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IN THE HIGH COURT OF DELHI AT NEW DELHI

**RESERVED ON: 12.11.2009
PRONOUNCED ON: 20.11.2009**

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**I.A. No.11202/2008 (U/S 92 CPC) AND
CS(OS) 1931/2008**

VINAY RAI & ANR.

..... Plaintiff

Through: Mr. Ramji Srinivasan, Sr. Advocate with
Mr. Vinod K. Shukla and Mr. Shakeel Ahmed, Advocates.

Versus

RAM KRISHAN AND SONS CHARITABLE TRUST & ORS.

..... Defendants

Through: Mr. Arvind Nigam, Sr. Advocate with Mr. Amit Sibbal,
Mr. Naveen Chawla and Mr. Sandeep Mittal, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

HON'BLE MR. JUSTICE S.RAVINDRA BHAT

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1. This order will dispose of an application (IA 11202/08) seeking leave to file a suit, under Section 92 of the Code of Civil Procedure Code, 1908 (hereafter “the CPC”).
2. Briefly, the suit averments, as well as those in the application are that on 14-5-1974, late Manbhari Devi (hereafter “the Settler”)- grandmother of the first plaintiff (hereafter “Vinay”) and the second defendant (“Anil”) set up the first defendant PUBLIC

charitable trust (hereafter “the trust”). The trust comprised of Kulwant Rai, (father of Anil and Vinay), and his two brothers, Balwant Rai and Jaswant Rai. The objects of the trust were, charitable and included *inter alia*, imparting education, setting up and supporting societies or trusts, which were to promote education, health, and well being of people, and also promote literary and other associations, etc. The trust was registered in 1980; the settler, on 20-4-1981, appointed Kulwant Rai as the trust’s Chairman for life, and also appointed Vinay as Managing Trustee, responsible for its day to day affairs. It is alleged that Anil and Satya Paul were appointed as trustees, for two years. Vinay was appointed as Managing Trustee, which position, he says, he continues to hold.

3. The suit describes the relationship of Vinay with Anil, and the third defendant (Anil’s wife); the fourth defendant (Anil’s daughter) fifth defendant (Anil’s son), the sixth defendant (Anil’s sister in law) and seventh defendant, a close friend of Anil. The eighth defendant is the mother of third defendant, and the ninth defendant, an old employee of Anil. It is contended that since education was a dear subject of the settler, the trust applied for allotment of land, to the Land and Development office (L&DO) of the Central Government, for the purpose of setting up a higher secondary school, to provide affordable school education. Consequently, the trust set up the Rai school, (now called BANYAN TREE school), a recognized institution. It is contended that under Vinay’s guidance, a management school, Institute of Integrated Learning and Management, was started, which temporarily functioned from the Rai school premises in 1994. The school and the management institution received benefit of tax exemption under Income tax laws. The suit states that with age, Shri Kulwant Rai, started suffering from failing health and his memory deteriorated. Since Anil had interest in the activities of the trust, the Vinay, in good faith, along with Kulwant Rai, allowed him and his wife to look after its affairs. However, with passage of time, they started to misguide Kulwant Rai, and Vinay, and excluded information from them. Kulwant Rai and Vinay believed them. It is contended that Anil and Defendant Nos 3 to 9 systematically, and in a planned manner, since 2002-2003, succeeded in diverting crores of rupees from the trust, to new

trusts, societies, foundations, set up by them and other defendants with similar names. These trusts, societies, etc are sham institutions set up to defraud the trust of crores of rupees meant for charitable purposes; the diverted money is being used for personal gain. It is alleged that since Kulwant Rai started suffering from Alzheimer's disease, since 2000, the other defendants started getting papers signed by him, and later changing the character of the board of trustees, of the trust, which they systematically commercialized. It is alleged that a bare perusal of the trust's balance sheets would reveal that considerable amounts were spent for purposes alien to the public at large, and meant to benefit only the Defendant No. 2 to 9. The suit refers to another pending suit, CS (OS) 294/2006, where Anil has sought benefit and relief in respect of a document known as "RAI FAMILY AGREEMENT"; reference is also made to another suit, CS (OS) 1158/2005, which claims partition of a residential house. It is alleged that the Defendant Nos. 2 to 9 have sidelined the charitable objectives of the trust, and are providing education to mainly elitist sections of the society, and taking donations from the public, to give admissions. These donations are filling the coffers of Defendant Nos. 2 and 3; none of the trustees have the interests of the trust, or the general public, at heart.

