 23.9.2008, D.W.4 has asserted that the designation of Shankabrit Das referred to in



para 13 of his affidavit is reflected in correspondences and he is in possession of it. The same cannot be trusted, as it has run counter to his own earlier evidence. Moreover, when the said correspondence said to be in his possession is not brought before the court to support his testimony that he himself had designated Shankabrit Das as the president of the 1st defendant at Bangalore, his uncorroborated testimony cannot be believed. As such, his denial of a suggestion tendered to the contra cannot be of any consequence. Added to it, when he himself has admitted that the consent of the bureau members is not in writing, I should say that his evidence does not inspire any confidence to rely upon it. In view of this, another suggestion tendered to him that Shankabrit Das functioned as president of the plaintiff naturally gains ground, albeit it is denied.

228. When D.W.4 has also admitted that the consent of the bureau members referred to in para 13 of his affidavit is not in writing, the opinion already formed about the credibility of his testimony gets strengthened further. It is also brought out from him that as a member of bureau, he had authorized Atmatattva Das to function as acting president of Bangalore branch. But here again, he does not remember whether the said authorization is in writing. Even though, he has asserted that he had taken the consent of the bureau to authorize him so, unfortunately, the said consent is not in

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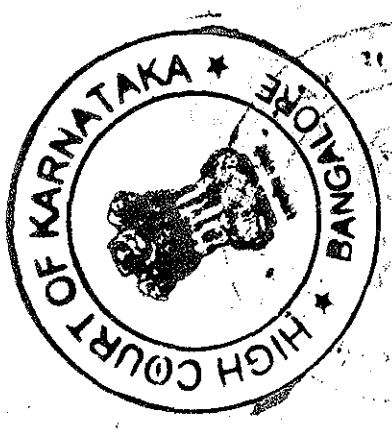
writing. He has also asserted that he designated M.P.Das as president of Bangalore branch, but it was not in writing, only to be disbelieved, for he could not have carried out any and every act off the records or orally. More over, when the 1st defendant has claimed that it is head office manning or monitoring many branches, it should have maintained documents of every one of its transactions, especially of the transactions in question. But the manner in which it had carried on its activities or transactions without the support of the documents would certainly raise the eye brows of anybody as rightly pointed by Sri.S.K.V.Chalapathy. Thus, the way in which D.W.4 has gone on giving evidence has undoubtedly questioned the credibility of his testimony, as the establishment of a branch and appointment or designation of a president to it could not have been oral.

229. It is also necessary to mention that D.W.1 has not spoken anything as to why accounts were sent to the 1st defendant. However, as rightly argued for the plaintiff, in 2nd para of page 51 of the cross-examination, he has admitted that several corporate bodies came into existence to spread the movement, even after the life time of Srila Prabhupada, giving enough indication that even before the life time of Srila Prabhupada, such bodies had come into existence. But as the plaintiff had come into existence after he departed to eternal



abode, probability of plaintiff's existence gets enhanced. In another attempt of countenancing the plaintiff's claim, the defendants have relied upon Ex.D4, D7 and D8. They are an extract of the office-bearers of Bangalore society as brought out from P.W.1 and internet copy of the letter dated 24.5.1972 and 16.6.1972 written to Giriraja Maharaja and D.W.4 by Srila Prabhupada respectively as spoken to by D.W.1. Speaking with reference to Ex.D8, D.W.4 has said that it is one of the declarations of Srila Prabhupada that declares that there should be only one entity in India for spreading the movement, denying a suggestion tendered to the contra. But it is argued for the plaintiff that a perusal of Ex.D8 clearly shows there is no such declaration and the plaintiff has questioned the authenticity of Ex.D7 and D8, as they do not bear the signature of Srila Prabhupada. A plain reading of Ex.D7 and D8 would not disclose any such declaration and thus, it fortifies the 1st part of the said argument. But I cannot find any force in the later part of it, for there is not even a suggestion tendered questioning their authenticity. But the fact that they are not proved to their hilt cannot be overlooked.

230. In his anxiety of sustaining the defense raised, D.W.1 has also asserted that Bangalore branch had a bank account betwixt 1977 and 1981. But his inability to say the bank in which it was there has rendered his assertion simply otiose. Further,

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the fact that there is no document produced to show the existence of bank accounts would virtually demolish the evidentiary value of it.

231. When D.W.1 has said, without mincing any words, that except the plaintiff, no other entity was registered as a society for spreading the movement, does it not probabalize the claim advanced? The evidence on record persuades me to answer it in the affirmative. When questioned with reference to the entries made in Ex.D38, what he has to say is that because branch means center, the word 'branch' is not used for other centers, societies mean other entities with whom, the 1st defendant has financial transactions and associated centers are a part of it and other entities are independent bodies. His evidence certainly fastens some credibility to the claim advanced.

232. Sending of accounts also occupies a prime of place in influencing either the claim put forward or the defense raised. In regard to the same, the pleading placed on record by the plaintiff is that it has been getting its annual accounts audited and circulating its annual management information system report (MIS) to its members and establishments of Iskcon including Bombay for their information. The defense raised in relation to it calls the term 'management information report' as obfuscatory and misleading and it is management jargon at best, denying sending any such reports. It



proceeds further to say that it is only the Bangalore branch that sent the audited statements annually and without fail and the plaintiff having fudged and doctored the accounts to make them appear as if they are its own accounts. Thus a clear indication emerges that audited accounts had been sent from Bangalore to Bombay. With it, the actual face of the controversy surfaces.

233. However, in evidence, P.W.1 has claimed that the plaintiff had sent accounts to Iskcon-India for the purpose of claiming the benefit of S.80G of I.T. Act. But disputing the same, what the defendants have maintained is that accounts had not been sent to Iskcon-India, but only to the 1st defendant, adding a rider that it was not the plaintiff which had sent the accounts, but only the Bangalore branch of it. But as it is already found that the defendants are not able to lay on record enough evidence to drive home the defense raised that the branch of the 1st defendant was in existence at Bangalore, the rider added has to recede to the background as of no consequence. But still, it is all the more necessary to find out whether the accounts had been sent to the 1st defendant and if sent, what is the effect of it and the consequence that flows out of it.

234. It is necessary to note the evidence given by P.W.1 to the effect that the plaintiff had appointed R.S. Prabhu as its statutory auditor for

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the financial years 1982 to 1987 and he prepared the audited reports, balance sheets and notes on accounts and they were produced before the registrar of societies on 24.9.1987. Ex.P87 supports his evidence in so far as it relates to the filing of the accounts with the registrar of societies. He has also given evidence that the said auditor had submitted management information system (MIS) reports to the plaintiff for the years 1982-83 to 1999-00. It is also in his evidence that MIS reports were being sent regularly to P.W.2 of Iskcon-India for sharing the information and consolidation and filing before income tax authorities. He has also given evidence that the presidents of all centers/societies/ independent bodies were interacting with each other in the matter of promoting Iskcon movement in India. It is also in his evidence that a federation of all centers/ societies and independent bodies under the name and style Iskcon India existed to enable filing of I.T. returns and D.W.2, as chief accountant of Iskcon India, was looking after the filing of returns by the federation. It is also in his evidence that the plaintiff also adopted the said practice, since D.W.2 informed it that S.80G exemption is available to the federation and plaintiff should also send its annual accounts for compilation and filing of returns by Iskcon India and accordingly and having regard to the same, the plaintiff was sending its accounts to Iskcon India to avail S.80G exemption. It is also in his evidence that all the centers including the

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plaintiff were sending their annual audited statement of accounts to Iskcon India and D.W.2, on its behalf, was filing the returns with the income tax officials.

235. In the cross-examination, it is necessary to note that testimony of P.W.1 is not impeached successfully, as he has denied very many suggestions tendered to the contra. It need not be said in so many clear words that suggestions denied do not constitute any evidence in the eye of law. Hence, it is equally necessary to look forward to positive evidence capable of supporting the subject matter of the suggestions.

236. However, it is brought out from P.W.1 that to his knowledge, the plaintiff had not sent accounts to Iskcon Bombay, but it had claimed exemption under S.80G of I.T. Act for the years 1982-83 to 2000-01 from Iskcon India, which is a registered body. It is also brought out from him that he came to know of existence of Iskcon India from the correspondence of D.W.2. Of course, he is ignorant about the constituents and rules and regulations of Iskcon India. Likewise, he is also not aware of its management committee and he has not seen its rules and regulations. It is also brought out from him that to utilize the benefit of S.80G, the plaintiff sent its accounts to Iskcon India. Of course, it is also brought out from him that Iskcon India is in Harekrishna land, Juhu, Bombay and he has visited the said premises making it clear that Iskcon India is

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located at Bombay. It is true that the benefit of S.80G was not available to the plaintiff. But prior to 2001, the said benefit was available to all donors of Iskcon activities in Bangalore. His stand really stands to reason for the simple reason that because the said benefit was not available or extended to the plaintiff, the plaintiff had sent its accounts to Iskcon India, only to claim the exemption for the benefit of the donors. Categorical admission taken out from D.W.4 that none of the reports sent to him by M.P.Das was addressed to the 1st defendant lends some more credibility to the plaintiff's claim.

237. It is also brought out from P.W.1 that the donors in Bangalore, who opted for the benefit of S.80G were not told that they are going to benefit from Iskcon India. Even if it is designated as a lapse on the part of the plaintiff, there cannot be any alteration in the situation that the plaintiff had collected donations from donors. With the evidence elicited from P.W.1 in the cross-examination, there cannot be change in the opinion formed that if the testimony is not impeached, much less, successfully.

238. It is in the evidence of D.W.1 that Ex.D90 is a certificate dated 8.4.08 issued by the deputy director of income tax, ExD91 to D99 are 9 S.80G approvals, Ex.D100 to D103 are 4 orders issued to the 1st defendant under S.80G, Ex.D104 is a copy of PAN. They fully endorse the fact that the 1st

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defendant is granted approval under S.80G since May, 1971 and it is valid up to 31.3.2008 about which there is no dispute. But Ex.D105, instead of helping the defendants, has helped the plaintiff in nourishing its claim. It is a certified copy of the application dated 12.10.01 given by M.P.Das. A plain reading of it would disclose the registration number of the plaintiff and a request made on its behalf to consider its application for grant of income tax exemption under S.80G of I.T. Act. But the categorical say of D.W.1 that the statement made in the 1st page of the auditors' reports of Ex.D38, D39 and D41 to D52 that the accounts are incorporated in the balance sheets for the purpose of consolidation and reports are given by different auditors are consolidated, is correct, fully vindicates the plaintiff's claim on one hand and demolishes the defense on the other hand. Thus, it too has brought out the existence of the plaintiff.

239. The testimony of D.W.2 is, undoubtedly, helpful in resolving the controversy, as his testimony has tremendous bearing on the same. In examination-in-chief, of course, he has mentioned that every center, where books of accounts of the 1st defendant are maintained, had to prepare a balance sheet, statement of income and expenditure at the end of the financial year and have the accounts audited by an auditor and send such audited statement of accounts along with auditor's report to the head office. He has also

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stated that on the basis of the audited statement of accounts received from the local centers of the 1st defendant and also the information received from the members of the bureau of the 1st defendant, he prepared consolidated accounts of the 1st defendant and the audited accounts along with auditor reports, upon approval by the bureau, are filed regularly with the income tax department. In particular, he has also mentioned that for the year ending on 30.6.1982, the head office of the 1st defendant received audited accounts and report of the Bangalore center of the 1st defendant for the first time and then, Mahashringa Das was its president. It is also in his evidence that the 1st defendant was approved under S.80G of I.T. Act and all the donations and contributions etc., by whatever name collected by different centers of the 1st defendant, are eligible to the benefit of exemption. Thus, his own say would throw some light on the fact that S.80G exemption given to the 1st defendant was, in fact, available to all its centers and it was not confined or restricted to the 1st defendant only. This would naturally help the plaintiff in sustaining its claim to a certain extent, as its stand that to claim the said benefit only, it was sending accounts for the purpose of consolidation and filing with income tax department is understandable.

240. It is curious to note the evidence of D.W.2 that the 1st defendant was described and referred to as Iskcon India. However, he has added that

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Iskcon India does not exist as a legal entity distinct from the 1st defendant, making it crystal clear that Iskcon India and the 1st defendant are one and the same. His testimony is to be appreciated with reference to the cross-examination directed against him. In the cross-examination, he has admitted in categorical terms that he has been corresponding with all the centers of Iskcon on behalf of Iskcon India and Ex.D38 to D52 were prepared on behalf of Iskcon India, without leaving any doubt to creep into the mind of anybody to say that Iskcon India was in existence. Realizing his folly, in the next breath itself, he has said that they were prepared on behalf of the 1st defendant to set right the mistake or irreconcilability. Further, when he himself has admitted that the bureau of the 1st defendant has not passed any resolution to prepare balance sheets in the name of Iskcon India, I find it really difficult to fall in line with his changed version, when correspondence was, in fact, made in the name of Iskcon India and in the absence of a resolution to make correspondence in its name, it is not that difficult to see improbability in his testimony. Thus, the improbability brought about by himself has lent some more credence to the plaintiff's claim.

241. Further, the evidence given by D.W.2, without mincing any words, that he represented to all Iskcon centers in India that S.80G is available to the funds collected by them and required all of them to send their accounts for their consolidation fully

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underlines the truthfulness in the claim projected that pursuant to his letter only, the plaintiff had sent its accounts to Iskcon India to claim the benefit of S.80G of I.T. Act, as forcefully pointed out by Sri.S.K.V. Chalapathy. Even then, D.W.2 had the audacity of denying a suggestion that the 1st defendant was only a nodal agency for getting the accounts for the purpose of their consolidation and Bangalore center was neither a center nor a branch of the 1st defendant. In view of this, I am persuaded to accept the contention of Sri. S.K.V.Chalapathy advanced in that respect.

242. Nevertheless and notwithstanding the same, Sri.D.R.Ravishankar repeatedly contended that two or more legally separate entities cannot consolidate their accounts and file one return as an AOP with income tax department and the plaintiff's claim that its accounts were sent to Bombay for consolidation with the 1st defendant is not only false and illegal, but also ridiculous, furnishing an illustration of bar council. It is really difficult even to appreciate the said argument in the light of evidence taken out from D.W2 that the head office of the 1st defendant has, by itself not maintained its accounts separately and it has not maintained a statement of income and expenditure of its own. But I am afraid, the illustration cannot have application to the situation on hand for the simple reason that bar council is an institution and advocates are enrolled as its members and therefore, their income

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cannot be subject matter of one return. Even otherwise, the income of advocates is assessable in their individual capacity separately. It is also interesting to note another face of argument addressed to the effect that the word 'AOP' used in Ex.D57 to D70, which are assessment orders does not mean that assessment is made in respect of AOP, although the 1st defendant is AOP. If the income of AOP and its members cannot be consolidated and assessed together, I am unable see any reason in the assessment reflected in Ex.D57 to D70. As such, the said argument cannot lead the defendants anywhere.

243. Ex.D56 to D60 are copies of orders passed by Assistant director of income tax(exemptions), as spoken to by D.W.1. He has categorically admitted that they are subsequent to the filing of the suit. But when it was suggested that in respect of them, the plaintiff did not send its accounts, without denying it, he has repeated his stock answer that the plaintiff did not exist, showing his bent up mind of avoiding telling the truth. Laying stress on the contents of Ex.D56, Sri.D.R. Ravishankar contended that they do bring out enough proof to the fact that Bangalore branch of the 1st defendant was in existence and it was assessed to income tax, as there is a clear reference to the fact that the 1st defendant has branches all over India. No doubt, it is mentioned in it that the accounts of Bangalore branch are

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assessed to tax, since its inception as a part of the assessee trust under the directorate of income tax and its accounts were submitted with returns of income at Bangalore for the first time in March, 2002. It is true that it does bring out a lapse or failure on the part of Bangalore branch in not submitting its returns regularly. If that were so, it is not known why 1st defendant was a mute spectator to it without raising its little finger against the same. On the other hand, it is interesting to note the evidence given by D.W.2 that he did not take any coercive steps against Bangalore center, when it did not comply with his request for sending its accounts. This would naturally tend to negative its stand. In addition to it, an indication would emerge from Ex.D56 itself that the accounts from Bangalore were submitted for consolidation with a view to claim benefit under S.80G of I.T. Act. It would, in turn, strengthen the plaintiff's claim, because as pointed out in Ex.D56 only, no branch or center was a separate assessee, but it was assessed to tax as part of the 1st defendant which was the assessee. In addition to it, when D.W.1 has asserted that the accounts of Bangalore branch were manipulated to make them appear as accounts of the plaintiff would also project the plaintiff's claim rather profusely, because, there is no evidence to show taking any action against the so called manipulation. In view of this, I have brush aside his assertion as far from truth. Further, as admitted by him only, when he did not instruct his counsel about the manipulation of

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accounts by the plaintiff at the time of the cross-examination of P.W.1, his assertion richly deserves to be turned down as an after thought only. Further, his evidence that after obtaining the accounts from income tax department, the 1st defendant found that plaintiff had claimed the properties and the accounts of the 1st defendant has its. It, falsifying his assertion, would strengthen the view taken up.

