

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 01.06.2015

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THE HONOURABLE MR. **JUSTICE R.SUBBIAH**

Application No.5217 of 2014

in

C.S.No.477 of 2014

Deshratna Dr.Rajendra Prasad Memorial Trust (Madras) (Regd),
represented by its Managing Trustee,

... Applicant/1st defendant

Vs.

1.Bihar Association (Regd)
represented by its General Secretary
Shri S P Sinha
having their office at Rajendra Babu Bhavan,
No.17, Damodaran Street,
Copalapuram, Chennai-600 086.

2.Shri S P Sinha,
Member & General Secretary,
Bihar Association (Regd),
No.11, First Street, Gill Nagar, Chennai-600 094.

3.Shri Sushil Kumar Dheer,
Member & Vice President, Bihar Association (Regd),
No.92, Pedarlal Koil Street, Chennai-600 001.

4.Shri Mukesh Kumar,
Member & Joint Secretary,
Bihar Association (Regd), No.92, Pedaiar Koil Street,
Chennai-600 001. ... Respondents/Plaintiffs

Application filed under Order XIV Rule 8 of Original Side Rules r/w
Section 151 of CPC, seeking to revoke the order dated 14.07.2014 granted in
Application No.4392 of 2014 in C.S.Sr.No.20570 of 2014.

For Applicant : Mr.A.Thiagarajan, Senior Counsel
for M/s.Surana & Surana

For Respondents : Mr.R.Arumugam

ORDER

This application has been filed by the applicant/1st defendant viz., Deshratna Dr.Rajendra Prasad Memorial Trust (Madras), under Order XIV Rule 8 of Original Side Rules r/w Section 151 of CPC, praying to revoke the leave granted by this Court in Application No.4392 of 2014 vide., order dated 14.07.2014 to sue the defendants.

2.The applicant herein is the 1st defendant and the respondents herein are the plaintiffs in the suit. For the sake of convenience, the parties will be referred to as per their rankings in the suit.

3.The plaintiffs have filed the suit for the following reliefs__

(a)to remove the 4th defendant from the office of the Managing Trustee and the 5th defendant from the office of the Trustee of the 1st defendant-Trust for their illegal activities which include their functioning against the Will of the author of the 1st defendant-Trust that was clearly spelt out in the resolution passed by the Extraordinary General Body Meeting of the 1st plaintiff-Association on 23.11.1980;

(b)to remove the defendants 2, 3, 6, 7 & 9 from the office of the Trustees of the 1st defendant-Trust as their appointments have been made against the Will of the Author as enumerated in the resolutions passed by the Extraordinary General

Body Meeting of the 1st plaintiff-Association held on 23.11.1980 of the 1st plaintiff-Association;

(c)to declare that the Board Resolution dated 2.5.2014 said to have been passed by the Board of Trustees of the 1st defendant-Trust at the residence of the 2nd defendant communicated vide 4th defendant's letter dated 7.5.2014 is against the Will of the author of the 1st defendant-Trust and also against the main objectives of the 1st defendant-Trust and it is illegal and not binding on the plaintiffs;

(d)Permanent Injunction restraining the defendants and their men & agents or any one claiming through them, from in any way interfering with or giving hindrance in functioning of the 1st plaintiff-Association at Rajendra Babu Bhavan and conducting their regular activities which include religious functions and cultural activities as mentioned at para 8 as usual and before;

(e)to frame a scheme for proper administration of the 1st defendant-Trust keeping in mind the Will of the author of the Trust as passed in the Extraordinary General Body Meeting on 23.11.1980 of the 1st plaintiff-Association for the better and efficient administration of the 1st defendant-Trust;

(f)to direct the 4th defendant to render true and genuine accounts of the 1st defendant-Trust from 10.12.1980 to till date.

(g)for the cost of the suit;

4. Since the suit is as against the public Trust, the plaintiffs had filed an application in A.No.4392 of 2014 under Section 92 of CPC seeking leave of this Court to file the suit. This Court by order dated 14.07.2014 has granted leave to the plaintiffs to file the suit. Pursuant to the leave granted by this Court, the suit has been numbered as C.S.No.477 of 2014.

5. On appearance, the 1st defendant-Trust has filed the present application seeking to revoke the leave granted by this Court.

6. Before dealing with the application to revoke the leave granted by this Court, it would be appropriate to extract the case of the plaintiff. The case of the plaintiff, in brief, is as follows_

6-1. The 1st plaintiff-Association namely Bihar Association is a registered body, registered vide S.No.178/1967 dated 08.09.1967 under the provisions of the Societies Registration Act, 1860. The Association has been established for the purpose of catering the welfare and service needs of persons originally hailing from Bihar, predominantly employed or based at Chennai and its surrounding territories. As per the bye-laws of the 1st plaintiff-Association, the office bearers are elected on annual basis invariably on 14th April of every year and in such a manner, one Shri.N.Shoba Kant Das, the 4th defendant herein, was elected as the President of the 1st plaintiff-Association for the year 1980-81. Since the 1st plaintiff-Association