4. The plaintiffs say that the defendants are running a management course, in association with the University of Bradford, UK, by charging Rs. 3 lakh plus per year; the bachelor degree course should have been stopped with the advent of new AICTE guidelines, of 2004-2005. It is however, being continued just to make money for personal gains, of the said Defendant Nos. 2 and 3, which is contrary to objectives of the trust, and against norms of the AICTE, which requires all foreign education to be recognized and approved by it. The defendants, say the plaintiffs, donated a running unit of the trust, i.e the ILIM undergraduate business school which was making surplus or profits of Rs. 5 crores per annum, to another entity, i.e the RKKR Charitable trust (eleventh defendant) absolutely free of cost. In the last 5 years, more than Rs. 20 crores were diverted from the trust and given to other entities by the defendants; not only that the ILIM UBS course continues to be run in the building of the trust, and given away to the RKKR foundation

(twelfth defendant). The said defendant is giving nothing in respect of such activities to the trust, which is systematically eroded of its finances and property. It is alleged that the defendants are making huge donations to other trusts, foundations, institutions, which do not benefit the first defendant trust. Reference is made to the assessment order of Assistant Director, of the income tax authorities.

5. The plaintiffs claim to be gravely disturbed by the occurrences which defeat the purpose for which the trust was set up. They mention that the eleventh defendant was set up in 2001, which is named similar to the trust, and is controlled by Defendant Nos. 2 and 3. It is alleged that in 2002-2003, the trust, under guidance of Defendant Nos. 2 to 9, donated free of cost, a running unit of the first defendant, the IILM Undergraduate business school which was generating a surplus of around Rs. 5 crores annually, and was valued, at more than Rs. 50 crores. The institution was a major revenue earner for the trust. The plaintiffs allude to an assessment order of the tax authorities which talk to two donations of the trust, (one for Rs. 4,43,37,505/-and the other, for Rs. 22,00,000) to the eleventh defendant. The plaintiff relies on the balance sheets of the trust, for 2002-2003. It is also alleged that even today the said IILM undergraduate business school uses the land allotted to the trust. The allotment of the land was made to a school; therefore, the use of the school's land by the IILM institution is contrary to terms of allotment, and the terms of the lease. The degree offered by the said IILM has no recognition or permission from AICTE, or UGC. The plaintiffs say that the eleventh defendant was established in 2001, with a paltry donation of Rs.5000/-; it has no experience in the managing any management institution. The first defendant trust, allege the plaintiffs, has not received any benefit from the donations made to the other establishment, and institutions. All these actions, it is alleged, amount to clear breach of fiduciary duties, by the defendant No. 2 to 9.

6. The plaintiffs allege that defendants 2 to 9 have created societies and foundations to embezzle trust's funds; they submit that in 2004-2005 the said defendants diverted Rs.1.3 crores from the trust to defendant No.14; the same year Rs.1.9 crores of worth

assets and buildings were donated to the said defendant No.14. It is alleged that such donations as well as the handing over of the IILM unit to defendant No.11 are not beneficial to the Trust or its overall objectives are in fact detrimental to the settler's intentions. The plaintiffs further submit that 13th defendant housing society formed by employees (of Usha India Limited and its sister companies) in 1994 wants to construct affordable houses to staff members. The plaintiff states that 13th defendant bought 7 acres of land in Gurgaon for construction of such low cost affordable houses. The second defendant is alleged to have illegally taken control of 13th defendant, replaced its members and office bearers with his employees, relatives etc. and changed the objectives of the society to education for elitist sections of the society by charging exorbitant fees. The plaintiffs allege that the personal cars used by defendant Nos. 2 to 9 as well as their trips abroad are being financed by the Trust. Again a reference is made to an order of Income Tax Inspector Sh. V.K. Khanna adversely commenting on the salary paid to Mr. Savita Rai by the Trust.