244. Para 6 at page 3 of Ex.D56 brings out further proof to the fact that the accounts of Iskcon Bangalore were submitted to Iskcon Mumbai for consolidation with its accounts. As it is already found that the plaintiff had been submitting its accounts to Iskcon India and there is no evidence capable of showing that the said accounts were of the branch of the 1st defendant at Bangalore, it has to be taken that they were the accounts of the plaintiff. Even otherwise, when it is also mentioned in it that consolidation of accounts or clubbing of incomes of two separate registered societies is not permissible under the Act and therefore, the question of consolidation of its accounts with the 1st defendant does not arise, as such a claim is not only illegal, but also false and untenable on facts. Even though the plaintiff was a registered society, it is not known how were its accounts were consolidated with that of the 1stdefendant, although it was not permissible. Hence, I have to say that for the said situation not only the plaintiff, but also the 1st defendant have to blame themselves.

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245. Dwelling upon S.164(2) of I.T. Act, it is also argued for the defendants that the assessment of a public trust or a society is conducted under the category of AOP. The said section stipulates that the assessment of income derived from a property held in trust wholly for charitable or religious purposes is not exempt under S.11 and 12 of the Act. But the fact that accounts had been sent to claim benefit under S80G of the Act is overlooked here. It is really difficult even to appreciate the said argument in the light of the evidence taken out from D.W.2 to the effect that the head office of the 1st defendant has, by itself, not maintained its accounts separately and it has not maintained a statement of income and expenditure of its own. Even then, it astonishing to find his denial of a suggestion that the head office of the 1st defendant and Bombay center are one and the same. But as could be seen from para 8 of page 23 of his deposition, by categorically admitting that the 1st defendant is Bombay center, he himself has brought out the falsity in his denial referred to above. By reiterating that because Bombay center is also the 1st defendant, the 1st defendant did not pay him salary directly, he has, without leaving any scope for any amount of doubt, reinforced the position. Thus, his evidence has virtually negatived the defense taken up to the contra and it has demolished his evidence that he was appointed as chief accountant by the 1st defendant for Bombay center and the 1st defendant.

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246. Of course, D.W.2 has also asserted that the plaintiff never sent statement of accounts, but only Bangalore center. This, I should say, instead of helping the defendants, has negatived their defense. Further, it also squarely answers the contention of Sri.D.R. Ravishankar advanced in that behalf. However, turning my attention to Ex.P251, it is argued for the plaintiff that Srila Prabhupada had enlisted 34 branches of the movement, as reflected in it, but they cannot be legal branches, because he used the word 'branches' to denote branches of the movement. It is also argued that in that sense, the 1st defendant as well as the plaintiff are branches of the same movement as envisioned by Srila Prabhupada. Ex.P251 is an application given by Shatrughna pillai to C.P. Das as spoken to by D.W.1. It is an application given by Shatrughna Pillai for enrolling him as a life patron of International Society for Krishna Consciousness. Hence, I cannot brush aside the said argument as bereft of reason or force.

247. It is also argued for the plaintiff that I.T. Act legitimizes 'AOP' or association of persons comprising of different legal entities having a common objective for limited purpose of assessing their income under the Act. It is also argued that the 1st defendant, as a nodal center, always gave an impression to the plaintiff that the assessee was Iskcon India, an AOP comprising of all Iskcons in

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India including Bombay center and its branches, various unincorporated Iskcon centers and incorporated Iskcon bodies like the plaintiff. It is also argued that such AOP is permitted to be assessed as a group under the Act and therefore, Iskcon India need not be incorporated or registered under any statute to be assessed as a single body. In the light of the evidence available, I find considerable force in the said argument. I cannot also brush aside another face of the argument that by not revealing who the assessee was, the 1st defendant has played fraud not only on the plaintiff, but also on income tax department.

248. As already said above, D.W.1 has categorically admitted that branches were being opened on the strength of the consensus of the members of the bureau of the 1st defendant, the consensus of its members is recorded in the minutes of the meeting and the opening of a branch is reflected in the records. But it is really startling to find that instead of producing those records, the defendants have tried to lean upon the correspondence for the reasons best known to them only. Thus, the defendants have, instead of producing concrete and clinching evidence capable of proving the establishment of a branch at Bangalore and its functioning there, brought on record a lot of correspondence. Hence, it has to be examined carefully to find out whether it has helped them and if helped, to what extent.



249. The defendants have relied upon Ex.D167 to D227 in sustaining their defense. As spoken to by D.W.1, Ex.D167 is a letter dated 11.8.1978 written to bureau member of 1st defendant. As could be seen from it, it is a letter dated 11.8.1978 addressed to Tamala Krishna Goswami of GBC by Shankabrit Das. A plain reading of it does not disclose the capacity in which Shakabrit Das had written it. I mean to say whether he had written it in his capacity as president of Bangalore branch or plaintiff, there is nothing in it to indicate. In view of this, I am afraid, the defendants cannot obtain any tangible help out of it. In the absence of any evidence capable of speaking on the context in which it had been written, on the strength of its text, I find it difficult to say that in his capacity as president of the Bangalore branch of the 1st defendant, Shankabrit Das had written it. Ex.D168 to D170 are three letters written to D.W.4 by Shankabrit Das. They are of the year 1979. D.W.1 has not spoken anything on their contents even to suggest how do they help in sustaining the defense. A careful reading of their contents does not drive home the defense raised, much less, to its hilt. On the other hand, drawing my attention to what is contained in page 2 and 3 of Ex.D168, Sri.S.K.V.Chalapathy contended that it gives ample indication of the fact that the plaintiff had furnished the documents and the details to the authorities for allotment of a site for final approval. If they were

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written in his capacity as president of the Bangalore branch of the 1st defendant, I find myself unable to reconcile with the said circumstance. In my view, it tends to question the defense raised. As such, the defendants cannot extract any help out of Ex.D168 to D170.

250. Ex.D171 to D176, D179, D182, D184, D186, D190, D191, D192, D194, D195, D198, D.211, D212, D213, D214, D215, D216, D217, D219, D220, D224, D226 and D227 are letters written to D.W.2. As could be seen from Ex.D171 to D176, they had been written by Gouranga Das. In particular, the presence of the registration of the plaintiff in Ex.D171 is conspicuous. In Ex.D172, he had reminded D.W.2 of his request to send information regarding keeping up of accounts in Bangalore. But here again, I have to point qut that it does not furnish clinching proof that nourishes the defense raised. Whereas the text of Ex.D173 gives an indication of the fact that foreign contributions were not received by his center. As already said above, when plaintiff is registered under Foreign Contributions and Regulations Act and the 1st defendant has not received any such contribution, I have to say that Ex.D173 refers to the plaintiff only. Ex.D174 is written with reference to foreign contributions only.

251. Under Ex.D175, K.A.Devaiah, accountant, enclosing 3 copies of final accounts for the year



1981-82, had requested for a copy of the audit report of any other temple so that his auditor can report in the same form. But how does it help the defendants is not pointed out. In Ex.D176, Rasheshwaridevi Dasi had assured D.W.2 that she will speed up and complete the final statements as soon as possible. Ex.D179, D182 and D184 were written by M.P.Das enclosing balance sheets, income and expenditure account and audit report and pleading sorry for the delay. But when the plaintiff has put up a specific claim that for the purpose of obtaining the benefit of S.80G of I.T. Act, the plaintiff was sending its accounts to Iskcon India, I find myself unable to say that Ex.D179, D182 and D184 extend any help to the defendants.

252. Ex.D186 written by C.P.Das speaks that by signing the balance sheet in place of M.P.Das, he had enclosed it to Ex.D186 and nothing beyond that. Even though D.W.1 has asserted that Ex.D188 is a letter written to D.W.2 by manager of Bangalore branch, it does not support his assertion, as there is nothing in it to indicate that as manager of Bangalore branch, Geetha Gopalaswamy Das had written it. With Ex.D189 and D190 written to D.W.2, copies of balance sheet were sent. As the evidence of D.W.1 is not elaborative on them, I do not think they can extend the expected help. Ex.D191 and D192 are two letters written by A.T. Das sending with them Kothari mutual fund form and audited financial accounts of his temple. But

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they do stand on the same footing as the other documents referred to above.

253. With Ex.D194, D195 and D198, copies of balance sheets of Iskcon, Bangalore, were sent by A.T. Das. But I should say that they also enjoy the same status as other documents. Ex.D211 to D217, D220, D265, D266 and D271 are letters written by M.P.Das. But, of them, it is necessary to note that Ex.D213, D214 and D271 had been written not in his capacity as president, but as a general secretary of Iskcon India. Thus they too point out the existence of Iskcon India. In other letters, though he has described himself as the president, they do not point out whether he was president of Bangalore branch of the 1st defendant or plaintiff. With them, he had informed that he does not have a foreign national who holds the power to sign any bank documents, separate accounts for B.B.T. are not maintained, furnishing details of savings of Iskcon, Bangalore with different financial institutions and the names and addresses of the financial institutions and sending of audited accounts of Iskcon, Bangalore.

254. Ex.D219, D224, D226, D227 and D273 were written by A.T.Das sending required certificates for Rs.3,000/- towards expenses D.W.2 had incurred, a form used to enroll donors above Rs.1,00,000/- and xerox copies of Form 26C. But it is necessary to note that Ex.D273 is not signed by

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A.T.Das. It is also pertinent to note that the documents referred to above are in the letterhead of Iskcon, Bangalore. But the presence of telephone numbers allotted to the plaintiff does persuade me to say that in the capacity as president of the plaintiff, M.P.Das and A.T.Das had written those letters. Added to it, as already said above, when the defendants have no documents nor have they produced any documents even to show that the 1st defendant had appointed S.B.Das, A.T. Das and M.P.Das as presidents of the Bangalore branch of it, I cannot even appreciate the defense raised.

255. Ex.D187, D193, D196, D199, D200, D202, D205, D207, D209, D218, D221, D222 and D225 are letters written by D.W.2. But before entering upon the use of the said documents, it is necessary to dispose of the objection raised to the marking of Ex.D202 to D227 that they have not come from proper custody. In the light of the fact that some of them had been written by Bangalore branch and some of them by D.W.2, I cannot even appreciate the objection, let alone upholding it. As such, it has to recede to the background as of no consequence.

256. But it is interesting to note that D.W.2 has signed them as chief accountant, not of the 1st defendant, but of Iskcon India. To reconcile with the piquant situation brought about by it, Sri.D.R. Ravishankar repeatedly and strenuously contended that it is not known what prompted D.W.2 to

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describe him as chief accountant of Iskcon India. But the very fact that he has represented Iskcon India in signing them cannot go unnoticed. Neither it can be ignored. However, laying stress on his very description, Sri.S.K.V. Chalapathy contended that it also adds enough credence to the plaintiff's claim that Iskcon India was in existence and pursuant to the letters written by D.W.2, the plaintiff was sending its accounts to Iskcon India to enjoy the benefits of S.80G of the I.T. Act. However, adverting my attention to the phrase 'Iskcon Bangalore center' found in Ex.D187, Sri.D.R.Ravishankar contended that it does establish that Bangalore center was in existence. But I am afraid, his contention does not or cannot lead the defendants anywhere, for even according to the defense raised, branch/center/temple are interchangeable and interlinked to each other. Even in the course of arguments, Sri.D.R.Ravishankar stressed on it. Hence, the entry of Bangalore center in Ex.D187 cannot bring out proof to the fact that it was only the branch of the 1st defendant.

257. However, the aforesaid documents are to be appreciated with reference to the cross-examination directed against D.W.1. Even the said correspondence, I should say, is bald and laconic and as such, it cannot assume the character of positive and cogent evidence. Neither it can take the shape of clinching evidence. In view of the above situation brought about by the defendants,

they cannot expect the said documents yield the desired result.

258. Nevertheless, relying upon Ex.D215, D216, D217, D220, D222, D223 and D225, it is argued for the defendants that Bangalore temple made some deposits with Sardar Sarovar Nigam Ltd., Canfin Homes, banks, etc. as per the request of M.P.Das and because, they have the address of the registered office of the 1st defendant, they clearly establish that the said deposits were made by the Bangalore branch and not the plaintiff. But I find it really hard to accept the said argument, in the absence of the production of the records of the deposits in the name of Bangalore temple. I find myself unable to reconcile with the situation why the defendants could not bring those records before the court. Even otherwise, a plain reading of the said documents would not endorse the argument addressed for the defendants, as there is nothing in them to indicate that a branch of the 1st defendant was in existence.

259. Further relying upon Ex.D227, it is also argued for the defendants that the forms sent with it carry PAN/GAR/TAN of the 1st defendant and it is clearly established that Form 15AA was obtained by it for its deposits in Bangalore and Form 26C was filed at Bangalore regional office by its branch referring to the said numbers. But a bare look at the forms sent with Ex.D227 would disclose that they do

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not carry PAN/ GAR/TAN of the 1st defendant. Hence, overlooking the said fact, the argument addressed for the defendants needs to be repelled, as not meriting any consideration. On the other hand, the 2nd column of the forms provided for entering PAN number is filled up by entering the words "as per enclosure" . But the fact that the enclosures are not a part of Ex.D227 cannot be lost sight of.

260. It is also in the evidence of D.W.1 that Ex.D228 is a statement of deposits issued by Canfin homes. A perusal of it would, no doubt, disclose the particulars of the deposits made by Iskon Bangalore in Canfin homes between January 95 and March 96. But it cannot offer proof that the depositor was Bangalore branch. It is true that the custody of Ex.D228 with the defendants has a role to play. But on the strength of its custody only, an inference that the deposits, that find a place in it, were made by Bangalore branch is difficult to draw, more so, when the connected evidence capable of showing that the deposits were, in fact, made by the Bangalore branch is not produced. Ex.D229 is a copy of a letter addressed to I.T.Department by Canfin homes with an annexure. It is a letter addressed to ITO Bangalore by Canfin homes, confirming that it holds the deposits as per annexure in the name of Iskon and it is issued to enable the depositor claim necessary exemption from it. But, when Ex.D228 has turned out to be of little help, I cannot say that

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Ex.D229 would go to the rescue of the defendants. Ex.D230 to D233 and D235 to 238 are 8 copies of Form 15AA issued by I.T. Department. But in my view, they do not render any assistance in sustaining the defense, for they only point out the issuance of Form 15AA to Iskcon. Further when they do not refer to the place or bear reference to the Bangalore branch, they cannot be of any help. Added to it, when there is no dispute about the issuance of the said forms to the 1st defendant, they cannot lead the defendants anywhere. Further, I have to say that how do they help the defendants is not pointed out. Ex.D234 is a copy of Form13. But D.W.1 has not elaborated on it, making its perusal necessary to find out whether it has lent a helping hand to the defense raised. A bare look at it would disclose that FDR/Cash certificates with Mahalakshmi layout branch of Corporation bank, Bangalore. But in the absence of the production of either FDR or cash certificates, it is not possible to say that they were in the name of Bangalore branch.