was nearly 15 years old in the year 1980-81 and which has grown to a reasonable level with sound financial background, the members of the 1st plaintiff-Association intended to own a suitable property on their own for carrying out all their activities in terms of the bye-laws during the year 1980-81. The same was deliberated by the Members of the 1st plaintiff-Association and it authorized Shri.Shobha Kant Das, being the then President of Bihar Association, to act and take appropriate decision to purchase land and to make construction thereon for owning building for Bihar Association. In the process of acquiring land and building for the 1st plaintiff-Association, initially steps were taken to get free land from Government of Tamilnadu and on failure, on the advise and suggestion from Shri.Shobha Kant Das (4th defendant herein) as the President of the 1st plaintiff-Association, a resolution was passed in the Extraordinary General Body Meeting of the 1st plaintiff-Association held on 23.11.1980 to establish a public charitable Trust in the name of Deshratna Dr.Rajendra Prasad Memorial Trust (Madras) (in short the DDRPM Trust) in order to derive tax benefits by the 1st plaintiff-Association. The sum and substance of the resolution passed in the said Meeting held on 23.11.1980 are reproduced hereunder_

1)There shall be a Trust established

2)The Name of the Trust shall be Deshratna Dr.Rajendra Prasad Memorial Trust.

3)The Trust shall be established as a public charitable trust;

4)There shall be a minimum of 5 members and maximum of 9 members as Trustees;

5)The Member of the Trust shall be member for life;

6)The President and the Secretary of the Bihar Association shall be the Ex-Officio members of the Trust;

7)Any vacancy of the Trust shall be filled by a person nominated by the Bihar Association;

8)Shri Shobha Kant Das being the President of the Bihar Association shall be founder trustee;

6-2.It is further case of the plaintiffs that it is very clear from the above resolution that the Bihar Association (1st plaintiff) is the author of the 1st defendant-Trust and the Will of the author has also been spelt out in clear terms. Any deviation from the resolution without the approval of the EGM/AGM of the Bihar Association is illegal and not sustainable in the eyes of law. Accordingly, the 1st defendant-Trust was formed on 10.12.1980 by transferring the sole and complete Corpus fund of Rs.2,000/- from and out of the funds of the 1st plaintiff-Association (author of the Trust). Thus, Shri.Shobha Kant Das, the 4th defendant, being the then President of the 1st plaintiff-Association was named as the founder trustee. But, in the real sense, the said Shri.N.Shobha Kant Das (4th defendant) is not a real founder trustee and only the Bihar Association, which established the 1st defendant-Trust by a resolution in its Extraordinary General Body Meeting on

23.11.1980 and contributing towards the complete corpus fund from and out of its own funds without any contribution from any other first trustees, is the author of the 1st defendant-Trust. The 4th defendant Shri.N.Shobha Kant Das was named and nominated to be the Founder Trustee mainly because he was holding the office of the President of the 1st plaintiff-Association and other major Trustees were also from the 1st plaintiff-Association. In the Trust Deed, the 4th defendant ought to have drafted as if he is representing Bihar Association; whereas for the reasons best known to him, the Trust Deed was drafted as if he is the author of the Trust.

6-3.It is very clear that the Will of the 1st plaintiff-Association is that the Trust should function under the shelter of the Bihar Association and also the members were cautious that in future there shall not be any confusion and adverse effect on the Association. From a careful scrutiny of the Trust Deed dated 10.12.1980 of the 1st defendant-Trust, it can be clearly established from the following recitals that the members of the 1st plaintiff-Association are the major beneficiaries of the 1st defendant-Trust_

"... and whereas the Bihar Association (Madras) Regd, a social and cultural organization of all sections of the people of Bihar functioning since nearly 15 years in the City of Madras has been authorized by the general body to initiate and help in the

formation of the public charitable trust for the said purpose. And whereas the said Bihar Association, has through a resolution passed at its general body meeting held on 23.11.1980, requested its President and a Social Worker of repute in Madras Shri Shobha Kant Das, the Founder Trustee herein to take necessary steps for the establishment of a Trust named DESHRATNA DR.RAJENDRA PRASAD MEMORIAL TRUST (MADRAS) and whereas the Founder Trustee requested the other Trustees above mentioned to accept the office of the Trustees jointly with himself as Trustees of the Trust and they have agreed to do so.....

.....

And whereas the Founder Trustee has received sum of Rs.2,000/- (Rupees two thousand only) from the Bihar Association, Madras (Regd) for the above purpose and has paid the said amount to the Trustees and the Trustees now hold the amount on behalf of the Trust as its corpus.

....

(3)Aims & objectives of the Trust:- The objects of the Trust are to help, aid, assist, undertake, organize, conduct, establish, maintain, facilitate and promote all or any of the following activities

(a)To establish, construct, maintain and run Deshratna Dr.Rajendra

Prasad Memorial Trust (Madras) in memory of the first President of India Late Dr.Rajendra Prasad, as a centre of Gandhian Philosophy, education and constructive activities, for the promotion of national integration, cultural and social activities for the citizens of Madras and more particularly for the people of Bihar living in and around the City of Madras and to help and assist and provide financial assistance for any other cause of general public utility regardless of religion, caste, creed or faith;

.....

.....

(I)To create and foster understanding among the people of Bihar and other States by establishing centers permanent exhibitions depicting the glory of ancient Bihar and achievements of Madras, Bihar.”