7. The plaintiffs state that an analysis of the balance sheet of Trust for the period between 1998 to March 2005 reveal a systematic fudging of accounts by defendants 2 to 9 to cheat the Trust and fill their personal coffers. Reference is made to siphoning of funds of the Trust by claiming huge expenses for the period 2001 and 2005 towards repairs and maintenance. In March a sum of Rs.26 lakhs, towards repairs and maintenance claimed by the Trust is challenged as false, over-inflated; similarly for other periods it is submitted that the amounts of Rs.1.14 crores (2005), Rs.1.13 crores (2004); Rs.1.24 crores (2003) and Rs.0.61 crores (2002) have been claimed without basis towards repair and maintenance. Similar alleged irregularities in the claim of extra cost of construction are alluded to.

8. To establish that actions of defendant No.2 to 9 are detrimental to the Trust in over-all interests, it is contended that the balance sheet for the years 2000-2005 shows mounting liabilities. It is alleged that the borrowings which stood on Rs.1.9 crores as on 31.03.2000, increased to Rs.9.35 crores as on 31.03.2004. While so the Trust is donating

huge amounts to Defendants 11 to 17 and also charging its running business which was consistently generating surplus. On the basis of all these allegations, it is contended that Defendants 2 to 9 are not entitled to administer the Trust and in any case cannot dispose of its property for their personal gains. According to the plaintiffs all these circumstances are documented and reliance is placed upon balance-sheets and annual reports of the Trust that are placed on record. Similarly the Income Tax authorities orders are placed on record. The cause of action, contend the plaintiffs, arose and when the defendants held meetings of the Trust without the first plaintiff's knowledge and started indulging in the activities detrimental to its objects. It is alleged that we are continuing one and also arose in August 2007 when the first plaintiff status was falsely denied by one R.L. Chaudhary in FAO (OS) No.331/2007, and on further deeds. The plaintiff, therefore, claims directions to remove all existing trustees from the Board of the first defendant, appoint fresh trustees to manage its affairs; appoint Court Receiver to take into custody of books of accounts, proceedings, minutes etc. and direct a full-fledged enquiry into the affairs of the Trust and issue consequential directions to the defendants to deliver possession of Trust properties in their possession to the Court Receiver. A declaration is sought that gifts and donations by the first defendant Trust to other Trust, Societies and Foundations etc. are void and illegal.

9. Supporting the averments Mr. Ramji Srinivasan, learned senior counsel points out that the donations of surplus generating IILM unit, apart from being contrary to the terms of allotment of land by the L&DO, in effect amounts to "asset stripping" of the Trust denuding it of real and effective income generating potential. Underlining this aspect, learned counsel relied upon the balance sheet placed on the record and sought to compare the levels of income generated prior to the management of IILM being handed over to defendant No.11 and the position of the Trust now. It is contended that by excluding the potential of generating meaningful income, the Trust denied the ability to realize its objectives to provide and spread meaningful education to the masses.

10. It is next contended that Court intervention under Section 92 is essential to protect and preserve the Trust property and ensure that the settler's intentions manifested in the trust deed and its objectives are fulfilled. It is submitted that there is enough material on the record to establish that not only the income levels have fallen but also the Trust's liabilities have mounted progressively exposing it to a real threat of loss of its assets and precious goodwill created by the Settler Kulwant Rai and other trustees who set up the institutions including the school by their hard work and efforts.

11. Learned counsel contended that both the plaintiffs have *locus standi* to maintain the present proceedings under Section 92. The first plaintiff was a managing trustee and it was only in 2007 to his shock and dismay in the course of legal proceedings he was informed by way of an affidavit alleging that he has been removed as managing trustee. He was associated right through with the Trust from 1985 onwards. Furthermore he is a member of Rai family and the grand-son of the settler. So far as the second plaintiff is concerned, it is contended that he has great concern for the Trust as it was set up by his family and being the son of the first plaintiff is vitally interested in the objectives spelt out in the Trust, and that the settler's intentions are fulfilled and traditions carried out by future generations in the family. Learned counsel relied upon the decision reported as *Mulla Gulam Ali and Safiabai D. Trust v. Deelip Kumar and Co.*, (2003) 11 SCC 772.