261. Ex.D239 is a letter dated 27.5.83 addressed to Bhaktianand swaroop swamy by M.P.Das. A plain reading of it would point out that M.P.Das was in Trivandrum then, about which there is no dispute, for even according to the plaintiff's claim, M.P.Das became its president with effect from 01.07.84. Further, it becomes clear from it only that because there was a decision to shift him from

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Trivandrum, it too fastens some more probability to the plaintiff's claim. Ex.D240 is a letter dated 30.5.83 addressed to D.W.4 by M.P. Das. But beyond confirming the fact that M.P.Das was there in Trivandrum at the time of its writing, Ex.D240 does not help the defendants in any other manner. Ex.D241 is a letter dated 26.8.83 addressed to D.W.4 by Trivandrum branch. It was written by M.P.Das. But how does it help the defense is not pointed out. Ex.D242 is a letter dated 3.1.84 addressed to B.S. Swamy by M.P.Das along with an enclosure. It is also unhelpful to the defendants. Ex.D243 is a receipt dated 19.3.84 issued to Iskcon Trivandrum branch by Bhakti vedanta trust, as reflected in it. The delivery of the books listed therein was taken by M.P.Das, perhaps as president of Iskcon Trivandrum. As such, it cannot also be of any help. Ex.D244 is a recommendation letter issued by M.P.Das, Ex.D245 is a letter written to GBC by M.P.Das, Ex.D246 is a letter dated 15.9.92 written to D.W.4 by C.C.Das, Ex.D249 is a book published by BBT, Ex.D252 is an application given by Sugatha to C.P.Das, Ex.D253 and D254 are 2 applications given to Trivandrum branch for life patron of the 1st defendant, Ex.D255 is a letter dated 30.3.83 addressed to B.S. Swamy by C.P.Das. Because, they are not eloborated, what help they have extended to the defendants is not pointed out.

262. Ex.D256 is a letter dated 14.1.83 addressed

to B.S.Damodar by Bangalore branch. It was written by Mahashringa Das in his capacity as temple president. A plain reading of it would disclose the reference made to litigation launched by Kittu and the letter dated 25.12.1982 of Shankabrit Das informing that he will go over to Bangalore to relieve Mahashringa Das. Thus, Ex.D256 instead of helping the defense raised, has tended to help the plaintiffs claim. Ex.D257 is a letter dated 24.6.84 addressed to B.S.Swamy by M.P.Das. Ex.D257 throws light on celebration of the appearance day and publication of Vyasa-puja offerings and nothing more. As such, it is not of any assistance to the defendants. Ex.D258 and D259 are a letter dated 20.4.91 and 17.9.91 addressed to Sridhar swamy by M.P. Das. Whereas Ex.D258 and D259 had asked for comment of Sridhara swamy on the working of the committee of ICC bureau and the report reflected in Ex.D258. With Ex.D259, four resolutions were sent and Sridhara Swamy was asked to consider the matter as urgent and write to M.P.Das on his schedule for Vrindavan festival. Ex.D260 is a letter dated 17.7.92 addressed to D.W.4 by general secretary of the 1st defendant, Ex.D261 is a copy of letter dated 14.11.91 addressed to deputy charity commissioner, Ex.D263 is a letter dated 6.1.92 addressed to the chief accountant of Bangalore branch. As could be seen from Ex.D263, M.P.Das had informed D.W.2 that he will go over to Bombay with final draft of the proposed rules and regulations. Thus, the text of it

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does not lend any support to the defense raised. Ex.D264 is a latter dated 7.12.92 addressed to Sridharaswamy by general secretary of the 1st defendant. In Ex.D264, passing of a resolution on 13.11.91 and its ratification by ICC on 2.11.92 are mentioned. Ex. D265 and D266 are two letters dated 31.07.92 and 05.08.92 addressed to D.W.2 by Bangalore branch. Under Ex.D265, M.P.Das had sent audited accounts of Iskcon, Bangalore in duplicate waiting for progress in the renewal of 80G exemption and nothing more. Ex.D266 was written in continuation of Ex.D265 anticipating a proposed solution to the item mentioned therein. Ex.267 is a copy of annual notice sent to the members of bureau Ex.268 is a postal envelope pertaining to it, Ex.269 is a letter dated 11.06.93 addressed to the bureau members by General Secretary, Ex.D270 is a letter dated 02.07.93 addressed to the 9th defendant by General Secretary of the bureau, Ex.D272 is a xerox copy of letter dated 21.05.09 addressed to Prabhu by General Secretary. Ex.D273 is a letter dated 28.5.1994 written to D.W.2 by Anandatirtha Das enclosing a D.D. For Rs.200/- incurred in sending to him an attested copy of rules and regulations. Ex.D259 to D262 point out the addition of M.P. Das to the bureau as general secretary, about which there is no dispute.

263. Ex.D274 is a letter dated 28.12.97 addressed to D.W4 by general secretary. It is a letter written by M.P.Das sending with it a copy of

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the resolution of the bureau passed on 9.11.1997. When he had written it in his capacity as a general secretary, it is not pointed out, how does it help the defendants. Ex.D275 is a copy of the resolution dated 9.11.97 passed by the bureau. A perusal of it would disclose the intention of the bureau to have regulated expansion of Iskcon centers in India. As could be seen from it, there was a proposal to introduce the concept of Iskcon-extention center and Iskcon-preaching center. As entered therein, basically a full temple only has a president as per existing Iskcon law. It is brought out even in evidence. Further, M.P.Das is shown as functioning as general secretary. But, I am afraid, Ex.D275 too, cannot help the defendants in sustaining their defense.

264. Ex.D276 is a letter dated 4.11.98 sent to devotees by D.W.4. When questioned with reference to it, D.W.1 has admitted that on 4.11.88, D.W.4 had given a clean chit to M.P.Das under it and grievances against M.P.Das arose only after it. If that be so, his evidence found in para 30 of his affidavit that only after filing of the suit, the plaintiff came out with manipulated accounts cannot be believed. Even then, emphasizing its contents, Sri.D.R.Ravishankar contended that it gives out enough proof to the existence of Bangalore branch and the fact that M.P.Das was its president. No doubt, it has made reference to Bangalore branch and the fact that M.P.Das had been the president

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for the last 14 years. But the fact that there is reference made to Bangalore center in it cannot be lost sight of. In view of the evidence that they are inter-changeable, even if they are taken to be one and the same, it is difficult to conclude that Bangalore branch was in existence and M.P.Das was its president, ignoring voluminous evidence produced to the contra. Even otherwise, such a conclusion on the strength of Ex.D276 is simply hazardous. On the other hand, the very fact that M.P.Das had been the president for the past 14 years, dates back to 1984. Thus, it too lends some more credence to the plaintiffs claim, as there is no concrete evidence produced by the defendants to drive home the defense that M.P.Das became the president of the Bangalore branch in 1984. As such, the defendants cannot hang on to Ex.D276 either in sustaining their defense or challenging the plaintiff's claim. Ex.D277 is a letter dated 20.10.99 addressed to the bureau members by the general secretary. It is also written by M.P.Das expressing that under protest, he was attending the meeting schedule to be held on 20.12.1999. But in my view, it does not help the defendants in any manner, as the subject matter of it was between the members of the bureau and M.P.Das as general secretary of it. Ex.D278 is a letter dated 20.10.99 issued by the bureau, as spoken to by D.W.1. The fact that it is a letter dated 27.10.1999 is overlooked by him, while giving its date. It too had been written by M.P.Das as general secretary of the bureau. Hence, the

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analogy applied to Ex.D277 needs to be applied to it also.

265. Ex.D279 is a letter dated 30.12.2000 addressed to the life member of Iskcon by M.P.Das and others. But it is necessary to note that he has subscribed his signature to it as president, Iskcon Bangalore. In addition to him, the presidents of Iskcon Calcutta, Iskcon Singapur and Iskcon Brindavan have also subscribed their signatures to it. A careful reading of the same would not bring out any proof required to sustain the defense taken up. No doubt, it is mentioned in it that as temple presidents, they had worked very hard to build and maintain temples, such as Bangalore, Brindavan, Calcutta and Singapur. Whether it furnishes the proof to establish that what was functioning at Bangalore was a branch of the 1st defendant is the question that necessarily surfaces. But the text of Ex.D279 is not able to provide an answer to it. Ex.D280 is a notice dated 2.2.2001 of the meeting of the bureau with one enclosure. It is signed by Bhima Das as general secretary of the bureau and addressed to Adridharan Das informing him that a meeting of the bureau of the Iskcon will be held on 2.3.2001 at Harekrishna land, Juhu, Mumbai and one of the topics for discussion on the agenda was to consider and if found fit, to take action for suspension of Adaridharan Das and M.P.Das. But it is curious to note that there is no evidence produced by the defendants even to suggest that

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there was any action taken against M.P.Das. On the other hand, it becomes clear from the evidence brought on record that no action was taken against him. Even in the course of his arguments, Sri.D.R.Ravishankar contended that as M.P. Das had rendered great and wonderful service to the institution of Iskcon, the bureau thought it fit not to precipitate the matter and take action against M.P. Das. Even though, his argument looks plausible at first sight, I find it difficult to accept it, for the simple reason that throwing the rules and regulations of the 1st defendant, if M.P.Das had acted detrimental to the interest of the 1st defendant, without losing any time, the 1st defendant should have taken some action against him. But the fact that no such action was taken would necessarily tell upon the credibility of the defense raised.

266. Ex.D282 is a letter dated 2.3.2001 addressed to the chairman of the bureau by M.P.Das with a request to accept his resignation as the area representative of the bureau in the state of Andhra Pradesh. But, it cannot help the defendants to any extent. Ex.D283 is an e-mail dated 7.5.2001 sent to him by M.P.Das, as spoken to by D.W.1. But the fact that it was addressed to the chairman/secretary, Iskcon bureau and it does not bear the signature of M.P.Das becomes evident from it only. Even otherwise, M.P. Das had written it as a member of the bureau. However, laying stress on para-2 of it, Sri.D.R. Ravishankar

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contended that as mentioned therein, M.P. Das had handed over his resignation letter dated 2.3.2001 to the addressee, perhaps, to relieve himself from the post of area representative. Thus, except making it clear that M.P. Das had handed over letter of his voluntary resignation dated 2.3.2001, the defendants cannot obtain any other help out of it. Hence, the defendants cannot obtain any assistance out of it. Ex.D284 and D285 are two letters sent to the secretary of the 1st defendant by M.P.Das. Both of them are addressed to Bhima Das. Even though Ex.D284 does not disclose the capacity in which it had been written, Ex.D285 points out that it had been written by M.P.Das in his capacity as a member of the Iskcon bureau. Of course, my attention was adverted to the 4th para of page 2 of Ex.D285 to obtain support to the argument that an action was intended to be taken against M.P.Das. But as could be seen from the said para, M.P.Das had made it clear that he had neither defied the authority of the bureau or member of the bureau. As such, the defendants cannot carve any help out of Ex.D284 and D285.

267. Ex.D286 is a copy of the letter dated 28.5.1996 addressed to the 3rd defendant by general secretary along with one enclosure. But general secretary is none other than M.P.Das. As such, it too has to fall in line with the documents already referred to above. Ex.D287 to D290 are four letters addressed to co-presidents of

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Bhuvaneshwar branch by general secretary of the 1st defendant, as spoken to by D.W.1. Here again, I have to say that they were written by M.P.Das in his capacity as general secretary. But how do they influence or ameliorate the defense taken up is not pointed out. Ex.D291 points out an appeal made by M.P.Das and others to the local devotees of Hyderabad temple. But D.W.1 has not pointed out its utility. Ex.D292 is a notice of the meeting dated 2.2.2001 addressed to M.P.Das, Iskcon Bangalore by Bhima Das in his capacity as general secretary informing him of the meeting of the bureau to be held on 2.3.2001 and nothing more. Ex.D293 is a letter dated 28.9.1999 addressed to M.P.Das by chairman, Iskcon bureau informing him that a meeting of the bureau is convened on 20.10.1999 to discuss various pending matters listed therein. 6th matter was to consider the stand to be taken in the pending cases at Calcutta and Bangalore. But what was the outcome of the meeting, what was the stand taken up by it and was there any action initiated or sought to be initiated against M.P.Das for his stand in the suits filed by him at Bangalore, no evidence is forthcoming. Ex.D294 is an extract of the minutes of the meeting dated 2.3.2001 of the bureau. But it is necessary to note that neither D.W.1 nor the argument addressed for the defendants has pointed out the utility of Ex.D294.

268. Ex.D295 is a certified copy of the deposition of M.P.Das given in O.S. 4165/84. But an objection

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was raised to its marking on the ground that it cannot be marked under S.32 and 33 of Indian Evidence Act. As already said above, when M.P.Das is very much available, instead of summoning him and confronting Ex.D295 to him, it is strange to find the course of action adopted by the defendants in inducting it into evidence through D.W.1. As such, I cannot brush aside the objections raised to its marking. Moreover, when the connected evidence is not brought on record to show who had filed O.S. 4165/84, against whom and what was the relief claimed in it, it is really difficult even to appreciate it, let alone placing reliance on it. Nevertheless, laying stress on the same, Sri.D.R. Ravishankar contended that it points out succinctly that M.P.Das had given evidence that he was the president of the temple of the defendant at Bangalore. But as already said above, there is no evidence worth reliable produced by the defendants to show that M.P.Das had been appointed as the president of the branch of the 1st defendant at Bangalore and on the other hand, when there is no document to speak on it, on the strength of a statement made in Ex.D295, it is difficult to conclude that M.P.Das was the president of the branch of the 1st defendant at Bangalore, ignoring voluminous evidence produced to the contra.

269. Ex.D296 is a copy of objection statement filed by M.P.Das in complaint No.1599/93. As could

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be seen from it, V.Rajagopalan had filed a complaint against M.P.Das, mentioned that Iskcon Bangalore is only a branch/bureau. For more than one reason, the defendants cannot obtain any help out of it, because it stands on the same footing as Ex.D152, D154 and D156. I mean to say the analogy applied to them is to be applied to Ex.D296 also. Added to it, when Iskcon Bangalore is mentioned as a branch/bureau, I do not think the defendants can take any help out of it, for it has not made clear whether Iskcon Bangalore is a branch or a bureau. Ex.D297 is a certified copy of written statement filed in O.S.3959/97 by President of Bangalore branch. In the absence of the production of the plaint relating to Ex.D297, it is not possible to know anything about O.S.3959/97. Of course, it is a certified copy of the written statement filed by M.P.Das. But how does it help the defendants is not pointed out. Ex.D298 is a letter dated 23.12.78 addressed to Bangalore branch by Life membership director. Because there is nothing contained in it capable of substantiating the defense, it cannot help the defense raised. Ex.D299 is a letter dated 30.08.78 addressed to life membership director by Bangalore Branch. Even Ex.D299 which is a letter written by the 1st defendant is not helpful and Ex.D300 is specimen Form of advertisement price list of Bangalore branch. The usefulness of Ex.D300 is also not pointed out.

270. Ex.D301 is a copy of the complaint dated

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06.05.05 given to the Institute of chartered accountants by first defendant, Ex.D302 is a certified copy of W.P.26700/05, Ex.D303 is a reply given by the Institute of Charted Accountants, Ex.D304 is a certified copy of the order dated 22.02.07 passed in W.P.15944/06, Ex.D305 and D306 are copies of writ petition and objections filed to it, Ex.D307 is a copy of letter sent to DDIT by the first defendant, Ex.D308 is a certified copy of order sheet maintained in CS253/01, Ex.D309 is a certified copy of the order sheet maintained in GA 991/02, Ex.D310 is a certified copy of the order sheet maintained in TS369/00 and Ex.D311 is a certified copy of the order passed in GA2154/01.