Subsequent to the establishment of the 1st defendant-Trust, properties viz., the land admeasuring 6300 sq ft together with 2190 sq ft of house thereon comprised in Old Survey No.3179 Resurvey No.1295, collector's certificate No.1870 of Vellala Teynampet Village was purchased in the name of the 1st defendant-Trust for an amount of Rs.1,00,000/- for which a major portion of Rs.96,585/- was transferred to the 1st defendant-Trust from and out of the funds of the 1st plaintiff-Association and the balance amount was contributed by the members of the 1st plaintiff-Association in small amounts in their

individual capacities at the given point of time. Further, a new building in the name of Rajendra Babu Bhavan was constructed over the said land by mobilizing funds from various sources under the banner of the 1st plaintiff-Association and the major contribution was from the Government of Bihar due to the hard efforts by the members of the 1st plaintiff-Association. Thus, Rajendra Babu Bhavan came into existence during early nineties at No.17, Damodaran Street, Gopalapuram, Chennai, from where the 1st plaintiff-Association has been functioning since then. Hence, the 1st plaintiff-Association and the 1st defendant-Trust are inseparable entities for all practical purposes though they are different legal entities.

6-4. In addition to the payments for corpus fund and fund for procuring land for 1st defendant-Trust, the 1st plaintiff-Association continued to make payments every year ranging from the minimum of Rs.10,000/- to higher amounts to the 1st defendant-Trust. Any vacancy of the Trust shall be filled up only by a person nominated by the Bihar Association. But, in violation of the same, the 4th defendant for the reasons best known to him, had filled up the new Trustees as per his choice, without any consultation of the Bihar Association, in a preplanned manner only to loot the money of the Trust and amended the Trust Deed to suit his convenience. From the manner in which the Trust is presently functioning, it could be presumed that the 4th defendant had selected new Trustees of his choice and whomever is signing the Minutes and proceedings without reading the same. Hence, the appointment of new

trustees after the initial establishment of the Trust is also illegal and not valid in the eyes of law.

6-5.As per the bye-laws of the 1st plaintiff-Association, the Office Bearers are elected on annual basis in the Annual General Body meeting invariably held on 14th day of April every year and in such process, Shri.N.Shobha Kant Das, the 4th defendant herein, was elected as the President of the 1st plaintiff-Association during 1980-81, 1994-95, 1996-97 to 2013-14 and thus, the 4th defendant could continue as the President upto 14.04.2014. However, the 4th defendant and his supporters could not get themselves elected for the current year in the elections held during the Annual General Body Meeting on 14.04.2014 and the present Officer Bearers were declared elected and assumed their Office, which is neither challenged nor struck down by any Court of competent jurisdiction, and it resulted in difference of opinion. The 4th defendant, being the Managing Trustee of the 1st defendant-Trust, managed to call for Board of Trustees meeting without even inviting or giving notice to all the Trustees especially the President and the Secretary of the 1st plaintiff-Association and got the resolution passed on 02.05.2014, whereby the so-called oral permission/licence granted to the 1st plaintiff-Association was withdrawn as act of vindication. The said resolution is against the interest of the members of the 1st plaintiff-Association, who are the major beneficiaries of the 1st defendant-Trust. Furthermore, the defendants 4 & 5 have acted in high handed manner and illegally removed

the name board of the 1st defendant-Association during the night hours of 04.05.2014 to 05.05.2014 from the Rajendra Babu Bhavan. Hence, the 1st plaintiff-Association was constrained to take up their grievances directly to the 2nd defendant, being the Chairman of the 1st defendant-Trust, for amicable solution vide their letter dated 07.05.2014 and a copy of the same was also addressed to the 4th defendant, by making various allegations as against the 4th defendant and his son alone. The 4th defendant, after receiving the same, had sent out a letter dated 07.05.2014 addressing it to Mr.S.P.Sinha and Mr.Susheel Kumar Dheer (2nd and 3rd plaintiffs in the present suit) claiming that they had passed certain resolutions in the Board of Trust Meeting on 02.05.2014 and by one among the resolutions, oral permission that was granted to the first plaintiff Association to have its address as the same as that of the first defendant was withdrawn. The 4th defendant also made false claims in the said notice that no amount or money or charge is paid by the 1st plaintiff-Association to the 1st Defendant-Trust. Hence, the plaintiffs have filed the present suit for the relief as stated supra.

7.Since the suit is filed under Section 92 of C.P.C., the plaintiff has filed an application in A.No.4392 of 2014 seeking leave of the Court to institute the suit. This Court by order dated 14.07.2014 has granted leave to institute the suit.