12. The plaintiffs contend that all the essential ingredients for maintaining the present action under Section 92 have been fulfilled by them. They rely upon the decision reported as *R.M. Narayana Chettiar and another v. N. Lakshmanan Chettiar and others*, (1991) 1 SCC 48 and *Swami Aramatmanand Saraswati and Anr. v. Ramji Tripathi and Anr.*, AIR 1974 SC 2141. It is contended that at this stage the Court would not examine the merits of the dispute concerning the Trust but has to be broadly satisfy itself that those who have approached it are "persons interested" and that on a broad and prima facie examination of the pleadings and documents, Court intervention under Section 92 to set right the affairs of the Trust is essential.

13. The defendants resisted the application for leave and contend that none of the essential conditions prescribed under Section 92 is fulfilled. It is submitted that the first plaintiff's *locus standi* is premised upon his being a managing trustee. The defendant pointed out that in one part of the suit, the said plaintiff states that affairs of the Trust were handed over to Defendants 2 and 3 in 2000 whereas in a latter part he avers inconsistently that he never resigned. It is submitted that yet in another part i.e. paragraph 4 of the suit, the said plaintiff states that he was illegally removed. On the basis of this and other averments, it is contended that plaintiff No.1 is not a person interested in the affairs of the suit that he concededly detached himself from the functioning of trust in 2000. The mention of irregularities for the period 1998-2002, assuming the allegations to be correct, makes the plaintiff No.1 a party to the said alleged irregularities. It is contended that the former association of the first plaintiff does not clothe him with any or sufficient interest to be called "person interested" in the affairs of the first defendant Trust, entitling him to leave.

14. It is submitted that the suit, so far as the second plaintiff is concerned is not at all maintainable because there is no material averment as to how he can ever claim to be a person or party interested in the affairs of the Trust. Learned counsel contended that the said defendant had no association with the Trust and appears to have been a minor when it was established. That he belonged to the family of the settlers who established it or is the son of the first plaintiff by itself is insufficient to confer him with any interest or *locus*. Learned counsel emphasized that the requirements of Section 92 are categorical in that at least two persons having interest or having sufficient interest to be called as "persons interested" in the affairs of the Trust can maintain the suit. In the present case, even if it is assumed that the first plaintiff has some semblance of interest no such interest can be seen from the averments so far as the second plaintiff is concerned. The Court, therefore, cannot grant leave as is claimed by the plaintiffs.

15. It is also contended that the averments in the suit and the application I.A.No.1102/2009, reveal that the plaintiffs' interest is purely personal and unconnected

with the welfare of the Trust as is sought to be agitated. The defendant also submits that the plaintiffs have instituted the present proceedings purely by way of *vendetta* and with a view to settle personal scores. They refer to various litigations filed by them and Vinay's stand about a family settlement which was duly recorded in the form of a document on 07.02.2000. They also refer to a "Rai Family Agreement" dated 19.03.2000. According to the defendants in 2005 disputes again arose between Vinay and Anil and their parents regarding house and occupation of residential house at 12 Aurangzeb Lane, New Delhi which led to filing of another suit CS(OS) No.1158/2005 by Vinay's mother and Anil's wife seeking partition of user and occupation of the house. Reference is also made to another suit CS(OS) No.294/2006 in which the first plaintiff was defendant – he denied the efficacy of the agreements and settlements alluded to. The defendants allege that Vinay, with a view to create confusion in the public mind and take advantage of the popularity and goodwill started infringing the trademarks and trade names "ILIM" and "Sanatan Sangeet Sanskriti" which was popularized by Defendants 2 to 5 through their hard work and dedication. It is contended that the Trust has been using the trademark without objection from any quarter including from Vinay. Reference is made to written statement in CS(OS) 294/2006. According to the Defendants, in the civil suit filed by the Trust an interim injunction granted earlier was vacated on 30.07.2007 after which the matter was carried in appeal; the Division Bench on 23.01.2008 restrained the business school managed by Vinay from issuing any advertisement in respect of any institute set up in the name of ILIM and also from converting the name of any existing institute to ILIM. It is contended that the said order subsist even as on date.