271. Now time has come to make an useful reference to Ex.D312 and D313 to D321 which are certified copy of the plaint and written statements presented in O.S.1758/03. As could be seen from Ex.D312, Amiyavilas Swamy and others had filed O.S. 1758/03, but the fact that it was instituted long after the institution of the suit on hand cannot be lost sight of. Commenting upon the same, Sri.S.K.V.Chalapathy contended that it is filed at the behest of the 1st defendant as counter blast to the suit on hand and as plaintiffs 1 to 3 and 5 have already withdrawn themselves from the suit, ultimately the truth has come out. Per contra, there was no argument addressed to counter his contention. Shankabrit Das is the author of Ex.D313. The very stand assumed by him and his

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prayer to decree the suit with costs would, undoubtedly, expose the fact that he has shifted his loyalty to the 1st defendant, for reasons best known to himself, as rightly pointed out by Sri.S.K.V.Chalapathy, as otherwise, he could not have asked for decreeing the suit. Ex.D315 and Ex.D319 are to be placed on the same footing, for the authors of the same have also prayed for decreeing the suit. Ex.D320, unlike Ex.D315 and D319, occupies a different place, for it is a certified copy of written statement presented by M.P. Das. Taking me through the contents of it, Sri.D.R. Ravishankar contended that the stand assumed by him is diametrically opposite to the one taken up by him in Ex.D152, D154 and D156 and therefore, the stand assumed by him in Ex.320 is unworthy of belief. Of course, on a perusal of the two stands assumed by him, an indication emerges that he has taken an 'U' turn. But nevertheless, it cannot go to the rescue of defendants or sustain the defense raised by them, for the simple reason that none of the parties has brought him before court. As already said above, when Ex.D152, D154 and D156 are not confronted to him and questioned and on the other hand, when the stand assumed in them by him is shown to be erroneous, I do not think, the defendants can make use of them to their benefit. But, it is necessary to say that the the stand assumed by him in Ex.D320 would also bolster the claim advanced.

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272. Ex.D322 is a certified copy of the W.P. 42760/2003 filed by Jaichaitanya Das against the plaintiff, the 1st defendant and others challenging the order dated 13.4.2004 passed on I.A.14. As a certified copy of the final order is not produced, it is not known what happened to the writ petition. As could be seen from para 2 of it, the petitioner has mentioned that a general body meeting of the plaintiff was held on 1.7.1984 and in it, the petitioner was elected as secretary. Thus, it also bears testimony to the general body meeting held on 1.7.1984.

273. Ex.D323 is a letter dated 1.8.1979 addressed to the 1st defendant by Bangalore branch, as spoken to by D.W.1. But a reading of it does not support his evidence, for it is addressed to D.W.4, when he was stationed at Mayapur and even a glimpse of the fact that it was written by Bangalore branch is unavailable. Of course, Shankabrit Das is also a signatory to it. But his signature does not alter the situation and support the say of D.W.1.

274. It is also in the evidence of D.W.1 that Ex.D326 to D332 are 7 acknowledgments issued for having received income tax returns from the 1st defendant. But Sri.V.Ramesh Babu objected to their marking on the ground that the enclosures appended to them are not produced. His objection cannot be overlooked, for without enclosures

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appended to them, I should say that they are incomplete and therefore, they cannot place on record all the facts to enable the court appreciate them in their correct perspective. Nevertheless, it is better to appreciate them on their face value to find out whether they have extended any help to the defense raised. But, D.W.1 has not elaborated Ex.D326 to D332. Even if they are believed by taking them on their face value, it is not pointed out how do they help the defendants. Ex.D334 is a magazine by name Iskcon world review and Ex.D335 is a 5th anniversary memorial souvenir published by Bangalore branch, as spoken to by D.W.1. However, in the cross-examination, the fact that he has had no courage to deny a suggestion that the plaintiff published Ex.D334 would not inspire any confidence to rely upon his evidence. In regard to Ex.D335, even though, he has denied a suggestion that the name it bears is that of New York society, there is nothing contained in it to support the suggestion. That is why, D.W.1 has rightly denied the suggestion. But as could be seen from it, the fact that it had been published by Iskcon, West of Chord road, Mahalakshmi layout, Bangalore, indeed, suggests that it should have been published by the plaintiff and not Bangalore branch, as claimed by D.W.1. Because there is no evidence worth its name produced by the defendants to show the existence and functioning of a branch of the 1st defendant at Bangalore at the time of Ex.D335.

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275. Ex.D336 is a copy of the letter dated 21.7.1980 written to the president of Bangalore branch by his secretary, Ex.D336(a) is signature of Judy Creavo. But a bare look at Ex.D336 would disclose that it was written by Judi Creado and not Judi Creavo, as spelt out by D.W.2. Further, it does not disclose that it is addressed to the president of the Bangalore branch. Instead, the very presence of P.B.5181 belonging to the plaintiff would indeed bolster the plaintiff's claim that it had been addressed to the president of the plaintiff. Even otherwise, I do not think Ex.D336 helps the defendants to any extent, as it had just informed Gouranga Das that D.W.2 is busy with some income tax work of Iskcon and he will reply to his letter. Thus, Ex.D336, instead helping the defendants, has helped the plaintiff. Ex.D337 is a copy of the letter dated 31.7.1980 addressed to Gauranga Das by him. Even though, an objection was not raised to the marking of Ex.D337, the fact that it does not bear either the signature of D.W.2 or his initials would make it rather dubious. But it is not proper to discard it on the ground that it does not bear the signature or the initials of D.W.2. A plain reading of it would disclose the issuance of certain instructions of procedure to be followed. But in the light of Ex.D336, the defendants cannot obtain any help out of Ex.D337, because it is a contemporary of Ex.D336 and addressed to none other than the Gouranga Das only. Ex.D338 is a

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postal receipt pertaining to it, Ex.D339 is a copy of the letter dated 5.12.1994 addressed to M.P.Das by him also marked subject to the objection raised. Unlike Ex.D336 and D337, Ex.D339 pertains to the year 1994 and addressed to M.P.Das. But like Ex.D337, it too does not bear the signature or the initials of D.W.2. Turning my attention to the text of it, Sri.S.K.V.Chalapathy forcefully contended that it does not leave any doubt to creep into the mind of anybody to say that it had been addressed to M.P.Das in his capacity as the president of the plaintiff only. As it has got some force to reckon with, I cannot, but accept it. It is clear from it that in response to the letter of M.P.Das asking for supply of TDS certificates in connection with investments, it had been written. Thus, it too has lent its own support in nurturing the plaintiff's claim. Ex.D340 is a postal acknowledgment pertaining to it, as spoken to by D.W.2.

276. It is necessary to note that even though Ex.D336 to 340 are marked on 25.8.2008 through D.W.2, on 9.9.2008, five documents are marked as Ex.D336 to D340 through D.W.3 also by mistake. In fact, highlighting the same and filing a memo, the 1st defendant has admitted the mistake in getting the documents marked by mistake. As pointed out in it, five documents marked through D.W.3 should have been marked as Ex.D341 to D345. As spoken to by D.W.3, Ex.D336 is a F.I.R. issued and Ex.D336(a) is an english version of it. As could be seen from it,

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D.W.3 had filed the complaint against M.P.Das and another complaining that by calling him on mobile phone 9987786436, M.P.Das and another threatened him not to come to Bangalore to give evidence. As it is not disputed in the cross-examination, even if it is believed for a moment, I do not think, it will help the defendants in establishing their defense. Ex.D337 is a brochure issued by Iskcon temple, Bangalore, Ex.D338 and D339 are two monthly newspapers issued by it. In the cross-examination, D.W.3 has admitted that Ex.D338 and D339 do not show him as the owner on behalf of Bangalore branch/temple of the 1st defendant. In view of this, I cannot say that both of them have helped the defendants.

277. Of course, D.W.1 has spoken on Ex.D152, D156 and D154. He has also spoken on Ex.D153, D155 and D157 which are certified copy of memos filed to withdraw the suits. But it is necessary to note that he has not made it clear whether M.P.Das had filed them in his personal capacity or official capacity. However, a bare look at them would indicate that he had filed them in his personal capacity. Hence, in the absence of positive evidence, it is really difficult to conclude that he had filed the said suits in his capacity as president of the Bangalore branch of the 1st defendant. When it is brought from P.W.1 that to his knowledge, M.P.Das had participated as the plaintiff or defendant in his personal capacity in 2 or 3 suits, because he had

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learnt about it from his colleagues, denying a suggestion tendered to the contra, I find it extremely difficult to endorse the defense raised, the evidence produced and the arguments addressed in support of it. However, the defendants have remained content with the evidence taken out from him to the effect that to his knowledge, D.W.4, M.P. Das and C.P. Das had not lied or made any false representation with regard to the administration of the temple at Bangalore. The said evidence cannot be of any tangible help for the defendants for more than one reason. Firstly, it is not specific, in the sense, it has not pinpointed the matter nor has it fixed P.W.1 to any particular aspect of the matter in so many clear words. Secondly, when it is not confronted to the person concerned, it cannot be of any consequence. Notwithstanding the evidence on record, Sri.D.R. Ravishankar vehemently contended rather repeatedly that as M.P.Das had filed those suits as president of the Bangalore branch, the plaintiff cannot turn back and contend to the contra. He also contended that the plaint on hand is a repetition of the plaints presented in those suits with certain cosmetic changes lending some more credence to the fact that in his capacity as president of the Bangalore branch, M.P.Das had filed those suits. I find it really difficult even to appreciate it, for the simple reason that merely on the strength that the contents of the plaints of those suits are carried forward to the plaint on hand, I cannot conclude that M.P.Das had filed those suits in his

capacity as the president of the branch of the 1st defendant. Of course, it is brought from P.W.1 that M.P.Das was also instrumental in getting the plaint in question prepared. But the fact that in addition to M.P.Das, another or others was/were there behind it cannot be lost sight of. Even otherwise, when M.P.Das had taken role in its preparation as president of the plaintiff, it is not known how does it help the defendants.

278. In serious contrast to what Sri.D.R. Ravishankar contended, Sri.S.K.V.Chalapathy argued that because M.P.Das had filed those suits in his personal capacity, they cannot bind the plaintiff. He also argued that for any reason, even if it is assumed as an admission, the plaintiff has certainly right to show it to be erroneous or wrong, placing reliance on the following decisions: (1) Ambika Prasad Thakur and others v. Ram Ekbal Rai (dead by his Lrs) and others, AIR 1966 SC 605, (2) Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt, AIR 1966 SC 1697, (3) Basant Singh v. Janki Singh and others, AIR 1967 SC 341, (4) Sita Ram Bhau Patil v. Ramachandra Nago Patil (dead) by LRs, AIR 1977 SC 1712 and (5) Rakesh Wadhawan and others v. Jagdamba Industrial Corporation and others, (2002) 5 SCC 440. In the 1st decision, it is laid down that an admission made by a witness in other litigation is admissible against him alone and not against other defendants. In the 2nd decision, what is laid down is that an admission

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is not admissible against a person other than the person making it, unless such person can be said to be bound by the admission. An admission made by a party in the plaint signed, verified by him may be used as evidence against him in other suits is the dictum laid down in the 3rd decision. It is also observed in it that such admission cannot however, be recorded as a conclusive and the party can show it not true. The principle enunciated in the 4th decision reads as follows:

> "*An admission is relevant and it has to be proved before it becomes evidence. The provisions in the evidence act that 'admission is not conclusive proof' are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission? In order to attach weight, it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in accordance with the provisions of the Act and if it is to be used against the party who has made it, 'it is sound that if a witness is under cross-examination on oath, he should be given an opportunity, if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule.*



*Therefore, a mere proof of admission, after the person whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilized against him."*

In the 5th decision, it is held that an admission is only a piece of evidence and can be explained. It does not conclusively bind a party, unless it amounts to an estoppel. Its value must be determined by keeping in view of the circumstances in which it is made and to whom.

279. The authority that flows out of the principles handed over in the said decisions would lend enough support to the contention of Sri. S.K.V. Chalapathy for the simple reason that M.P. Das is not a party to the suit on hand and even if his statement that he was president of the Bangalore branch is accepted as an admission, it cannot bind the plaintiff. Furthermore, the circumstances under which M.P. Das had made the said admission cannot altogether be ignored. Hence, as rightly pointed out by Sri. S.K.V. Chalapathy, the plaintiff has a right to show that the so called admission made by M.P. Das is erroneous or untrue. In the light of the discussion made by appreciating the evidence on record, when the plaintiff has come out to be an independent entity, I am afraid, the defendants 1 to 9 cannot take shelter under the so called admission of M.P.Das and contend that

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Bangalore branch of the 1st defendant was in existence and M.P.Das was its president.

280. Nevertheless, Sri.D.R.Ravishankar contended that M.P.Das cited as a witness for the plaintiff is deliberately kept away from the court, carrying an impression that if he is examined, truth will come out. It is true that M.P.Das was one of the witnesses for the plaintiff, as could be seen from the list of witnesses filed for it. But the plaintiff did not choose to examine him as its witness, although it was to its knowledge that his examination would have thrown ample light on the controversy in question, more so, in the light of the facts on record showing that at one point of time, M.P. Das was at the helm of affairs at Bangalore, as rightly pointed out by Sri.D.R.Ravishankar. But for the reasons best known to itself, the plaintiff has not chosen to examine M.P.Das. Even then, the defendants 1 to 9 cannot be permitted to exploit the said situation brought about by the plaintiff, because, as already said above, they were not precluded from summoning and examining M.P.Das on their behalf to bring out the truth from his mouth. But unfortunately for them, they too have adopted the same course as the plaintiff has. Hence, I find it difficult to accept the contention of Sri. D.R. Ravishankar.

281. Nevertheless, leaning upon para 10 of the examination-in-chief of P.W.1, Sri.D.R.Ravishankar

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contended that it very much admits of the existence of the branch of the 1st defendant at Bangalore. But I find it difficult to accept his contention on the face of the evidence on record. P.W.1 has just mentioned that a bunch of devotees who came from Bombay in or around 1997 for spreading Iskcon movement in Bangalore were loosely referred to as Bombay group of the Bombay branch. However, there was no organized branch as one would normally understand and in that sense, the Bangalore branch of Bombay was never in existence with an organizational or statutory recognition. Even the said group or bunch of devotees ceased to carry on any activity after Shankabrit Das registered the plaintiff and started participating in the activities of the plaintiff. It is also mentioned that no entity duly organized or constituted that can be called as Bangalore branch was in existence and hence, Bangalore branch of Bombay society never existed at Bangalore. A plain reading of his evidence would necessarily demonstrate that he has not admitted the existence of the branch of the 1st defendant at Bangalore. On the other hand, it has totally negatived its existence. As such, the contention of Sri.D.R.Ravishankar cannot stand and it has to fall flat to the ground.

282. Even in the course of lengthy cross-examination, nothing capable of establishing the existence of Bangalore branch is elicited from P.W.1. Of course, an admission to the effect that in

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innumerable letters, it is represented that the plaintiff was founded by Srila Prabhupada is taken up from P.W.1. But in my considered view, it cannot help the defendants to any extent, for it is not the case of anybody that the plaintiff was founded by Srila Prabhupada. On the other hand, the plaintiff came into existence long after the mahasamadhi of Srila Prabhupada. Thus viewed, the so called admission goes inconsequential and insignificant. The evidence elicited from P.W.1 himself speaks that Srila Prabhupada had not registered any society in India. In the next breath itself, contradicting the same, he has said that as chairman, Srila Prabhupada established one society in India namely Bombay society, during his life time. This would necessarily endorse the view taken up that the plaintiff was not founded by Srila Prabhupada and therefore, the so called admission taken out from P.W.1 is, indeed, a fallacy. It is also brought out from him that there was no independent center established in India during his life time and centers at Brindavan, Mayapur and Hyderabad were functioning as on the date Bombay society was registered and they were known as Iskcon Brindavan, Iskcon Mayapur and Iskcon Hyderabad. It is also brought out from him that in every center, Iskcon was suffixed with the name of the city, where it was established. But the very fact that even before the establishment and registration of 1st defendant, centers were existing at Brindavan, Mayapur and Hyderabad would also tend to

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enfeeble the defense, for the simple reason that the branches would not have come into existence even before the birth of head office. I mean to say that it is difficult to call centers at Brindavan, Mayapur and Hyderabad as branches of the 1st defendant. But as they are not the subject matter of the suit, I do not want to have a probe into them in detail.