8.Aggrieved over the same, the 4th defendant has filed the present application (A.No.5217 of 2014) seeking to revoke the leave granted by this Court on 14.07.2014. The sum and substance of the averments made in the affidavit filed in support of the application to revoke the leave are as follows_

8-1.The 1st defendant-Trust viz., Deshratna Dr.Rajendra Prasad Memorial Trust is the sole and absolute owner of the land and building at Rajendra Babu Bhawan, Door No.17, Damodaran Street, Gopalapuram, Channai, having purchased the same under a Sale Deed dated 23.01.1981 registered as Document No.175 of 1981 in the office of the Sub-Registrar of Mylapore from Goenka Charitable Trust and having put up a new building thereon, out of its own funds and it is paying the property tax, water and other taxes and electricity bills in the name of the Trust, ie., the 1st defendant. The 1st plaintiff-Association viz., Bihar Association was a registered body, registered vide S.No.178/1967 dated 08.09.1967 under the provisions of the Societies Registration Act, 1860. But, the registration of the 1st plaintiff-Association has not been renewed as per the Rules for the last so many years and as such, the 1st plaintiff-Association is not a registered association as on date. On this ground alone, the suit is liable to dismissed.

8-2.The 1st plaintiff-Association is a private association of a few Biharis, now controlled by a handful of persons, like the plaintiffs 2 to 4. On the other hand, the 1st defendant-Trust is a Registered National Public Charitable Trust. The 1st defendant-Trust and the 1st plaintiff-Association are two separate independent legal entities. The 1st plaintiff-Association is one of several Donors of the 1st defendant-Trust. Being a Donor or a contributory to the corpus of the Trust, the 1st plaintiff-Association does not get any legal right on the Trust or its properties. By making certain donation to the 1st defendant-Trust, the 1st plaintiff-Association cannot create a right to manage

the Trust nor claim any legal right whatsoever on the Trust or the property of the Trust. The 1st defendant-Trust, being a totally independent legal entity, the Board of Trust alone can control and manage the affairs and properties owned by the Trust, which is neither subservient to nor in any manner subject to the control or supervision of the 1st plaintiff-Association or anyone on its behalf.

8-3.The 1st plaintiff-Association has given a corpus donation of Rs.2,000/- and a further donation of Rs.96,585/- to the Trust as a Donor and it does not get any legal right either over the Public Charitable Trust or its properties. The Resolution passed in the EGM of the 1st plaintiff on 23.11.1980 gets merged in the subsequent registered document viz., the Registered Trust Deed dated 10.12.1980, which has stood the test of time for 34 years and was never objected to by anybody whosoever. The Resolution of the 1st plaintiff-Association cannot override the registered Trust Deed after 34 years of no objection whatsoever from whomsoever.

8-4.The claim of the 1st plaintiff-Association that the 1st defendant being a Secular Public Charitable Trust was formed only by the WILL of the 1st plaintiff-Association, cannot be sustained in the law on the very ground that once a Public Charitable Trust is formed and the objects of the Trust Deed, which is the bible of the Trust, enunciates that the beneficiaries of the Trust are the public at large, then it can not be said as a Secular Public Charitable Trust. Hence, the founder or any other individual or organization cannot claim to be the exclusive author of the said Public

Charitable Trust, in which the intention in founding the Charitable Trust was not only for the members of the Bihar Association but also for the public at large. The objects of the Trust clearly state that the said Trust was formed to serve the poor people irrespective of castes, creed, religion and class and not the members of the 1st plaintiff-Association alone. The said objects are clearly enumerated under the heading of *Aims and Objectives of the Trust*; from clause (a) to (q) of the Trust Deed respectively.

8-5. None of the reliefs claimed by the plaintiffs can be granted either on facts or in Law. The defendants 4 & 5 have not indulged in any illegal activity and therefore, the prayer to remove them for their alleged illegal activities is liable to be rejected with exemplary cost. The relief asked for by the plaintiffs to remove the defendants 2, 3, 6, 7 and 9 for the alleged reason that their appointments have been made against the Will of the author, is baseless and untenable. The relief asked for the plaintiffs, '*to declare the resolutions of the Board dated 02.05.2014 as against the Will of the author of the 1st defendant-Trust and against the main objectives of the 1st defendant-Trust and it is illegal and not binding on the plaintiffs*', is also false, malicious and untenable and is liable to be rejected. The relief of permanent injunction restraining the defendants from interfering with or giving hindrance in the functioning of the 1st plaintiff-Association and conducting their regular activities, which include religious functions and cultural activities, is absolutely *mala fide*, untenable and a misuse of the process of Law. No cause whatsoever has been made out for framing a

scheme for the 1st defendant-Trust, which is being maintained efficiently and as per the Registered Trust Deed and Law, and therefore, the relief to frame a Scheme is liable to be dismissed. The relief prayed for by the plaintiffs, "*to direct the 4th defendant to render true and genuine accounts of the 1st defendant-Trust from 10.12.1980 till date*", is misleading, mischievous, *mala fide* and untenable. From the beginning of the Trust till date, over the last 34 years, the accounts of the Trust have been truthfully and genuinely maintained and every year, they have been audited by a certified and qualified firm of Chartered Accountants about the truthfulness and genuineness. The various Ex-Officio Trustees representing the 1st plaintiff-Association in the Board of Trustees of the 1st defendant-Trust as well as several prominent Biharis and non-biharis who were the trustees, have had occasion to go through the accounts before they were all passed through proper Board Resolutions regularly and unanimously. Even the plaintiffs 2 & 3 have been in the Board of Trustees. The 3rd plaintiff had been continuously a Trustee for the last 10 years. The 2nd plaintiff has been in Government service and has now retired. The 3rd plaintiff is a successful businessman. The plaintiffs 2 & 3 are educated. Till the date of filing the suit, the plaintiffs have never raised any objection about the genuineness or truthfulness of the accounts of the 1st defendant-Trust or about any affairs of the 1st defendant-Trust. Suddenly, for the first time, for the purpose of this litigation, they have invented all false and baseless allegations with malicious and *mala fide* intentions. The suit is filed by the plaintiffs in gross abuse of process of law.