16. The Defendants further argue that the allegations about misfeasance and mal-administration of the first defendant Trust are unfounded. It is submitted that a comparison of the revenues which existed in 2000-01 (of the first defendant) with the latest revenues would disclose that actually the income has increased, contrary to the plaintiffs' allegations. Likewise, it is contended that the liabilities against purchase of lands of the Trust were Rs.651 lakhs as on 31.03.2004; the same got reduced to Rs.37

lakhs as on 31.03.2007 and are Nil as on 31.03.2008. Similarly the secured loans also diminished from Rs.588 lakhs as on 31.03.2007 to Rs.363 lakhs on 31.03.2009.

17. It is submitted that contrary to the allegations about irregularities noticed by the order of the I.T.O. the first plaintiff has deliberately withheld from this Court the fact that in appeal, the adverse observations were set aside sometime in the year 2007. The defendants also contend that the arrangement whereby the first defendant Trust handed over ILIM Business Management School to Defendant No. 11 was because of objections by the AICTE, since the institution was affiliated to Bradford University. Consequently, the institute at Noida was set-up and could apply for affiliation. It is submitted that far from there being depletion of the first defendant's assets or corpus, in fact the 11th defendant gave the first defendant Trust Rs.4.43 crores. It is submitted that the 11th defendant conducts non-AICTE courses whereas Defendant No.12 conducts courses which are affiliated with the Indira Gandhi National Open University (IGNOU); all these were necessitated because of legal requirements. Despite knowledge these facts, the plaintiffs are levelling mala fide allegations.

18. So far as the allegations concerning increased liabilities of the first defendant Trust are concerned, it is contended that the activities of the Trust has led to increase in the number of admissions which in-turn mean that the institution has to pay back refundable security deposits which are shown in its books. Denying the allegations about inflated or false claims towards repairs and maintenance as alleged by the plaintiffs, the defendants state that the actual repairs and maintenance of the buildings according to the audited balance-sheet filed by the plaintiffs, along with their list of documents bear out the genuineness of such expenditure. The defendants also state that there is no question of falsification of the records since Income Tax Records are processed through scrutiny assessment by the authorities.

19. The defendants contend that the arrangement whereby the Trust distributed its activities by creating other foundations, societies or trusts was with a view to facilitate

and streamline its administration and not as the plaintiffs allege, with a view to denude the Trust of its assets or defeat its objectives.

20. The defendants rely upon the decision reported as *Vidyadaya Trust –vs- Mohan Prasad R. & Anr* 2008 (4) SCC Page 115 and *Rahul Jain & Anr –vs- Pradeep Kumar & Ors* 138 (2007) DLT 329. They contend that a suit under Section 92 should satisfy the twin requirements of the parties approaching the Court disclosing a real (as opposed to a remote) interest and that at least two persons interested in the affairs of the suit and its proper management should institute it, and claim leave. It is contended- by placing reliance on the decision in *Swami Aramatmanand Saraswati* that on a correct application of law declared by the Supreme Court, the present suit does not satisfy and even prima facie – the essential ingredients spelt out in Section 92 and consequently leave should be refused.

21. The above discussion would reveal that the Court’s scrutiny, at this stage has to be directed towards two questions namely, whether the plaintiffs are persons interested and therefore possess sufficient *locus* to maintain the present suit and secondly whether the averments in the suit and the applications prima facie disclose that Court intervention on one or some of the grounds satisfy in Section 92 is warranted.

22. In *R.M. Narayana Chettiar and another v. N. Lakshmanan Chettiar and others*, (1991) 1 SCC 48, the Supreme Court held that:

“16. A plain reading of Section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind, the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave Under Section 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave

Under Section [92](#) are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave Under Section [92](#) can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section [92](#) of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.

17. We may mention that although Clause (ffa) of a Section [104\(1\)](#) of the Code provides that an appeal shall lie against the refusal of grant of leave, that cannot lead to the conclusion that it is obligatory on the part of the court to give notice to the proposed defendants before granting leave because an appeal lies only against the refusal of leave and not against the grant of leave. Before refusing leave the proposed plaintiffs are bound to be heard and it is the plaintiffs and not the defendants who could be prejudiced by refusal to grant such leave.”