283. To counter his contention, there was no arguments worth mention addressed for the defendants on the face of the fact that elaborate arguments were addressed for them. In view of this, I am not hesitant to say that the defense has become vulnerable and beyond reliability. Even on the face of it, it is curious to note that without any rhyme and reason, D.W.1 has denied a suggestion that the memorandum of association and rules and regulations had not provided for opening a branch till 1993, only to be repelled as devoid of any truth. However, laying stress on the contents of Ex.P205, Sri.D.R.Ravishankar argued that they profusely point out the existence of the branch of the 1st defendant at Bangalore. It is a copy of the proceedings of the meeting dated 9.2.90. No doubt, it makes a reference to the Bangalore branch and the gratitude expressed for handing over the state of affairs of it to the plaintiff. Further it also makes a point blank reference to the fact that Bangalore branch had ceased to function with the going away of Shankabrit Das. Thus, Ex.P205 also shows that Bangalore branch had ceased to function, even if it

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is said that it was there in existence.

284. Making use of the contents of Ex.P205, Sri. S.K.V.Chalapathy contended that it makes it manifest that the plaintiff, as an independent entity, was carrying on its activities ever since 1978 and it had not received any monetary assistance from Bombay public trust. It also points out that there was no bank account of the Bangalore branch to be taken over. Thus, Ex.P205 also cuts the defense at its root. In view of this, I cannot just agree with the defense raised that branch of the 1st defendant was in existence and was functioning, after the registration of the plaintiff.

285. It is pertinent to note that even though the 1st defendant has not claimed that it is in possession of the schedule properties in so many clear words, curiously enough, it has claimed permanent injunction alleging that there is direct interference with its possession,management and control of its Bangalore branch and the properties referred to in para 2(c) by the plaintiff. But it necessary to note that it is not able to produce any evidence worth its name to substantiate its defense that its branch is in possession of the schedule properties. D.W.1 has not given any evidence worth consideration. Even D.W.4 has followed suit, as he too has not deposed any thing in support of the dense raised. The testimony of D.W.3 and 4 is any of assistance. However, it it curious to take note of the assertion of

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D.W.1 that the 1st defendant is in possession of the title deeds of all the properties. But unfortunately for it, the said deeds are not produced. If his assertion is read in conjunction with his another assertion that sale deed and the statements of M.P.Das and C.P.Das in the suits are the material that shows conveying of the property to the 1st defendant by B.D.A., what has to emerge is that the 1st defendant has no title deeds as claimed by him. Even then, it is necessary to note that D.W.4 has denied the last suggestion tendered to him that the schedule properties belong to the plaintiff and they are in its possession without any rhyme or reason. But on the face of the evidence on record, his denial cannot be of any consequence. This would naturally and necessarily upset the defense raised, besides negativing the counter-claim. In view of this, I am hesitant to say that the defendants have failed to prove that the 1st defendant's branch at Bangalore is in possession of the schedule properties.

286. In the light of the foregoing reasoning, I am profusely convinced to say that the plaintiff has proved the subject matter of the 1stand 2nd issue, but the defendants have failed to prove the subject matter of issue No.2B. Hence, my finding on the 1st and the 2nd issue is in the affirmative and issue No.2B is in the negative.

287. **Issue No.2C**: In the written statement presented to the counter-claim preferred by the

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defendants, the plaintiff has maintained that the parties are parties to O.S. 1758/03 wherein the reliefs claimed are similar to the counter-claim put forward and the said suit is filed at the behest of the members of the 1st defendant and therefore, it is not open to the defendants to put forward counter-claim in the present suit. Of course, by filing a rejoinder, the defendants have not challenged it. Still on the basis of the same, this issue is raised. To record a finding on it, it is necessary to peruse and scrutinize Ex.D312 with reference to the counter-claim preferred.

288. Contending that having regard to the stand taken by the plaintiff and the fact that M.P. Das has claimed to be president of the plaintiff, there is direct interference with the 1stdefendant's possession, management and control of the Bangalore branch and the properties referred in para 2(c) above and in order to safeguard its interests,the counter-claim preferred for permanent injunction restraining the plaintiff from interfering with the 1st defendant's possession, management and control of Bangalore branch and Sri.Radhakrishna temple situate at Hare Krishna Hill, A to C schedule properties and other annexures to the plaint and every other property either movable or immovable, tangible or intangible, corporeal or incorporeal, whether in existence on the date of filing of the suit or acquired thereafter in its name or in any other name, all trusts, organizations, programmes, projects and the like

attached to, or operating from the premises of Sri. Radhakrishna temple of Bangalore and Srikrishna Balarama temple of Mysore and any branch, property and the like that are alleged by the plaintiff to be existing in the state of Karnataka or else where in India or claimed by as belonging to it. Further, the cause action for the counter-claim arose on or about 16.10.01, when the suit was filed, on the plaintiff amending the plaint as per order dated 13.4.04 and on all subsequent dates when the suit is continued.

289. Of course, the plaintiff is the 6th plaintiff in O.S. 1758/03. But in addition to it, five more plaintiffs have joined in the institution of the said suit as reflected in Ex.D312. But none of them are parties to the suit. Further, the defendants are not parties to the said suit. As such, I cannot even appreciate the defense raised by the plaintiff that the parties to the suit are parties to O.S. 1758/03. Hence the first limb of its defense has to fail on its own. In the suit on hand, as already said above, the reliefs claimed are a declaration that the plaintiff is the absolute owner of the 1st item of 'A' schedule and 'B' and 'C' schedule properties and it is in possession and enjoyment of the same, as independent legal entity, that the executive committee or bureau of the 1st defendant and or the 1st defendant has no power or authority to remove the president or any other office bearers of the plaintiff and its temples or to exercise control over

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the possession of the property of the plaintiff or administration of its affairs, since it is a separate entity independent of the 1st defendant and permanent injunctions. Whereas the reliefs claimed in O.S. 1758/03 are a declaration that the 1st to 5th plaintiffs and the 1st to the 10th defendants constitute the governing body of the 6th plaintiff, that the 11th to 17th defendants have no right to manage or control the 6th plaintiff, mandatory injunction and permanent injunction. Thus, the reliefs claimed in both the suits are different and distinct and they cannot be equated with each other. Neither they can be described to be similar, as maintained by the plaintiff. As such, the 2nd limb of its defense has also to fail on its own. Likewise, I have to mention that the counter-claim preferred is different from the reliefs claimed in O.S. 1758/03. With it, the last limb of its defense has also fall flat to the ground.

290. On the face of the facts pleaded and referred to above, I find unable to say the counter-claim is not maintainable in the light of O.S.1758/03. Further,it is necessary to note that there is no evidence produced by the plaintiff to show that the counter-claim is not maintainable on the face of O.S. 1758/03. Nor was there any argument addressed nor written argument filed even to suggest that the counter-claim is not maintainable as alleged. Hence, my finding on this issue is in the affirmative.

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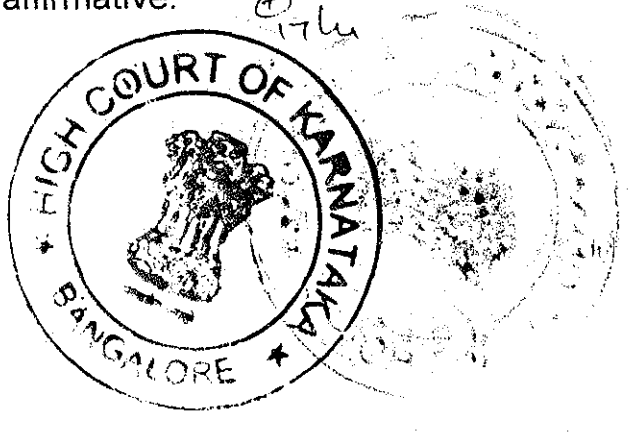
291. **Issue No.3**: As already mentioned above, the declarations sought for by the plaintiff are that it is the absolute owner of the 1st item of 'A' schedule and 'B' and 'C' schedule properties and is in possession and enjoyment of the same as absolute owner being an independent legal entity, that the executive committee or bureau of the 1st defendant and or the 1st defendant has no power or authority to remove the president or any other office bearers of the plaintiff and its temples or to exercise control over the possession of the plaintiff or administration of affairs since the plaintiff is a separate entity independent of the defendant which should have been the 1st defendant. In view of the findings recorded on issue No.1, 2 and 2B holding that the plaintiff has proved that it is the absolute owner in possession of 1st item of 'A' schedule and 'B' and 'C' schedule properties, that the 1st defendant has no power or authority to exercise control over the possession of the same by the plaintiff and defendants have failed to prove that the 1st defendant acquired the schedule properties out of the funds of its branch at Bangalore and the said branch is in possession of them, it is needless to say that the plaintiff is entitled to the declarations sought for, as rightly argued by Sri.S.K.V.Chalapathy. Per contra there was no argument worth consideration for the defendants to say otherwise or to say that the plaintiff is not entitled to the declarations sought for. Hence, my finding on this issue is in the affirmative.



292. **Issue No.4 and 6A**: The plaintiff has also claimed 3 types of permanent injunctions. One is to restrain the defendant 1 to 9 from interfering with its peaceful possession and enjoyment of the schedule properties, the second one is to restrain them from interfering with the position of the president and office-bearers of the plaintiff in the day to day administration of its affairs in the state of Karnataka including the temple at Bangalore and Mysore and all other affairs of it and the operation of bank accounts or taking possession of its properties other than by due process of law and the third one is to restrain them from enforcing the decision that no Iskcon life member or patron should be issued the membership card by following the existing practice which is in vogue since inception and declaring membership cards issued by the plaintiff as invalid or taking any disciplinary action or otherwise against the plaintiff.

293. By putting forth a counter-claim, the defendants have claimed that the 1st defendant is entitled to permanent injunction sought for in its counter-claim. The permanent injunction sought for by them is to restrain the plaintiff from interfering with the 1st defendant's possession, management and control of Bangalore branch and Sri.Radhakrishna temple situate at Hare Krishna Hill, A to C schedule properties and every other property, whether movable or immovable, tangible

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or intangible, corporeal or incorporeal, all trusts, organizations, programmes, projects and the like attached to, or operating from the premises of the temple, any branch, property and the like that are alleged by the plaintiff to be existing in the State of Karnataka or elsewhere in India or claimed by it as belonging to it.

294. In view of the findings recorded on issue No.1 to 3 and 2B, I need not be hesitant in saying that the plaintiff is entitled to the permanent injunctions claimed in para B and C of the prayer column of the plaint. Even then, I find it necessary to appreciate the facts pleaded in that behalf and the evidence produced in support the same.

295. The plaintiff has maintained that with a view of lower the reputation of the president of the plaintiff in public eyes, the executive council of the 1st defendant called for a meeting of the executive committee to take action for suspension of the president of the plaintiff and take possession of the temple belonging to it. It is also mentioned that as the followers of the 1st defendant threatened to take forcible possession of the plaintiff's temple, its member filed a suit and the Bombay High court passed an order on 7.8.01 directing the 1st defendant maintain status quo and in view of the direction of it, the suit is filed. The same is denied by the defendants. That is why, P.W.1 has given evidence to that effect and it is not questioned in the

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cross-examination. Further, there is no contra evidence produced by the defendants to erase or eliminate is effect. Even then, subjecting to a scathing attack, Sri.D.R.Ravishankar contended that there is no direction issued by Bombay High court to file the suit on hand.

296. Of course, in so far as permanent injunction claimed in para D, I am afraid, it cannot be granted, for it is misconceived. Because, when the plaintiff has claimed to be an independent legal entity, the defendant 1 to 9 cannot enforce the decision that no Iskcon life member or patron should be issued the membership card or declare membership cards issued by the plaintiff as invalid. Likewise, they cannot take any disciplinary action or otherwise against the plaintiff for issuing such cards from time to time or issuing any statements in the press or media. When the statute confers upon the plaintiff power to enroll members, extend facilities permissible to its members, etc., none else including the defendant 1 to 9 can interfere with its such activities. Further as the 1st defendant is also a society registered under the Societies Registration Act, 1860, it cannot take any disciplinary action or any other action against the plaintiff. Neither such a course of action by the 1st defendant is thinkable. Furthermore, when the plaintiff has claimed to be an independent legal entity, it certainly enjoys the freedom conferred upon it to carry on the activities, for which it is established by issuing statements in



the press or media. Hence, I do not think the defendant can and would interfere. Even there is no evidence worth its name produced by the plaintiff to speak on it. Neither there is any suggestion tendered to D.W.1 to 4 in that behalf so as to elicit any evidence from them capable of showing that the plaintiff is entitled to the said permanent injunction.

297. Just like the permanent injunction claimed by the plaintiff, as reflected in para D of prayer column, the permanent injunction sought for by the defendants takes within its fold many sweeping factors. When the defendants are not able to establish that Bangalore branch is in existence and Sri Radhakrishna temple is in its possession and enjoyment, the question of interfering with the 1st defendant's possession, management and control of the same cannot arise at all. Likewise, when defendants have failed to establish that A to C schedule properties are in their possession, I do not think they are entitled to the permanent injunction sought for in the counter-claim.

298. In so far as the permanent injunction sought for in respect of the subject matter of para 1(iii) to (v) is concerned, I should say that because they are simply bald and laconic, the defendants cannot seek to have a permanent injunction in respect of the same. I mean to say without furnishing description of the properties referred to in the said paras or specifying them, I cannot say that the

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defendants are entitled to the permanent injunction sought for.

299. Turning my attention to para 33 of the affidavit of D.W.4, it is argued for the plaintiff that on the face it, the counter-claim ought have been against M.P. Das and not against the plaintiff which, according to the defendants, does not exist and therefore, on its basis itself, the counter-claim deserves to be rejected. As could be seen from para 33 of his affidavit, D.W.4 has stated that M.P. Das forced most of the 60 odd devotees, who did not support him, out of the temple complex at Harekrishna hill and seized complete control of it with the help of his family members and close confidents. I cannot act upon his evidence for the simple reason that it is not founded upon pleading. It is a settled principle of law that any evidence given beyond pleadings cannot be relied upon for any purpose, because evidence produced cannot travel beyond pleadings. Even then, for a moment, it is assumed as true, as rightly argued for the plaintiff, it, instead of helping the defendants, has negatived their defense, because it tends to point out that the defendants are out of the possession of the temple complex. The fact being so, they cannot seek to have permanent injunction sought for.

300. Further, taking me through the evidence on record, it is also argued for the plaintiff that none of D.W.1 to 4 has stated that either the 1st defendant

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or its branch is in possession of the schedule properties and there is not even a single sentence to that effect in their evidence. It is also argued that as against it, it is conclusively proved by the plaintiff that B.D.A. handed over the possession of the land to it and it constructed building and it is in its possession. Laying stress on the evidence given by D.W.4 in examination-in-chief itself, it is also argued for the plaintiff that the 1st defendant is not entitled to the injunction sought for. I do find much force in the said argument and as such, I am persuaded to accept it.

301. However, it is argued for the defendants that it is established that the property belongs to the 1st defendant and therefore, the counter-claim is preferred to ensure that the shelter, which M.P. Das and his co-brother C.P. Das, P.W.1 and others have taken, is not available. It is further argued that it is a settled law that the possession of a servant is that of a master and possession of an agent is that of principal and as M.P. Das and others are servants of the 1st defendant, they should be restrained from claiming under any other status and their activities under their claimed status under the plaintiff requires to be restrained by means of injunction. Mere injunction is sufficient to restrain any person to act or to claim under any other status in relation to the properties held by any person in his capacity as a servant or an agent, placing reliance on two decisions reported in (1) Mahabir Prasad Jain Vs.

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Ganga Singh, AIR 1999 SC 3873 and (2) M/s Rocklines constructions, Bangalore Vs. Trupti K. Patel, AIR 2003 Kant. 73.

302. In the 1st decision, the ratio laid down speaks that it is for the respondent to establish that his possession was exclusive possession and not one on behalf of the applicant, owner of premises. Failure of respondent to prove the only plea of tenancy put forward by him, he is not entitled to get any relief in suit under S.6 of Specific Relief Act, 1963. In the 2nd decision, what is laid down is that when an agreement between the parties provides for accounting liabilities of parties before completion of construction and delivery of possession of the property to the plaintiff for carrying out construction when a dispute regarding their liability arises, suit by plaintiff for protection of possession on the basis of agreement although outstanding liability of the defendant set out in detail in the plaint, the suit is maintainable as claimed for protection of only possessory rights as per agreement is distinct relief not relatable to monetary liability.

