

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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In the Matter of the Application of JARNAIL SINGH, a director, former president and member KULBIR SINGH, GURCHARAN SINGH & HARBANS SINGH, members,	Index No.: 18204/11 Motion Dated: January 31, 2012 Cal. No.: 41
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Petitioners,

For the Judicial Dissolution, pursuant to m# 1
the Not-for-Profit Corporation Law §1102, of

BABA MAKHAN SHAH LOBANA SIKH CENTER, INC.,
a New York Not-for-Profit Corporation, and
the Attorney General of the State of New York,
and the New York State Department of Taxation
and Finance,

Respondents.

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The following papers numbered 1 to 8 read on this Order to Show Cause by petitioners to dissolve the corporation pursuant to Not-for-Profit Corporation Law § 1102.

	<u>PAPERS NUMBERED</u>
Order to Show Cause - Petition - Exhibits.....	1 - 4
Affidavits in Opposition - Exhibits.....	5 - 8

Upon the foregoing papers it is ordered that this Order to Show Cause by petitioners to dissolve the corporation pursuant to Not-for-Profit Corporation Law § 1102 is decided as follows:

At the outset, the court notes that this proceeding was reassigned to this Part pursuant to a directive of the Administrative Judge of this Court.

Petitioners seek dissolution of the Baba Makhan Shah Lobana Sikh Center, Inc. ("Sikh Center"), a not-for-profit organization with principal offices located at 113-10 101st Avenue, in Richmond Hill, Queens County. The Sikh Center was created pursuant to the

Not-for-Profit Corporation Law and received its Certificate of Incorporation from the State of New York in 1998. It is used as a temple, known as a "Gurdwara." In December 2010, a dispute arose as to whether the term of the President of the Gurdwara at the time, Jarnail Singh, who is also one of the petitioners herein, could be extended. Pursuant to an order dated June 9, 2011, this court ordered, adjudged and decreed that Gurmej Singh was the President of the Gurdwara.

In support of its application for dissolution, petitioners assert that there has been internal dissension within the Gurdwara for many years, which has resulted in physical attacks between members of competing factions. Petitioners refer specifically to two episodes of violence at the Gurdwara in January 2011 and April 2011.

NPCL § 1102(a) provides, in pertinent part, that "[a] petition for judicial dissolution of a corporation may be presented ... (2) By ten percent of the total number of members... in the following cases: (C) There is internal dissension and two or more factions of members are so divided that dissolution would be beneficial to the members." Dissolution is a drastic remedy. There is no absolute right to judicial dissolution of a corporation since that determination lies within the discretion of the trial court. (Matter of John Luther & Sons Co. v Geneva Bldrs. & Trade Assn., 52 AD2d 737, 738 [1976].)

Respondents contend that a significant number of annexed statements of members supporting the petition for dissolution are forgeries and were not prepared or signed by the individuals who are named on the statements. This bare, conclusory assertion is insufficient to raise any factual issue as to whether the member statements annexed to the petition are forgeries. (Brown Bark I, L.P. v Imperial Dev. and Constr. Corp., 65 AD3d 510, 511 [2009]; Beitner v Becker, 34 AD3d 406, 408 [2006].)

With respect to the merits of the application for judicial dissolution, there is little doubt that disputes and disagreements have arisen between the competing factions of the Gurdwara within the last two years. Indeed, respondent Gurmej Singh concedes as much in his affidavit. He also states, though, that "day-to-day operations have proceeded on a smooth basis" since he became President in June 2011. Even accepting petitioners' allegations as true, they have failed to show that the drastic remedy of dissolution would be beneficial to the members of the Gurdwara as required by NPCL § 1109. (see Matter of Cusato v Glen at Great Kills Homeowners Assn., Inc., 23 AD3d

464, 464 [2005]; Matter of John Luther & Sons Co. v Geneva Bldrs. & Trade Assn., 52 AD2d at 738.) The incidents of violence set forth in the petition occurred before Gurmej Singh became President pursuant to this court's June 2011 order, and there is no evidence in the petition that such incidents continued after June 2011. Based upon the evidence before it, this court cannot conclude that there is dissension to such a degree that dissolution would be beneficial to the members of the Gurdwara.

Accordingly, this Order to Show Cause by petitioners is denied in its entirety.

All Temporary Restraining Orders contained in the Order to Show Cause for dissolution are vacated and set aside.

Date: March 7, 2012

AUGUSTUS C. AGATE, J.S.C.