8-6. Section 92 of CPC is not meant for removing any particular Trustee. Even against the defendants 4 & 5 no specific allegations had been made by the plaintiffs. On a close reading of the plaint averments, it is clear that though the color of legitimacy was sought to be given by projecting as if the suit was for vindicating public rights, the emphasis was on certain purely private and personal disputes. 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 of CPC 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. Thus, the 1st defendant sought for revocation of the leave granted by this Court.

9. The learned senior counsel appearing for the 1st defendant/applicant herein, by inviting the attention of this Court to Section 92 of CPC, submitted that a suit under the special provisions of Section 92 of CPC could be filed only for the vindication of public rights and not private individual right of either an individual personal or juristic body like the 1st plaintiff-Association. Further, the prayers C & D made in the plaint namely_

(c) To declare that the Board Resolution dated 2.5.2014 said to have been passed by the Board of Trustees of the 1st defendant-Trust at the residence of the 2nd defendant communicated vide 4th defendant's letter dated 7.5.2014 is against the Will of the author of the 1st defendant-Trust and also

against the main objectives of the 1st defendant-Trust and hence, it is illegal and not binding on the plaintiffs.

(d)Permanent Injunction restraining the defendants and their men & agents or any one claiming through them, from in any way interfering with or giving hindrance in functioning of the 1st plaintiff-Association at Rajendra Babu Bhavana and conducting their regular activities which include religious functions and cultural activities as mentioned at para 8 as usual and before.

are totally outside the scope of Section 92 of CPC; Section 92 of CPC is a special provision and the suit filed under Section 92 of CPC is a suit of special nature. In a suit under Section 92 the reliefs specified under Section 92 alone can be prayed for. It is not as if anyone of the prayers specified in Section 92 is sufficient to maintain a suit under Section 92. If the plaintiff asked for any other prayer which has not been specified under the various special clauses in Section 92(1) from (a) to (g), then the suit would fall outside the scope of Section 92 of CPC; in the instant case, the prayers (c) & (d) fall outside the scope of Section 92 of CPC; as such, the present suit will not be one under Section 92; therefore, there is no question of granting leave. In this regard, the learned senior counsel appearing for the 1st defendant/applicant herein relied upon Section 92(1)(h), which reads as follows_

“(h)granting such further or other relief as the nature of the case may require.”

The learned senior counsel for the 1st defendant/applicant herein submitted

that the words '*such further or other relief*' mentioned in clause (h) should be the prayer of similar nature mentioned in Clauses (a) to (g). If a prayer is totally different prayer, not similar to the prayers mentioned in Clauses (a) to (g), then the suit will fall outside the scope of Section 92. In the instant case, if the prayers (c) & (d) are deleted, then the other reliefs asked for would fall within the scope of Section 92; if the prayers (c) & (d) are retained, then the suit will be one outside the jurisdiction of this Court. Thus, the learned senior counsel for the 1st defendant submitted that the leave granted by this Court has to be revoked.

10. In this regard, the learned senior counsel for the 1st defendant/applicant herein has relied upon the judgment reported in ***MANU/DE/2847/2012 [Shiv Mandir Trust Vs. Gopi Chand Rath & Ors]***, wherein it has been held as follows__

"7. It is in this background that the averments and prayer made in the plaint have been perused. Perusal of the same show that the individual rights of the plaintiff society have been bruised and affected by mis-trust qua the society which is a duly registered society under the Indian Societies Act. The dominant purpose of the suit appears to be to address the personal and individual rights of the society coupled with a declaration of the effect that the defendant and its newly formed society would not interfere in the affairs of the plaintiff society and its management; merely because a prayer has been made for rendition

of accounts which is one of the purpose mandated under Section 92 of the Code, for which a suit is a representative capacity can be filed, would not necessarily entail it to be a suit under Section 92 of the Code as has been vehemently urged by the learned counsel for the petitioner.

.....

9. Even presuming that the suit property relates to a public charitable and religious trust wherein rendition of accounts has also been claimed as one of the various reliefs (noted supra) yet it is clearly not a suit which has been filed in a representative capacity; it is a suit which has been filed by the individual society to address its personal grievance; the grievances being that defendant No.14 who is acting at the behest of defendant No.1 is unwarrantedly interfering with the affairs of the plaintiff-society. The plaintiff-society has also sought a declaration that the defendants are not authorized to collect any fee or any money on behalf of the plaintiff society; this is not a relief which is encompassed under Section 92 of the Code. This suit clearly falls outside the scope of Section 92 of the Code. In this background the prayer made under Order 7 Rule 11 of the Code seeking rejection of the plaint was rightly declined. Impugned order dated 16.08.2011 thus suffers from no infirmity."