303. But I am afraid, the defendants cannot obtain any assistance out of the ratio laid down in the aforesaid decisions, for the simple reason that there is absolutely no clinching evidence produced by them even to show that the branch of the 1st defendant at Bangalore was/is in possession of the

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schedule properties for and on behalf of the 1st defendant either as its servant or its agent. Further when it is not their defense that the plaintiff is in possession for and on behalf of the 1st defendant, much less, as its agent or servant, the defendants cannot obtain any help out of the ratio of the decisions. In view of this, I find considerable force in the reply argument advanced for the plaintiff to the effect that when it is not proved that the branch of the 1st defendant at Bangalore existed or existing, there is no question of master and servant or principal and agent relationship and hence, the authorities cited for the defendants are of no assistance to them to entitle the 1st defendant to the counter claim.

304. In view of the above, I am not left in any doubt to say that the 1st defendant is not entitled to permanent injunction sought for in its counter-claim. Hence, my finding on the 4th issue is in the affirmative and 6A is in the negative.

305. **Issue No.5**: The plaintiff has claimed a direction to the 10th and 11th defendant in exercise of the inherent power to render all facilities and legal assistance and protection to the plaintiff and its office-bearers and its property by rendering police and government assistance to the plaintiff to achieve its objects for which it is established. Even though, it has not used the words 'mandatory injunction', the relief claimed is, in essence, a

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mandatory injunction only, of course, not claimed in so many clear words. But a plain reading of it would, indeed, point out that it is simply misconceived, for such a mandatory injunction cannot be issued. It is, indeed, a blanket mandatory injunction asked for by the plaintiff. Exercising inherent power, the court cannot issue such a mandatory injunction, as its grant would be, in my considered view, an abuse of the process of the court. Thus, it has come out to be untenable too. There is no evidence produced by the plaintiff to even to persuade the court say that it is grantable, let alone granting it.

306. The 10th and 11th defendant are none other than the registrar of societies and state of Karnataka. Hence, there cannot be a mandatory injunction issued to them for the exercise of statutory and regulatory powers vested in them. For any reason, if the plaintiff finds that they have failed in the discharge and exercise of their statutory and regulatory powers, it cannot be said that the plaintiff has no avenue at all to redress its grievance. When an alternative efficacious remedy is available, for the exercise of power, including inherent power to grant mandatory injunction, S.41(h) of Specific Relief Act, comes in the way. I mean to say the grant of such mandatory injunction is barred by S.41(h)of the Act. Hence, even on this ground, I cannot say that the plaintiff is entitled to mandatory injunction.

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307. Without specifying or pinpointing any incident or event, I am afraid, the plaintiff cannot seek rendering of all facilities and legal assistance and protection to it and its office-bearers from either the police or the government. Even if the defendants indulge in any acts of interference, it is always open to the plaintiff to seek police help. As spoken to by P.W.1, Ex.P106 is an acknowledgment issued by the police for having received a complaint. But curiously enough, he has eloborated it. Added to it, when it is not summoned or a certified copy of it is not produced, its contents cannot be ascertained, much less with any exactitude. However, the path adopted by the plaintiff goes to show that when to approach the police is very much within its knowledge. Moreover, when an affirmative finding is recorded on issue No.4, I cannot say that there is necessity or need for mandatory injunction. Even then, as could be seen from page 84 of the written argument filed for the plaintiff, a very feeble attempt is made in that behalf by contending that having regard to all the circumstances stated therein, the suit will have to be decreed as sought for. As it is, not only bereft of any substance or reason, but also ineffective, it cannot persuade the court say that the plaintiff is entitled to mandatory injunction. Hence, my finding on this issue is in the negative.

308. **Issue No.6**: As could be seen from para 25

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of its written statement, the 1st defendant has maintained that the suit is not properly valued and the court fee paid is insufficient, as the relief of declaration is in reality in respect of the properties set out in the 4th document attached to the plaint and alleged to be of the value of Rs.39 crores. Of course, the defendants have not brought on record any evidence worth its name in respect of the defense raised. But it cannot afford a ground to straight away say that the valuation of the suit is proper and the court fee paid thereon is sufficient. On the other hand, the proper course to find a solution to it is to get at the facts placed on record touching upon the same and to appreciate them in their perspective.

309. By effecting a surgery to the plaint, the plaintiff has sought for a declaration that it is the absolute owner of the 1st item of the "A' schedule and 'B' and 'C' schedule properties. The 1st item of 'A' schedule is land measuring 6.08 acres situate at Rajajinagar, Bangalore. Hence, it cannot be disputed that it is located in a place of high potentiality. As it is not the case of the plaintiff that it has still remained an agricultural land, naturally and necessarily, it invites the application of the provisions of Karnataka Court Fees and Suits Valuation Act. In view of this, it is not that difficult to find out whether the valuation of the suit is proper and the court fee paid is adequate.

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310. Pursuant to the amendment carried out to the plaint, the plaintiff, filing a fresh valuation slip, has paid a court fee of Rs.30,000/-. But the very text of the valuation slip makes an interesting reading. As mentioned in it only, because as per the covenant of the sale deed, the land cannot be sold, the plaintiff has maintained that its value has to be taken as the acquisition costs, viz., Rs.8,83,518/-. It is also mentioned in it that since the buildings put up on it cannot be sold, they have no market value. With it, even though the plaintiff has tried to play smart, the subtle fallacy contained in it cannot be lost sight of or ignored. With it, the plaintiff cannot even dream of avoiding the rigour and vigour of the provisions of the Act. The plaintiff could not have taken shelter under the covenant and stuck to an unfair and unreasonable valuation of the suit and avoided the payment of the adequate court fee. In avoiding paying it, I should say that it has assumed a highly misconceived, untenable and unrighteous stand. Whether the 1st item of 'A' schedule can be sold or not, it cannot be disputed that it had its own market value as on the date of the institution of the suit. But even then, by taking shelter under a flimsy ground, it is unfortunate that the plaintiff has evaded the payment of the requisite court fee, forgetting for a moment that betraying the government is nothing, but betraying itself.

311. It is also curious to note the way in which the plaintiff has moulded the the 3 permanent

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injunctions sought for in para (B), (C) and (D) of the prayer column of the plaint. Albeit, it has tried to project that it has asked for only 3 permanent injunctions and it looks plausible at first sight, a plain reading of the same would succinctly point out out the fallacy contained in them, for they take within their fold more than one permanent injunction. But the plaintiff has proceeded as if they are just 3 permanent injunctions. Hence, the plaintiff is directed to value the various permanent injunctions sought for by it separately and to pay the requisite court fee payable on them. In view of this, it is needless to say that the valuation of the suit is not proper and court fee paid is inadequate. It is interesting to note that there was no argument addressed at all, especially on the plaintiff's side, touching upon the subject matter of this issue, lending some more credence to the view taken up. In view of this, I cannot say that the valuation of the suit is proper and the court fee paid is correct and adequate. Hence, my finding on this point is in the negative.

312. **Issue No.7**: In the light of the findings recorded on other issues, it is needless to say that the plaintiff's claim is entitled to succeed, of course, in part, with proportionate costs, but the counter-claim is liable to fail. But before parting with the records, it is necessary to direct the plaintiff to value the 1st item of 'A' schedule as on the date of the institution of the suit, file a fresh valuation slip and to



make good the deficit court fee within 3 days from this day. In the result and for the reasons aforesaid, I proceed to pass the following:

**ORDER**

The suit is decreed, but in part, with proportionate costs. The plaintiff is declared as the absolute owner of the 1st item of 'A' schedule and 'B' and 'C' schedule properties and is in possession and enjoyment of them, being an independent legal entity.

It is declared that the executive committee or bureau of the 1st defendant or the 1st defendant has no power or authority to remove the president or any other office-bearers of the plaintiff and its temples or exercise control over the possession of its properties or administration of its affairs, since it is a separate entity independent of the 1st defendant.

The defendants 1 to 9 their agents, men, representatives or any person or persons acting or claiming under or through them, are restrained by means of permanent injunction from interfering with the plaintiff's peaceful possession and enjoyment of the schedule properties or attempting to take possession or control them and interfering with the position of the president and office-bearers of the plaintiff in the day to day administration of its affairs

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including the operation of bank accounts in the state of Karnataka.

The plaintiff is directed to file a fresh valuation slip in the light of the observations made herein above and to make good the deficit court fee within 3 days from this day.

Office to draw decree only after the plaintiff files fresh valuation slip and makes good the deficit court fee as directed.

(Dictated a part to J.W., computerized by her, rest typed by me, corrected and then pronounced by me in the open court on this 17th day of April 2009)

17.04.09
(B. Balakrishna)

**ANNEXURE**

List of witnesses examined for the plaintiff:

P.W.1: Jai Chaitanya Dasa
P.W.2: K.N.Haridasan Nambiar
P.W.3: M.R.Ramakrishna

List of witnesses examined for defendants:

DW-1: Dayaram Dasa
DW-2: M.V.Kapadia
DW-3: Ananda Tirtha Dasa

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DW-4: H.H.Jayapataka Swami

List of documents exhibited for the plaintiff:

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| Ex.P1 | Copy of letter dated 22.12.72 addressed to Karandara by Prabhupada |
| Ex.P2 | Certification of registration of plaintiff |
| Ex.P3 | Certified copy of the suit register pertaining to O.S.1936/79 |
| Ex.P4 | Certified copy of the plaint presented in O.S.1936/79 |
| Ex.P5 | Copy of the plaint presented in O.S.1936/79 |
| Ex.P6 | Copy of application dated 29.7.1978 given to Bangalore telephones by the plaintiff |
| Ex.P7 | Copy of inspection report dated 29.8.1978 given by Indian Posts and Telegraph department |
| Ex.P8 | Copy of an endorsement dated 13.9.1978 |
| Ex.P9 | Copy of letter dated 29.9.1979 addressed to General Manager, |

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| | Bangalore Telephones by the plaintiff |
| Ex.P10 | Copy of letter dated 28.8.1980 addressed to the General Manager Telephones by private secretary of Ministry for Finance and Planning |
| Ex.P11 | Copy of letter dated 10.9.1980 addressed to private secretary by General Manager |
| Ex.P12 | Copy of work order issued by Bangalore telephones |
| Ex.P13 | Copy of letter dated 22.2.1980 written to the General Manager by the plaintiff |
| Ex.P14 | Copy of letter dated 2.7.1980 written to the General Manager by the plaintiff |
| Ex.P15 | Copy of work order dated 31.10.1980 received by Bangalore Telephones |
| Ex.P16 | Copy of letter dated 8.7.1980 written to plaintiff by Bangalore Telephone |
| Ex.P17 | Copy of letter dated 8.3.1985 |



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| | written to General Manager by the Vice-president of the plaintiff |
| Ex.P18 & 19 | Two copies of work order issued by Bangalore Telephones |
| Ex.P20 | Copy of letter dated 16.4.87 written to officer in charge by the plaintiff |
| Ex.P21 to 23 | Copies of three work orders issued by Bangalore Telephones |
| Ex.P24 | Copy of application dated 30.09.88 issued to Bangalore telephones by the plaintiff for shifting telephone |
| Ex.P25 | Copy of application given to Bangalore telephone for shifting telephone |
| Ex.P26 | Copy of work order dated 29.7.1989 |
| Ex.P27 | Copy of application dated 28.4.83 given to General Manager by the plaintiff |
| Ex.P28 | Copy of work order issued by Bangalore telephones |

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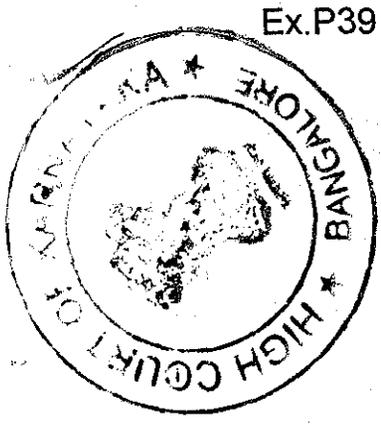
| Ex.P29 | Copy of letter dated 22.11.96 issued to Commercial officer by the plaintiff |
| Ex.P30 & 31 | Copies of two work orders issued by Bangalore telephones |
| Ex.P32 | letter dated 18.3.2002 issued to the plaintiff by BSNL |
| Ex.P33 | copy of letter dated 28.1.03 written to the commercial officer by the plaintiff |
| Ex.P34 | Copy of the letter dated 20.3.03 written to the commercial officer by the plaintiff |
| Ex.P35 | Letter written to the plaintiff by BSNL |
| Ex.P36 | Copy of letter dated 1.7.89 issued to Commercial officer by Manohar D.Naik |
| Ex.P37 | Copy of letter dated 3.8.89 given by Manohar D. Naik |
| Ex.P38 | Copy of the undertaking dated 3.8.89 given to area manager by the plaintiff |
| Ex.P39 | Copy of the application dated |



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| | 9.8.89 given by Manohar D.Naik |
| Ex.P40 | Copy of the letter dated 22.8.89 issued to area manager by the plaintiff |
| Ex.P41 | Copy of the check list dated 28.08.89 prepared by Bangalore telephones |
| Ex.P42 | Copy of the letter addressed to the plaintiff by department of telecommunications |
| Ex.P43 | Copy of GPA dated 16.10.89 issued to telephone department |
| Ex.P44 | Copy of the resolution dated 3.10.89 passed by the plaintiff |
| Ex.P45 | Copy of the letter dated 15.11.89 issued to area manager by the plaintiff |
| Ex.P46 | Copy of declaration dated 14.11.89 given by the plaintiff |
| Ex.P47 | Copy of receipt issued for having paid charges |
| Ex.P48 | Copy of work order dated 20.11.89 issued by Bangalore telephones |

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| Ex.P49 | Copy of the letter dated 2.11.89 issued to plaintiff by the department of telecommunication |
| Ex.P50 | Copy of the affidavit dated 8.12.92 furnished by the plaintiff |
| Ex.P51 | Certified copy of the application issued to BDA by the plaintiff |
| Ex.P51(a) to (c) | Certified copies of certificate of registration, memorandum of association and a paper cutting appended to original of Ex.P51 |
| Ex.P52 | Acknowledgment issued for having received the application |
| Ex.P53 | Certified copy of application dated 1.8.87 given to BDA by the plaintiff |
| Ex.P53(a) to (c) | Certified copies of paper cuttings |
| Ex.P54 | Letter dated 31.5.88 issued to the plaintiff by BDA |
| Ex.P55 | Challan obtained for having paid Rs.2,75,000/- |
| Ex.P56 | Challan obtained for having paid |



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| | Rs.5,00,000/- |
| Ex.P57 | Certified copy of letter dated 20.7.88 issued to BDA by the plaintiff |
| Ex.P58 | Certified copy of the letter dated 2.8.88 issued to BDA by the plaintiff |
| Ex.P59 | Letter dated 30.4.91 issued to plaintiff by BDA |
| Ex.P60 | Receipt dated 10.8.88 issued by sub-registrar |
| Ex.P61 | Certified copy of letter dated 1.8.88 |
| Ex.P62 | Certified copy of the letter dated 21.10.88 issued to BDA by the plaintiff |
| Ex.P63 | Challan obtained for having paid Rs.27,471/- |
| Ex.P64 | Letter dated 6.7.92 issued by BDA |
| Ex.P65 | Letter dated 17.4.97 issued by BDA |
| Ex.P66 | Challan issued for having |

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| | remitted Rs.1,16,506/- |
| Ex.P67 | Khata certificate dated 30.5.91 |
| Ex.P68 | Certified copy of the letter dated 10.6.88 issued to BDA for exemption |
| Ex.P69 | Certified copy of the sketch issued by BDA |
| Ex.P70 | Intimation dated 8.8.2002 issued by BDA |
| Ex.P71 | Challan issued for having remitted the amount |
| Ex.P72 | Certified copy of letter dated 15.5.89 for exemption |
| Ex.P73 | Certified copy of Form No.4 |
| Ex.P74 | Notice dated 16.5.89 issued to the plaintiff |
| Ex.P75 | Certified copy of the order dated 27.5.89 passed by Special D.C. |
| Ex.P76 | Letter written to the plaintiff by Krishnaiah Shetty |
| Ex.P77 | Receipt dated 8.9.97 |