Earlier, in the decision reported as *Swami Paramatmanand Saraswati* (supra) it was held that:

*10. “...It is, therefore, clear that if the allegation of breach of trust is not substantiated cir that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail, and, even if all the other ingredients of a suit under Section [92](#) are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section [92](#) [see *Shamukhan v. Govinda* A.I.R. 1938 Mad 92 *Tirumalai Devasthanams v. Krishnayya* A.I.R. 1943 Mad 466. *Sugra Bibi v. Hazi Kummur Mia* [1969] 3 S.C.R. 23 and *Mulla: Civil Procedure Code* (13th ed.), Vol. 1, p. 4001. A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits*

which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights; and in deciding whether a suit falls within Section [92](#), the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section [92](#)".

11... There is no reason to think that whenever a suit is brought by two or more persons under Section [92](#), the suit is to vindicate the right of the public. As we said, it is the object or the purpose of the suit and not the reliefs that should decide whether it is one for vindicating the right of the public or the individual right of the plaintiffs or third persons.

14. It is, no doubt, true that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section [92](#) [see Association of B.D.B. Bagga Singh v. [Gurnam Singh](#) [MANU/RH/0072/1972](#), Sohan Singh v. Achhar Singh and Ors. [MANU/PH/0101/1968](#) and Radha Krishna and Ors. v. Lachmi Narain and Ors. [MANU/OU/0054/1947](#). But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in facts or reason but is made only with a view to bring the suit under the section, then a suit purporting to be brought under Section [92](#) must be dismissed....."

23. As far as the first question is concerned, the materials on record show that the first plaintiff was closely associated with the trust, for nearly two decades. He was apparently a managing trustee. According to the plaint averments, he allowed Anil to run its affairs, as he (Anil) was more interested, since about 2000. At one place, the suit states that he was removed as managing trustee in 2002. At another place, he says that he became aware about his illegal removal in 2007. These inconsistencies would have not been material, were it not for the fact that the plaintiff claims to have been the managing trustee, engaged with the day to day affairs of the trust, for about 20 years. If that were the true position, there would have been no question of his relinquishing powers or decision making to anyone. At any rate, whether he exercised day to day control or not, if

the first plaintiff were concerned about the trust, he would not have waited that long, to acquaint himself with its affairs. He even alleges not having been invited to attend the trust's meetings. Irrespective of whether the first plaintiff was removed from the position of a trustee, or whether he claims to be continuing, his averments – apart from inconsistency, also reveal indifference about the trust's activities. Besides, the court cannot be unmindful that Vinay and Anil are fighting each other in several other cases, including over family property. There is an allegation of a binding settlement, made by one party and denied by the other. In these circumstances, the first plaintiff, Vinay's interest is not altruistic, to ensure that objectives of the trust are achieved, but appear to be personal. Whether the interest vindictive, of course is not for the court to decide; for the purpose of the present discussion, it is sufficient to conclude that it does not qualify for the kind of interest contemplated by Section 92, CPC.

24. So far as the second plaintiff is concerned, there is no fig leaf of averment to justify how he can be said to be a “person interested” entitled to join the suit. Although the plaintiffs rely on *Mulla Gulam Ali and Safiabai D. Trust*, there is no denial that mere association with a charitable society does not automatically imply an “interest” of the kind entitling the litigant to file, or join in Section 92 suit. Here, the second plaintiff ever had no association with the trust; his claim to be interested is not borne out by any material, or objective fact. Even if it were assumed, *arguendo*, that the first plaintiff has *locus*, and can maintain the suit, there is absolutely no material or even averment disclosing how the plaintiff No. 2 can claim to be a person interested.