11. The learned senior counsel for the 1st defendant/applicant herein

has also relied upon another judgment delivered by the Privy Council reported in **AIR 1928 PC 16 [Abdur Rahim and others vs. Syed Abu Mahomed Barkat Ali Shah and others]**, wherein it has been held that the words "*further or other relief*" must on general principles of construction be taken to mean relief of the same nature as Clauses (a) to (g) and such construction would cut down substantive rights which existed prior to the enactment of the Code of 1908, and it is unlikely that in a Code regulating procedure the Legislature intended without express words to abolish or extinguish substantive rights of an important nature which admittedly existed at that time.

12. Thus, by relying upon the above said decision, the learned senior counsel appearing for the 1st defendant/applicant herein submitted that only if the other reliefs as mentioned in Clause (h) are in consonance with the various reliefs enumerated in Clauses (a) to (g) of Section 92(1), the suit is maintainable under Section 92; if the plaintiff's personal grievance is vindicated, then the suit cannot be maintained under Section 92. In this regard, the learned senior counsel appearing for the 1st defendant has also relied upon the judgment reported in **AIR 1919 Madras 394 [T.R. Ramachandra Iyer and another Vs. P.A. Parameswaran Munbu and others]**.

13. Further, by relying upon the judgment reported in **AIR 1967 SC**

1044 [Bishwanath and another Vs. Sri Thakur Radha Ballabhli and others], the learned senior counsel appearing for the 1st defendant submitted that the Hon'ble Supreme Court has set out three conditions to invoke Section 92 of C.P.C., as follows_

(i)the trust is created for public purpose of a charitable or religious nature;

(ii)there was a breach of trust or a direction of Court is necessary in the administration of such a trust;

(iii)the relief claimed is one or other of the reliefs enumerated therein;

and held that if any of the three conditions is not satisfied, the suit falls outside the scope of the said section.

14.For the same proposition, the learned senior counsel appearing for the 1st defendant has also relied upon the judgment reported in **AIR 1952 SC 143 [Pragdasji Guru Bhagwandasji Vs. Ishwarlalbhai Narsibhai and others]** and submitted that in the said case, the Hon'ble Supreme Court has categorically held that in a suit framed under Section 92 of CPC, the only reliefs which the plaintiff can claim and the Court can grant are those, enumerated specifically in the different clauses of that section.

15.The learned senior counsel appearing for the 1st defendant/applicant herein submitted that so far as the present case is

concerned, the plaintiffs 2 to 4 are the office bearers of the 1st plaintiff-Association. The main grievance in the suit is about the suspension of the plaintiffs 3 & 4 by resolution dated 02.05.2014 and hence, the plaintiffs had filed the suit with a prayer to declare the resolution dated 02.05.2014 as illegal. Therefore, it is apparent that the suit is filed only to vindicate the personal and private right of the plaintiffs 3 & 4. Hence, the present suit will not fall within the ambit of Section 92 of CPC.

16. Further, the learned senior counsel appearing for the 1st defendant submitted that the 1st plaintiff is a registered Society. The 1st plaintiff-Association, being a society representing a section of a particular community of people, cannot file a suit under Section 92 in a representative capacity purporting to represent the public at large. The 1st plaintiff-Association cannot file a suit under Section 92 of CPC to vindicate its personal rights or grievance against the defendant-Trust, which is a Public Charitable Trust. In this regard, the learned senior counsel appearing for the 1st defendant-Trust relied upon the judgment in the case of ***Shri Achyuta Ashram R/B Vs. K.Ramakrishna S/o.Bhaskar Roa, dated 23rd July 2012, RFA No.3017/2009(MV)***, wherein it has been observed by the High Court of Karnataka as follows_

“6..... The suit has been instituted by a registered Society, in that case, provision of 92 of the CPC, is not all applicable. Therefore, filing an application under Section 92 of CPC itself is misconceived. The grant of leave therefore

was also not correct. The trial court was justified in revoking the leave granted under Section 92 of the CPC. However, the impugned order is challenged with regard to rejection of the plaint. If an application under Section 92 of the CPC was not at all necessary to be filed, then the suit filed by the registered Society-plaintiff No.1 along with other plaintiffs as members of the Society could have been filed de hors Section 92 of the CPC.”

Further, it is submitted by the learned counsel for the 1st defendant that a Society has no right to institute a suit under Section 92 of CPC in view of the fact that the Society is a separate legal entity.

17.Per contra, the learned counsel appearing for the plaintiffs submitted that the 1st plaintiff-Association and the 1st defendant-Trust are inseparable entities. The President of the 1st plaintiff-Association continues as Ex-officio trustee of the 1st defendant-Trust. The 4th defendant was elected as the President of the 1st plaintiff-Association during the years 1980-81, 1994-95, 1996-97 to 2013-14. Thus, the 4th defendant could continue as President of the 1st plaintiff-Association till 14.04.2014. The fourth defendant had lost the election conducted in the year 2014-2015 held on 14.04.2014. Thereafter, the present office bearers were elected and they assumed their office and communication to that effect has been sent to all members of the 1st plaintiff-Association. One Shri.B.B.Singh being the President of the 1st plaintiff-Association has become the Ex-Office Member of

the 1st defendant-Trust as per the bye-laws of the Trust. Similarly, one Shri.S.P.Sinha, on his re-election to the position of the Secretary of the 1st plaintiff-Association, automatically gets the right to continue as the Ex-officio Trustee of the 1st defendant-Trust. The 1st plaintiff-Association is functioning at Rajendra Babu Bahavan. After the 4th defendant lost in the election, he managed to call for a meeting without giving notice to all the members of the Trust and got the resolution passed on 02.05.2014, whereby the so called oral permission was withdrawn as an act of vindication. Therefore, the present suit has been filed under Section 92 of CPC for framing a Scheme.