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| Ex.P78 to P81 | Receipts dated 8.9.89, 23.9.87 and 24.9.87 |
| Ex.P82 | Acknowledgment dated 24.9.87 issued by district registrar |
| Ex.P83 | Certified copy of the governing council list |
| Ex.P84 | Receipt dated 4.4.89 |
| Ex.P85 | Acknowledgment dated 29.4.1989 issued by District Registrar |
| Ex.P86 | copy of letter dated 20.6.89 issued to the Registrar by the plaintiff |
| Ex.P87 | Certified extract of register issued to the plaintiff |
| Ex.P88 | Certified copy of list of governing council |
| Ex.P89 to P100 | certified copies of list of governing council members for 1989-90 to 2000-01 |
| Ex.P101 | Acknowledgment dated 21.8.2001 issued by District Registrar |

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BANGALORE

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| Ex.P102 | Notice dated 1.8.2001 issued to the plaintiff by Registrar |
| Ex.P103 to P105 | receipts dated 9.8.2001 and 21.8.2001 |
| Ex.P106 | Acknowledgment issued by the police for having received a complaint |
| Ex.P107 | Certified copy of decree drawn in O.S. 506/82 |
| Ex.P108 | Copy of letter dated 25.11.86 written to the plaintiff |
| Ex.P109 | Receipt dated 27.11.86 issued by Bharath Travels to the plaintiff |
| Ex.P110 | True copy of account opening form issued by Canara Bank |
| Ex.P111 | Letter dated 9.12.87 issued to the plaintiff by I.T.O. |
| Ex.P112 | Certificate of registration issued u/s.12-A |
| Ex.P113 | letter dated 2.9.88 issued to the plaintiff by the Governor |
| Ex.P114 to 115 | copies of applications dated |

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| | 27.11.87 and 30.11.87 addressed to the secretary to Home Ministry |
| Ex.P116 | postal acknowledgment received for having given an application to the Home Ministry |
| Ex.P117 | letter dated 27.11.87 addressed to the plaintiff by Grindlays Bank |
| Ex.P118 | copy of application dated 13.2.88 addressed to the secretary of Home Ministry |
| Ex.P119 | Letter dated 20.4.88 addressed to the plaintiff by Home Ministry |
| Ex.P120 | copy of letter dated 24.1.89 sent to the Secretary, Ministry of Home affairs |
| Ex.P120(a) | Copy of Form FC-3 |
| Ex.P121 to 124 | Copies of Letters dated 24.1.89, 13.7.80, 22.7.91 and 23.11.92 respectively, addressed to Ministry of Home Affairs |
| Ex.P125 | Acknowledgment issued by Karnataka Sales Tax Office for having received application in Form 1 |

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| Ex.P126 to P128 | Copies of declarations issued in Form 3 |
| Ex.P129 to P130 | Receipts issued for having received money |
| Ex.P131 | Copy of letter dated 18.6.90 addressed to A.C.T.O by the plaintiff |
| Ex.P132 & P133 | Assessment orders dated 28.9.80 and 17.9.90 |
| Ex.P134 | Copy of application 08.07.88 issued to A.C.T.O. |
| Ex.P135 to P138 | Four receipts |
| Ex.P139 | Copy of annual return dated 4.10.96 filed in Form 26C |
| Ex.P140 | Order dated 3.12.96 of A.C.I.T. |
| Ex.P141 | Notice of demand dated 3.12.96 issued to the plaintiff |
| Ex.P142 to P144 | Orders dated 3.12.96 of A.C.I.T. |
| Ex.P145 | Demand notice dated 3.12.96 issued to the plaintiff |
| Ex.P146 & P147 | Demand notices dated 3.12.96 issued to the plaintiff |



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| Ex.P148 | Challan of 1997-98 |
| Ex.P149 to P160 | certified copies of auditor reports for the year 1989 to 2000 |
| Ex.P161 to P163 | receipts issued by auditor |
| Ex.P164 | General ledger maintained by the plaintiff for the year 1987 to 1989 |
| Ex.P164(a) | Relevant entry |
| Ex.P165 | General ledger maintained by the plaintiff for the year 1988-89 |
| Ex.P165(a) to (d) | Relevant entries |
| Ex.P166 to P168 | guest registration books |
| Ex.P169 | Donation collection book |
| Ex.P170 | Registered sale deed dated 3/8/88 executed in favour of the plaintiff by BDA |
| Ex.P171 | Certificate of posting |
| Ex.P172 to P183 | Letters addressed to the plaintiff by Chartered Accounant |
| Ex.P184 | auditors report dated 6.7.87 |

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| Ex.P185 to P187 | balance sheets for the year 1984-85 to 1986-87 |
| Ex.P188 | letter dated 10.10.86 written to the plaintiff by the chartered accountant |
| Ex.P189 | auditors report for the year 1980-89 |
| Ex.P190 | auditors report for the year 1989-90 |
| Ex.P191 | Certified extract of property register |
| Ex.P192 | Certified copy of order sheet in case CR.3196/96 |
| Ex.P193 | Certified copy of report of change |
| Ex.P194 & 195 | Certified copy of two public notices issued by charity commissioner |
| Ex.P196 | Certified copy of paper publication |
| Ex.P197 | Certified copy of auditors report pertaining to branch of Ahmedabad |



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| Ex.P198 | Certified copy of letter dated 3.6.97 addressed to Superintendent of Public Trusts |
| Ex.P199 | Certified copy of letter dated 9.2.99 addressed to charity commissioner by 1st defendant |
| Ex.P200 | Certified copy of public notice issued by charity commissioner |
| Ex.P201 | Certified copy of letter dated 3.6.97 addressed to superintendent of Public Trusts |
| Ex.P202 | Certified copy of amended rules and regulations of D1 |
| Ex.P203 | Certified copy of possession certificate dated 16.8.88 issued to the plaintiff |
| Ex.P204 | Minutes book maintained by the plaintiff |
| Ex.P205 | Copy of proceedings of the meeting dated 9.2.90 |
| Ex.P206 | Letter dated 15.6.84 written to the then President of plaintiff by Shankabrit Das |
| Ex.P207 to P210 | Minutes of the meetings dated |

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| | 10.8.01, 13.8.01 and 12.8.01 respectively |
| Ex.P211 | Enquiry report dated 5.11.2001 given by governing council |
| Ex.P212 | Notice dated 25.5.84 issued to the members |
| Ex.P213 | Resolution dated 24.11.2007 |
| Ex.P214 to P220 | water bills issued by Maruthi water supplies |
| Ex.P221 to P227 | Acknowledgments issued in respect of water bills |
| Ex.P228 to P233 | bills issued by Group Four Securator Guarding Limited |
| Ex.P234 | Certified copy of Memorandum of Association of GBC |
| Ex.P235 | Certified copy of Memorandum of association and rules and regulations of D1 |
| Ex.P236 | Certified copy of amended rules and regulations of 1978 of D1 |
| Ex.P237 | certified copy of auditors report |



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| Ex.P238 | Certified copy of letter dated 27.1.98 addressed to Deputy charity commissioner |
| Ex.P239 & P240 | Certified copies of auditors reports |
| Ex.P241 | letter dated 23.11.93 written to D.W.2 |
| Ex.P242 & P243 | Certified copies of reports of changes |
| Ex.P244 to P248 | certified copies of returns |
| Ex.P249 | book published by BBT |
| Ex.P250 | Letter dated 30.4.99 |
| Ex.P251 | web site copy of initial concept for the constitution of GBC |
| Ex.P252 | Letter of Srila Prabhupada |
| Ex.P253 | No objection certificate issued to R.S.Prabhu and company by PW3 |
| Ex.P253(a) | Signature of PW3 |

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List of documents exhibited for the defendants:

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| Ex.D1 | Certified copy of bylaws of plaintiff |
| Ex.D1(a) | Source of power |
| Ex.D2 | Certified copy of memorandum |
| Ex.D3 | Rules and Regulations of plaintiff |
| Ex.D4 | Extract of office bearers |
| Ex.D5 | receipt |
| Ex.D6 | xerox copy of Ex.P204 |
| Ex.D7 | internet copy of letter dated 16.6.72 written to 4th defendant by Srila Prabhupada |
| Ex.D8 | internet copy of letter dated 16.6.72 written to 4th defendant by Srila Prabhupada |
| Ex.D9 | Balance sheet as on 30.6.1982 submitted to 1st defendant by Bangalore branch |

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|---|---|
| Ex.D9(a) | Signature of Mahashringadas |
| Ex.D9(b) | Signature of PW3 |
| Ex.D10 | Statement of income and expenditure as on 30.6.82 submitted by Bangalore branch to 1st defendant |
| Ex.D10(a) | Signature of Mahashringadas |
| Ex.D10(b) | Signature of PW3 |
| Ex.D11 | Statement of receipts and payments for the year ending on 30.6.82 submitted to 1st defendant by Bangalore brahch |
| Ex.D11(a) | Signature of Mahashringadas |
| Ex.D11(b) | Signature of PW3 |
| Ex.D12 | Auditors report 12.2.86 for the year ending on 30.6.85 |
| Ex.D13 | Balance sheet as on 30.6.83 |
| Ex.D13(a) | Signature of M.P.Das |

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| Ex.D14 | Statement of income and expenditure for the year ending 30.6.83 |
| Ex.D14(a) | Signature of M.P.Das |
| Ex.D15 | Statement of receipts and payments for the year ending on 30.6.83 |
| Ex.D15(a) | Signature of M.P.Das |
| Ex.D16 | Auditors report for the year ending on 30.6.84 |
| Ex.D17 | Balance sheet of Bangalore branch for the year ending on 30.6.84 |
| Ex.D17(a) | Signature of M.P.Das |
| Ex.D18 | Statement of income and expenditure of Bangalore branch for the year ending on 30.6.84 |
| Ex.D18(a) | Signature of M.P.Das |
| Ex.D19 | Statement of receipts and payments of Bangalore branch for the year ending on 30.6.84 |

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| Ex.D19(a) | Signature of M.P.Das |
| Ex.D20 | Balance sheet of Bangalore branch for the year ending on 30.6.85 |
| Ex.D20(a) | Signature of M.P.Das |
| Ex.D21 | Statement of income and expenditure of Bangalore branch for the year ending on 30.6.85 |
| Ex.D21(a) | Signature of M.P.Das |
| Ex.D22 | Statement of receipts and payments of Bangalore branch for the year ending on 30.6.85 |
| Ex.D22(a) | Signature of M.P.Das |
| Ex.D23 | Statement of receipts and payments of Bangalore branch for the year ending on 30.6.82 |
| Ex.D23(a) | Signature of Mahashringadas |
| Ex.D24 | audited balance sheet for the year ending on 30.6.86 |

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| Ex.D24(a) | Signature of M.P.Das |
| Ex.D25 | audited balance sheet for the year ending on 30.6.87 |
| Ex.D25(a) | Signature of M.P.Das |
| Ex.D26 | audited balance sheet for the year ending on 31.3.89 |
| Ex.D26(a) | Signature of M.P.Das |
| Ex.D27 | audited balance sheet for the year ending on 31.3.90 sent to the 1st defendant |
| Ex.D27(a) | Signature of M.P.Das |
| Ex.D28 | An audited balance sheet for the year ending on 31.3.91 to the 1st defendant |
| Ex.D28(a) | Signature of V.L.Varadaraju |
| Ex.D29 | audited balance sheet for the year ending on 31.3.92 sent to the 1st defendant |
| Ex.D29(a) | Signature of M.P.Das |
| Ex.D30 | audited balance sheet for the year ending on 31.3.93 |

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| | sent to the 1st defendant |
| Ex.D31 | audited balance sheet for the year ending on 31.3.94 sent to the 1st defendant |
| Ex.D31(a) | Signature of M.P.Das |
| Ex.D32 to D37 | audited balance sheets for the year ending on 31.3.95, 31.3.96, 31.3.97, 31.3.98, 31.3.99 and 31.3.2000 sent to the 1st defendant |
| Ex.D32(a) | Signature of M.P.Das |
| Ex.D33(a) | Signature of PW1 |
| Ex.D34(a) to D37(a) | Signatures of M.P.Das |
| Ex.D38 to D52 | assessments orders containing corresponding audited accounts and audit reports submitted to the 1st defendant |
| Ex.D53 to D55 | assessment orders for the year ending on 31.3.96, 31.3.98 and 31.3.2000 |
| Ex.D56 | copy of the order passed by the Director of Income |

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|---|---|
| | tax (exemptions) |
| Ex.D57 to D60 | copies of orders passed by Asst. Director of Income Tax (exemptions) |
| Ex.D61 to D72 | certified copies of balance sheets submitted to Registrar of societies by M.P. Das for the year 1989 to 2000 |
| Ex.D73 to D75 | letters written to 4th defendant by Mandhupandit Das dated 24.8.84, 17.2.85 and 28.2.85 respectively |
| Ex.D76 & D77 | telegrams sent to Calcutta branch and Coimbatore branch respectively |
| Ex.D78 | Certified copy of office note issued by BDA |
| Ex.D79 | Certified copy of letter dated 10.3.87 written to Chief Minister by Hindubai Patel |
| Ex.D80 | Certified copy of letter written by Hindubai Patel |



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| | to M.P. Das dated 14.8.87 |
| Ex.D81 | letter dated 28.11.87 written to M.V. Kapadia by M.P. Cas |
| Ex.D81(a) | Signature of M.P.Das |
| Ex.D82 | letter dated 4.12.88 written by M.V. Kapadia to M.P. Das |
| Ex.D82(a) | Signature of Kapadia |
| Ex.D83 | letter dated 17.12.87 written to Kapadia by M.P. Das |
| Ex.D83(a) | Signature of M.P.Das |
| Ex.D84 | letter dated 15.12.87 written to M.P. Das by kapadia |
| Ex.D84(a) | postal acknowledgment pertaining to Ex.D84 |
| Ex.D85 | letter dated 29.8.87 written to Kapadia by M.P.Das |
| Ex.D86 | letter dated 17.3.88 written to 4th defendant by M.P. Das |

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|---|---|
| Ex.D86(a) | Signature of M.P.Das |
| Ex.D87 | letter dated 26.7.88 written by M.P. Das to Radhacharandas |
| Ex.D88 | letter dated 29.6.95 written to Kapadia by M.P. Das |
| Ex.D88(a) | Signature of M.P.Das |
| Ex.D89 | A brochure of the proposed temple at Harekrishna Hills |
| Ex.D90 | certificate dated 8.4.08 issued by Deputy Director of Income Tax |
| Ex.D91 to D99 | 80G approvals issued to 1st defendant |
| Ex.D100 to D103 | Orders issued to 1st defendant under S.80G |
| Ex.D104 | copy of PAN |
| Ex.D105 | Certified copy of application dated 12.10.01 given by M.P. Das |
| Ex.D106 to D142 | Carbon copies of 37 receipts |



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| Ex.D143 to D150 | Eight applications given to 1st defendant |
| Ex.D151 | Certified copy of rules & regulations of 1st defendant |
| Ex.D152 | Certified copy of plaint presented in O.S. 2180/99 filed by M.P. Das |
| Ex.D152(a) | Signature of Ananda Tirtha Dasa |
| Ex.D152(b) | Signature of C.P.Das |
| Ex.D152(c) | Signature of M.P.Das |
| Ex.D153 | Certified copy of memo of withdrawal |
| Ex.D154 | Certified copy of plaint presented in O.S. 1483/01 filed by M.P. Das |
| Ex.D155 | Certified copy of memo of withdrawal |
| Ex.D156 | Certified copy of plaint presented in O.S. 4467/00 filed by M.P. Das |
| Ex.D157 | Certified copy of memo of |