25. Now coming to the second aspect of the case i.e. whether the leave has to be granted on the basis of the averments regarding irregularities in the management of the affairs of the Trust. The plaintiffs' main submissions hinge on the wrongful action of defendants 2 to 9 in transferring or handing over a profitable or surplus generating unit i.e. ILIM School of Business Management to any other Trust namely the 11th defendant. The plaintiffs allege that this transfer or handing over of management does not enure to the benefit of the Trust and in fact detrimental to it. They characterize this as resulting in

denudation of the Trust asset basis and income generating capacity which would ultimately undermine its objectives. The second part of this submission is that reliance placed upon the adverse observations of the income tax authorities and a further argument that needless donations were made from the income of a Trust to defendants 11 to 13. The third limb of allegation concerning irregularities are in respect of the plaintiffs contention about inflated expenditure of the Trust funds towards repairs and maintenance for various orders and allegations of “siphoning off” the Trust funds for the personal gains by defendants 2 to 9.

26. Now upon a bare reading of the averments in the suit and the applications undoubtedly the plaintiffs have categorically averred about the irregularities which according to them necessitated Court intervention. However, mere averment is not sufficient in such cases, unlike in the case of normal civil action where the Court has to take every pleading on its face value. The requirements of Section 92 mandate a slight higher standard in the sense that the legislative intention was to spare public charities from needless litigation. If someone feels that public charitable trust is being mis-managed or mal-administered, he can seek leave of the Advocate General to sue for one or some of the specific reliefs which the Court can grant under Section 92. However, if such leave is not forthcoming, he has to necessarily approach the Court and disclose why such leave is needed. In these circumstances, the duty cast upon the plaintiffs is not merely to aver but also to establish whether the allegations pertaining to irregularities in the administration of the Trust are prima facie manifested from the record.

27. The plaintiff's main submission is about the unjustified donation of the ILIM institution to the eleventh defendant; it is claimed that this is detrimental to the trust. On this, the plaintiff relied on the order of the ITO. Apparently, the issue was carried in appeal; the appellate forum (Commissioner Appeals) set aside the order, by order dated 17-9-2007. There is no mention of this document, or disclosure in the list of documents, filed by the plaintiff. Apart from this significant omission, it is also apparent that the Commissioner Appeals, set aside the assessment order, and held that the “donation” of

the unit to the eleventh defendant was not unlawful. The order also notices that the eleventh defendant paid Rs. 4.43 to the trust, as donation. If these are facts, there was no reason for the plaintiffs to withhold correct facts, and project a misleading picture.

28. As regards the plaintiffs' submission that the trust funds were depleted, or that its income generating capacity was impaired, is concerned, the documents on record bespeak otherwise. A comparison of the income levels for the years 2002 with later years would bear out the defendants' submissions that in fact income has risen. Further, the documents filed by the plaintiff also establish, *prima facie* that the asset values of the trust have not diminished; on the contrary, they seem to have increased (Ref Pages 153-154, plaintiff's list of documents). The plaintiffs' allegations about falsification of accounts or books, vis-à-vis the trust's repairs and expenditure account, is utterly unsubstantiated by any documentary material. The same position occurs in relation to other allegations.

29. In the recent decision of the Supreme Court, *Vidyodaya Trust* (supra) it was held that:

"In Sugra Bibi v. Hazi Kummua Mia MANU/SC/0239/1968 : [1969]3SCR83 it was held that the mere fact that the suit relates to public trust of religious or charitable nature and the reliefs claimed fall within some of the clauses of Sub-section (1) of Section 92 would not by itself attract the operation of the Section, unless the suit is of a representative character instituted in the interest of the public and not merely for vindication or the individual or personal rights of the plaintiffs.

23. To put it differently, it is not every suit claiming reliefs specified in Section 92 that can be brought under the Section; but only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. As a decisive factor the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought."

30. In the opinion of the court, the materials placed on record in this case reveal that the plaintiffs do not have *locus standi* to maintain the present suit. Further, the averments in the plaint, and the list of documents, nowhere reflect *prima facie* that there is mismanagement or

wrongful management of the first defendant trust, of the kind, requiring intervention of the court, under Section 92, CPC.

31. For the above reasons, the court holds that the application IA 11202/08 cannot be granted; it is accordingly rejected. Consequently, due to the rejection of the application, the suit too has to be, and is accordingly dismissed. No costs.

DATED: November 20, 2009

(S. RAVINDRA BHAT)
JUDGE