18.The learned counsel appearing for the plaintiffs would further submit that in the instant case, a *prima facie* case has been made out to maintain the suit through the averments in the plaint and documents filed along with the plaint, based on which this Court has granted leave by order dated 17.10.2014 to sue the defendants. The learned counsel appearing for the plaintiffs further submitted that the 1st plaintiff-Association is having sufficient members and therefore, they can maintain the suit under Section 92 of CPC.

19.With regard to the submission made by the learned senior counsel appearing for the 1st defendant that the prayers (c) & (d) made in the plaint will make the suit to fall outside the scope of Section 92 of CPC, the learned counsel appearing for the plaintiffs replied that mere addition of prayers for

declaration and injunction cannot take the suit outside the ambit of Section 92 of CPC, when other conditions are fulfilled. In this regard, the learned counsel for the plaintiffs has also relied upon the judgment reported in **2013(1) MLJ 433 [Nadigar Sangham Charitable Trust Vs. S.Murugan @ Poochi Murugan]** and the another judgment reported in **2007(1) MLJ 683 [V.Rajasekaran and others Vs. M.Rajendiran Trustee M.G.R.Memorial Charitable Trust]**.

20. With regard to the judgments relied upon by the learned senior counsel appearing for the 1st defendant, the learned counsel for the plaintiff submitted that the all the cases relied upon by the learned senior for the 1st defendant, none of the prayers were made under Section 92 of CPC, that is the reason why in such of those cases it was held that the suits are not maintainable under Section 92 of CPC. So far as the present case is concerned, even assuming for a moment that the prayers (c) & (d) would not fall under the scope of Section 92 of CPC, since the other prayers are in consonance with Section 92 of CPC, the suit is maintainable under Section 92 of CPC. In support of his contentions, the learned counsel for the plaintiffs has also relied upon the judgments reported in **AIR 2005 Mad 392 [Mazdoor Welfare Trust rep by its Managing Trustee & another Vs. The Southern Railway Mazdoor Union rep by its General Secretary], 2008-4 SCC 115 [Vidyodaya Trust Vs. Mohan Prasad & others] and 2012(5) MLJ 1023 [Senguntar Charitable Trust & others Vs. R.Manickam & others]**.

21. Heard the submissions made on either side and perused the materials available on record.

22. Though very many contentions have been raised with regard to the factual aspects of the case on either side, the only question that lies for consideration in the present application is, *in view of the prayers (c) & (d) made in the plaint, as to whether the present suit is maintainable under Section 92 of CPC?*

23. According to the learned senior counsel appearing for the 1st defendant/applicant herein, though the prayers (a), (b), (e) & (f) fall within the scope of Section 92 of CPC, the prayers (c) & (d) fall outside the scope of Section 92 of CPC since the same are in vindication of the personal grievance of the plaintiffs. Therefore, according to the learned senior counsel for the 1st defendant, if the prayers (c) & (d) are deleted, then the suit will fall within the scope of Section 92 of CPC; since the prayers (c) & (d) are retained in the plaint, the suit falls outside the scope of Section 92 of CPC and as such, there is no question of granting leave to the plaintiff to sue the defendants.

24. Whereas according to the learned counsel for the plaintiffs, if some of the reliefs are in consonance with the scope of Section 92 of CPC, the Court is not justified in returning the plaint. In this regard, reliance was

placed by the learned counsel appearing for the plaintiffs upon the judgment reported in **2013(1) MLJ 433 [Nadigar Sangham Charitable Trust Vs. S.Murugan @ Poochi Murugan]** wherein it has been held as follows_

"27.The plaint originally filed by the appellants was under Section 92(1)(d), (g), and (h) read with Order 4 Rule 1 of Original Side Rules and under Order VII Rule 1 of CPC. Even though suit was filed for declaring that the general power of attorney (dated 6.8.2010) and lease deeds (dated 6.8.2010 and 25.11.2010) are null and void, by perusal of plaint, it is seen that it contains averments as to execution of lease deeds and that 2nd and 3rd appellants have completely ignored the basic principles of collective responsibility in the affairs of the Trust and that they have taken upon themselves the task of administering the Trust property as if it is their own property apparently with the malafide intentions. It is also averred that there is no transparency in the dealings of the Trust and that valuable property has been leased out for a period of 29 years and 11 months and competitive bidding has not been resorted to ensure maximum income for the Trust. Though the plaint contains the essential averments regarding the breach of trust committed by the trustees, the fact remains that there was no prayer originally for accounting, removal of appellants from the trusteeships and to settle a scheme for administration of the Trust. But way of the amendment, the respondents 1 and 2 incorporated those three prayers. Except this, no

other changes were made in the plaint.

.....