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| | withdrawal |
| Ex.D158 | Certified copy of plaint in O.S. 4169/01 filed by Anandasamant |
| Ex.D159 | Certified copy of an order dated 14.8.01 in A.O.709/01 |
| Ex.D160 | Certified copy of order sheet |
| Ex.D161 | Certified copy of objections filed by M.P. Das in C.P.492/04 |
| Ex.D162 | Certified copy of affidavit filed by the plaintiff in SLP 14649/02 |
| Ex.D163 | Certified copy of IA.No.13 filed by 1st defendant in C.P.492/04 |
| Ex.D164 | Certified copy of rejoinder affidavit |
| Ex.D165 | Certified copy of IA.14 filed in it by 1st defendant |
| Ex.D166 | Certified copy of objections filed by M.P. Das |



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| Ex.D167 | letter dated 11.8.78 written bureau member of 1st defendant |
| Ex.D168 | letter dated 4.7.79 written to 4th defendant |
| Ex.D169 & D170 | Two letters written to 4th defendant |
| Ex.D171 | letter dated 6.7.80 written to the Chief accountant of 1st defendant |
| Ex.D171(a) | Signature of Gouranga Das |
| Ex.D172 | letter dated 25.7.90 written to the Chief Accountant of 1st defendant |
| Ex.D172(a) | Signature of Gouranga Das |
| Ex.D173 & D174 | letters dated 9.8.90 written to the Chief Accountant of 1st defendant |
| Ex.D173 (a) & D174 (a) | Signatures of Gouranga Das |
| Ex.D175 | letter dated 24.8.83 written to Chief Accountant of 1st |

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|---|---|
| | defendant |
| Ex.D175(a) | Signature of Devaiah |
| Ex.D176 | letter written to chief accountant of 1st defendant |
| Ex.D176(a) | Signature of Dasheswari Devi Dasi |
| Ex.D177 | copy of letter dated 9.11.85 written to the president of Bangalore Branch by 1st defendant |
| Ex.D177(a) | Signature of Kapadia |
| Ex.D178 | postal acknowledgment |
| Ex.D179 | letter dated 4.2.88 written to the Chief accountant of 1st defendant by Bangalore branch |
| Ex.D179(a) | Signature of M.P.Das |
| Ex.D180 | Copy of letter dated 16.8.88 written to Bangalore branch by secretary to accounts branch of 1st defendant |

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|---|---|
| Ex.D180(a) | Signature of DW2 |
| Ex.D181 | postal acknowledgment |
| Ex.D182 | letter dated 15.8.88 written to Chief accountant of Bangalore branch by 1st defendant |
| Ex.D182(a) | Signature of M.P.Das |
| Ex.D183 | telegram sent to 1st defendant by M.P.Das |
| Ex.D184 | copy of letter dated 5.3.90 by the Chief accountant of 1st defendant by Bangalore branch |
| Ex.D185 | copy of letter dated 10.1.92 written to Chief accountant of 1st defendant by Bangalore branch |
| Ex.D185(a) | Signature of Kapadia |
| Ex.D186 | letter dated 4.10.1991 written to Chief accountant of 1st defendant by C.P.Das |
| Ex.D186(a) | Signature of C.P.Das |

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|---|---|
| Ex.D187 | copy of letter dated 27.11.91 written to M.P. Das by Chief accountant of 1st defendant |
| Ex.D187(a) | Signature of Kapadia |
| Ex.D188 | copy of letter dated 14.10.93 written to Kapadia by manager of Bangalore branch |
| Ex.D188(a) | Signature of Geetha Gopal Das |
| Ex.D189 to D190 | letters written to Kapadia |
| Ex.D191 & 192 | Letters written to Kapadia by A.T.Das |
| Ex.D191(a) and D192(a) | Signatures of A.T.Das |
| Ex.D193 | copy of letter written to A.T. Das by the Chief accountant of 1st defendant |
| Ex.D193(a) | Signature of DW-2 |
| Ex.D194 | letter dated 27.7.96 written by Manager to Kapadia |

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|---|---|
| Ex.D194(a) | Signature of Geetha Gopal Das |
| Ex.D195 | letter dated 22.11.99 written to Kapadia by A.T. Das |
| Ex.D195(a) | Signature of A.T.Das |
| Ex.D196 | copy of the letter dated 27.10.01 written to Bangalore branch by Chief accountant of 1st defendant |
| Ex.D196(a) | Signature of Kapadia |
| Ex.D197 | postal acknowledgment |
| Ex.D198 | letter dated 20.11.00 written to Kapadia by A.T. Das |
| Ex.D198(a) | Signature of A.D.Das |
| Ex.D199 & D200 | Two copies of letters written to Bangalore branch by Chief accountant of 1st defendant |
| Ex.D200(a) | Signature of Kapadia |

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|---|---|
| Ex.D201 | postal acknowledgment pertaining to Ex.D199 |
| Ex.D202 | copy of letter dated 19.9.02 written to Bangalore branch by Chief accountant of 1st defendant |
| Ex.D202(a) | Signature of Kapadia |
| Ex.D203 | postal acknowledgment |
| Ex.D204 | postal acknowledgment |
| Ex.D205 | copy of letter dated 9.2.04 written to Bangalore branch by Chief accountant of 1st defendant |
| Ex.D205(a) | Signature of Kapadia |
| Ex.D206 | postal acknowledgment |
| Ex.D207 | copy of letter dated 6.3.2004 written to Bangalore branch by Chief accountant of 1st defendant |
| Ex.D207(a) | Signature of Kapadia |

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|---|---|
| Ex.D208 | postal acknowledgment |
| Ex.D209 | copy of letter dated 6.4.04 written to Bangalore branch by Chief accountant of 1st defendant |
| Ex.D209(a) | Signature of Kapadia |
| Ex.D210 | postal acknowledgment |
| Ex.D211 & P212 | Two letters addressed to Chief accountant of 1st defendant by Bangalore branch |
| Ex.D213 & D14 | Two letters addressed to Kapadia by General secretary of 1st defendant |
| Ex.D215 & D216 | Two letters addressed to Kapadia by M.P. Das |
| Ex.D216(a) | Signature of M.P.Das |
| Ex.D217 | letter dated 31.10.94 addressed Chief accountant of 1st defendant by M.P. Das |
| Ex.D217(a) | Signature of M.P.Das |

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|---|---|
| Ex.D218 | copy of letter dated 31.1.95 addressed to ADIT by Chief accountant of 1st defendant |
| Ex.D218(a) | Signature of Kapadia |
| Ex.D219 | letter dated 14.2.95 addressed to Kapadia by Bangalore branch |
| Ex.D219(a) | Signatures of A.T.Das |
| Ex.D220 | letter dated 29.3.95 addressed to Kapadia by M.P. Das along with three enclosures |
| Ex.D220(a) | Signature of M.P.Das |
| Ex.D221 | copy of letter dated 18.4.95 addressed to ADIT by Chief accountant of 1st defendant |
| Ex.D221(a) | Signature of Kapadia |
| Ex.D222 | copy of letter dated 15.6.95 addressed to M.P. Das by Chief accountant of 1st defendant |
| Ex.D222(a) | Signature of Kapadia |



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| Ex.D223 | postal acknowledgment |
| Ex.D224 | letter dated 27.8.96 addressed to Kapadia by A.T. Das |
| Ex.D224(a) | Signatures of A.D.Das |
| Ex.D225 | copy of letter dated 3.5.97 addressed to A.T. Das and M.P. Das by Chief accountant of 1st defendant |
| Ex.D225(a) | Signature of Kapadia |
| Ex.D226 | letter dated 4.2.2000 addressed to Kapadia by A.T. Das |
| Ex.D226(a) | Signatures of A.D.Das |
| Ex.D227 | letter dated 3.1.2001 addressed by A.T. Das to Kapadia with 5 enclosures |
| Ex.D227(a) | Signatures of A.D.Das |
| Ex.D228 | statement of deposit issued by Canfin homes |
| Ex.D229 | copy of letter is addressed to I.T. Department by |

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| | Confin homes with 1 annexure |
| Ex.D230 to D233 | Copies of Form 15AA issued by I.T. department |
| Ex.D234 | copy of Form 13 |
| Ex.D235 to D238 | copies of Form 15AA |
| Ex.D239 | letter dated 27.5.83 addressed to Bhaktianand Swaroop swamy by M.P.Das |
| Ex.D240 | letter dated 30.5.83 addressed to 4th defendant by M.P. Das |
| Ex.D241 | letter dated 26.8.83 addressed to D4 by Trivendrum branch |
| Ex.D242 | letter dated 3.1.84 addressed by M.P. Das along with 1 enclosure |
| Ex.D243 | receipt dated 19.3.84 issued to Iskcon Trivendrum branch by Bhakti Vedanta Trust |
| Ex.D244 | recommendation letter is |



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|---|---|
| | issued D4 by M.P.Das |
| Ex.D245 | letter written to GBC by M.P.Das |
| Ex.D246 | letter dated 15.9.92 written to D4 by C.C.Das |
| Ex.D247 | letter dated 17.6.84 written to Dvisa Prabhu by Trivendram branch president |
| Ex.D248 | letter dated 18.6.84 addressed to S.B.Das by Trivendrum branch |
| Ex.D249 & D250 | Copies of minutes of south and east zone of D1 |
| Ex.D251 | application given by Shatrugna Pillai to C.P.Das |
| Ex.D252 | application given by Sugatha to C.P.Das |
| Ex.D253 & D254 | Two applications given to Trivendrum branch for life patron of D1 |
| Ex.D255 | letter dated 30.3.83 addressed to B.S.Swamy |

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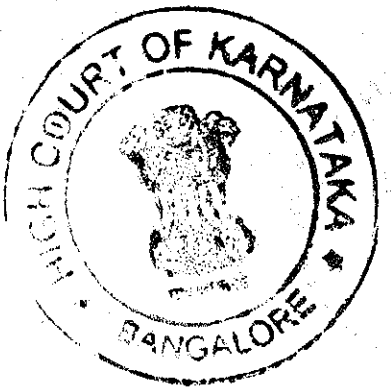

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| | by C.P.Das |
| Ex.D256 | letter dated 14.1.83 addressed to B.S.Damodar by Bangalore branch |
| Ex.D257 | letter dated 24.6.84 addressed to B.S.Swamy by M.P.Das |
| Ex.D258 | letter dated 20.4.1991 addressed to Sridhar Swamy by M.P.Das |
| Ex.D259 | copy of letter dated 17.9.91 addressed to Sridhar Swamy by M.P.Das |
| Ex.D260 | letter dated 17.7.92 addressed to D4 by General Secretary of D1 |
| Ex.D261 | copy of letter dated 14.11.91 addressed to Deputy Charity Commissioner by M.P. Das |
| Ex.D262 | copy of resolution dated 13.11.91 passed by |

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| | Bureau of D1 |
| Ex.D263 | letter dated 6.1.92 addressed to Chief Accountant by Bangalore branch |
| Ex.D263(a) | Signature of M.P.Das |
| Ex.D264 | letter dated 7.12.92 addressed to Sridharaswamy by General secretary of D1 |
| Ex.D265 & D266 | letters addressed to Kapadia by Bangalore branch dated 31.7.92 and 5.8.92 |
| Ex.D265(a) and D266(a) | Signatures of M.P.Das |
| Ex.D267 | copy of annual notice sent to members of Bureau meeting |
| Ex.D268 | postal envelope |
| Ex.D269 | letter dated 11.6.93 addressed to the Bureau members by General secretary |

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| Ex.D270 | letter dated 2.7.93 addressed to D9 by General Secretary of Bureau |
| Ex.D271 | letter dated 3.8.93 addressed to Kapadia by General Secretary |
| Ex.D271(a) | Signature of M.P.Das |
| Ex.D272 | letter dated 21.5.90 addressed to Prabhu by General secretary |
| Ex.D272(a) | Signature of M.P.Das |
| Ex.D273 | letter dated 25.8.94 addressed to Chief Accountant by A.T.Das |
| Ex.D273(a) | Signature of A.D.Das |
| Ex.D273(a) | Signature of DW3 |
| Ex.D274 | letter dated 29.12.97 addressed to D4 by General secretary |
| Ex.D274(a) | Signature of M.P.Das |
| Ex.D275 | copy of the resolution dated 9.11.97 passed by |

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| | Bureau |
| Ex.D276 | letter dated 4.11.98 sent to devotees by D4 |
| Ex.D277 | letter dated 20.10.99 addressed to the Bureau members |
| Ex.D278 | letter dated 20.10.99 issued by general secretary |
| Ex.D279 | letter dated 30.12.00 addressed to life members of Iskcon by M.P. Das and others |
| Ex.D280 | notice dated 2.2.01 of bureau meeting |
| Ex.D281 | postal receipt |
| Ex.D282 | letter dated 2.3.01 addressed to Chairman of D1 by M.P.Das |
| Ex.D283 | E-Mail dated 7.5.01 sent to member by M.P.Das |
| Ex.D284 & D285 | Two letters sent to Secretary of D1 by M.P. Das |

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| Ex.D286 | Copy of letter dated 28.5.96 addressed to D3 |
| Ex.D287 to D290 | Four letters addressed to Co-presidents of Bhuvaneshwara Branch by Genl. Secretary of D1 |
| Ex.D291 | An appeal made by M.P.Das and other |
| Ex.D292 | Meeting notice dated 2.2.01 issued to M.P.Das |
| Ex.D293 | letter dated 28.09.99 addressed to M.P. Das by Chairman |
| Ex.D294 | An extract of minutes of meeting dated 2.3.01 |
| Ex.D295 | Certified copy of deposition of M.P.Das given in O.S. 4165/84 |
| Ex.D296 | Copy of objection statement filed by M.P.Das in complaint No.1599/93 |
| Ex.D297 | Certified copy of written statement filed in O.S. 3959/97 by president of Bangalore branch |



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| Ex.D298 | letter dated 23.12.1978 addressed to Bangalore branch by life membership director |
| Ex.D299 | letter dated 30.8.78 addressed to life membership director by Bangalore branch |
| Ex.D300 | specimen Form of advertisement price list of Bangalore branch |
| Ex.D301 | copy of the complaint dated 6.5.05 given to the Institute of chartered accountants by D1 |
| Ex.D302 | Certified copy of writ petition No.26700/05 |
| Ex.D303 | Reply given by Institute of chartered accountants |
| Ex.D304 | Certified copy of order dated 22.2.07 passed in WP 15944/06 |
| Ex.D305 & D306 | Copies of writ petition and objections filed to it. |
| Ex.D307 | copy of letter sent to DDIT |

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| | by D1 |
| Ex.D308 | Certified copy of order sheet in CS 253/01 |
| Ex.D309 | Certified copy of order sheet in GA 991/02 |
| Ex.D310 | Certified copy of order in TS 369/00 |
| Ex.D311 | Certified copy of order passed in GA 2154/01 |
| Ex.D312 | Certified copy of plaint in O.S.1758/03 |
| Ex.D313 to D321 | Certified copies of written statements presented in it by D1 to D3, D6 to D8, D10 to D17 |
| Ex.D322 | Certified copy of writ petition 42760/03 |
| Ex.D323 | letter dated 1.8.79 addressed to D1 by Bangalore branch |
| Ex.D324 & D325 | Two magazines published by BVT |
| Ex.D326 to D332 | acknowledgments issued |



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| Ex.D333 | for having received income tax returns from D1 |
| Ex.D334 | Letter dated 17.6.79 issued to the president of Bangalore branch |
| Ex.D335 | Magazine by name Iskcon world review published by Bangalore branch |
| | 5th anniversary memorial souvenir published by Bangalore branch |
| Ex.D336 | copy of letter dated 21.7.80 written to the president of Bangalore branch |
| Ex.D336(a) | Signature of Judy Creavo |
| Ex.D337 | copy of letter dated 31.7.80 addressed to Gouranga Das by DW2 |
| Ex.D338 | postal receipt pertaining to it |
| Ex.D339 | copy of letter dated 5.12.94 addressed to |

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| | M.P.Das by DW2 |
| Ex.D340 | postal acknowledgment |
| Ex.D336 | Copy of the FIR |
| Ex.D336(a) | English version of FIR |
| Ex.D337 | Brochure issued by Iskcon temple, Bangalore |
| Ex.D338 to D339 | Two monthly news letters issued by Bangalore branch |
| Ex.D340 | Letter given to DW3 by M.P. Das |




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IX A.C.C. & S.J.