29. In the plaint filed, there seems to be an omission to ask for the one or more of the reliefs mentioned in Section 92 C.P.C., which made the plaintiffs to amend the plaint. As pointed out earlier, in the plaint, necessary averments are made as to the alleged breach of Trust and mismanagement, but declaratory relief has been sought for to set aside the general power of attorney (dated 06.10.2010) and two lease deeds (dated 06.08.2010 and 25.11.2010). When some of the reliefs claimed are outside the scope of the Section, the Court is not justified in returning the plaint or refusing to grant leave. It should require the plaintiff to amend his plaint by confining himself to the reliefs within the Section. Considering the averments made in the plaint, the learned single Judge rightly allowed the amendment application to include the reliefs for accounting, removal of Trustees and settlement of scheme. We do not find any merit in the objection raised by the appellants that the order passed in the amendment application – A.No.3519 of 2012 is non est.”

A reading of the above said judgment would show that in the said case, the suit was filed under Section 92 of CPC, but there was an omission to ask for any of the reliefs mentioned under Section 92 of CPC; therefore, the plaintiff

therein filed an amendment application to add the prayers as enumerated in Section 92(1) of CPC and the said amendment application was allowed and the prayers in consonance with Section 92(1) of CPC were added along with the other prayers already sought for; thereafter, leave was granted. In the said judgment, the Hon'ble Division Bench of this Court held that even when some of the reliefs claimed are outside the scope of the section, the Court is not justified in returning the plaint or refusing to grant leave. Therefore, from the above said judgment it is clear that in several reliefs sought for, even if some of the reliefs are outside the scope of Section 92 of CPC, the Court can grant leave under Section 92 of CPC.

25. It is well settled law that a prayer enumerated under Section 92 of CPC can be dealt with only in a suit under Section 92 of CPC; however, there is no specific bar for inclusion of other prayers. Therefore, I am of the opinion that the prayers (c) & (d) have been asked for in the plaint only as additional prayers and the said prayers will not take the suit outside the scope of Section 92 of CPC. Therefore, absolutely there is no impediment in adding the prayers (c) & (d) in the plaint under Section 92 of CPC. In the judgment report in **1975 SC 371 [Charan Singh Vs. Darshan Singh]** the Hon'ble Apex Court decided the scope of Section 92 of CPC and held that maintainability of the suit depends upon the allegations in the plaint and does not fall for decision with reference to averments in the written statement.

26. In **(2008)4 SCC 115 [Vidyodaya Trust Vs. Mohan Prasad R & Ors]** the Hon'ble Supreme Court has held as follows_

"As was observed by this Court in Swamy Parmatmanand's case (AIR 1974 SC 2141), to gauge whether the suit was for vindicating public rights, the Court has to go beyond the relief and to focus on the purpose for which the suit is filed. To put it differently, it is the object or the purpose for filing the suit and not essentially the relief which is of paramount importance. There cannot be any hard and fast rule to find out whether the real purpose of the suit was vindicating public right or the object was vindication of some personal rights. For this purpose the focus has to be on personal grievances."

From the dictum laid down in the above said judgment, I am of the opinion that even if some of the reliefs in the plaint are outside the scope of Section 92 of CPC, but at the same time the object of the suit and the other reliefs sought for in the plaint are in consonance with Section 92 of CPC, the suit is very well maintainable against the public Trust under Section 92 of CPC.

27. From a perusal of the averments in the plaint, *prima facie* I find that the suit has been instituted by the 1st plaintiff-Association that was instrumental in establishment of the 1st defendant-Trust for the benefit of its majority of its members by contributing to the entire corpus fund and also for almost entire sale consideration for procurement of suit property from and out of its funds with proper and valid authorization by way of EGM dated

23.11.1980. The present suit is filed in the representative capacity by the plaintiffs as they have been duly authorized by the EGM of the 1st plaintiff Association dated 1.6.2014 to protect the interest of the members of the 1st plaintiff Association who are major beneficiaries of the 1st defendant Trust. Hence, the present suit is validly laid and the plaintiffs are entitled to proceed with the suit to establish their rights in terms of law.

28. But, it is contended by the learned senior counsel appearing for the 1st defendant-Trust, by relying upon the judgment of the Karnataka High Court in the case of ***Shri Achyuta Ashram R/B Vs. K.Ramakrishna S/o.Bhaskar Roa, dated 23rd July 2012, RFA No.3017/2009(MV)*** that a Society has no right to institute a suit under Section 92 of CPC in view of the fact that the Society is a separate legal entity. But, the factual aspects of the case relied by the learned senior counsel for the 1st defendant would show that in that case, a Society has filed the suit as against its members; whereas in the instant case, the present suit has been filed by the Association as against a Public Charitable Trust, which is in conformity with Section 92 of CPC. Therefore, the said judgment relied upon by the learned senior counsel for the 1st defendant-Trust, cannot be made applicable to the present facts of the case.

29. Absolutely I do not find any valid ground to revoke the leave granted by this Court. Hence, this application is liable to be dismissed.

For the forgoing reasons, the application is dismissed.

01.06.2015

Index : Yes / No

Internet : Yes / No

SSV

R.SUBBIAH, J.,

SSV

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in

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