

In the High Court of Judicature at Madras

Dated: 20.02.2015

Coram:

The Honourable Mr. Justice R.SUBBIAH

Application Nos.3559 & 3560 of 2013

in

C.S.No.518 of 2013

Vellore Institute of Technology (VIT University),
Katpadi, Tiruvalam Road,
Vellore-632 014,
rep by its Registrar,
having Administrative office at:
No.W-73, Anna Nagar West,
Chennai-600 040.

.... Applicant/2nd defendant

..VS..

1.G.V.Sampath
2.R.Sadanandam

....Respondents 1 & 2/Plaintiffs

3.M/s.Vellore Institute of Technology,
a Public Charitable Trust,
having its registered office at
No.54, Thennamaram Street,
Vellore-632 001.
rep by its Chairman and
Managing Trustee and Chancellor
Shri.G/Viswanathan.

.... 3rd respondent/1st defendant

4.G.Viswanathan
5.Sankara Viswanathan
6.Sekar Viswanathan
7.G.V.Selvam
8.G.Kanagasabapathy
9.S.Dharmaraja Chettiar
10.P.L.Mareddy
11.Sundry Reddy
12.Sandya Penta Reddy

... Respondents 4 to 12 /Defendants 3 to 11.

Application No.3559 of 2013 has been filed under Judge's summons under Order XIV Rule 8 of OS Rules and under Clause XII of Letters patent Act read with Order III Rule 1 of CPC praying to revoke the leave granted by this Court in Application No.3334 of 2013 in C.S.No.518 of 2013 dated 30.07.2013.

Application No.3560 of 2013 has been filed under Judge's summons under Order XVI Rule VIII of OS Rules read with Order III Rule1 of CPC praying to revoke the leave granted by this Court in Application No.3335 of 2013 in C.S.No.518 of 2013 dated 30.07.2013.

Appearance:-

Mr.K.M.Vijayan, Senior Counsel
for Mr.R.Shiva Kumar & Mr.A.Saravanan – for applicant/2nd defendant

Mr.T.V.Ramanujam, Senior Counsel
for Mr.Prakash Gokka – for respondents 1 & 2/Plaintiffs

ORDER

Application No.3559 of 2013 has been filed by the applicant/2nd defendant praying to revoke the leave granted by this Court in Application No.3334 of 2013 in C.S.No.518 of 2013 dated 30.07.2013.

2.Application No.3560 of 2013 has been filed by the applicant/2nd defendant praying to revoke the leave granted by this Court in Application

No.3335 of 2013 in C.S.No.518 of 2013 dated 30.07.2013.

3.The applicant herein is the 2nd defendant in the suit. The respondents 1 & 2 herein are the plaintiffs. The 3rd respondent herein is the 1st defendant. The respondents 4 to 12 herein are the defendants 3 to 11 in the suit. For the sake of convenience, the parties are referred to as per their rankings in the suit.

4.The plaintiff/respondents 1 & 2 herein have filed the suit, under Order 7 Rule 1 read with 92 of CPC, for the following reliefs__

(a)to frame a scheme for the proper conduct of the affairs of the 1st defendant Trust;

(b)to remove the defendants 3 to 11 from the post of trusteeship and appoint an administrator in the interregnum, pending framing of a scheme by this Court;

(c)to direct the defendants to render true and proper accounts in respect of the 1st defendant-Trust including that of the 2nd defendant from the year 2001 till date of taking of accounts;

(d)to reinstate the 1st plaintiff to the post of Vice-President of the 2nd defendant and allow the 1st plaintiff to discharge his duties as trustee of the 1st

defendant-Trust.

5. Along with the plaint, the plaintiffs had filed the Application Nos. 3334 & 3335 of 2013 seeking leave of the Court.

6. A.No. 3334 of 2013 was filed under Order XIV Rules 8 of Original Side Rules r/w Order III Rule 1 r/w Clause 12 of Letters Patent, seeking leave of this Court to institute the suit on the Original Side of this Court, since the defendants are residing outside the jurisdiction of this Court and a part of cause of action arose within the jurisdiction of this Court. The sum and substance of the averments made in the affidavit filed in support of A.No. 3334 are as follows__

The 2nd defendant viz., Vellore Institute of Technology (VIT University) is a limb of the 1st defendant viz., M/s. Vellore Institute of Technology – a Public Charitable Trust. The 2nd defendant is having its administrative office in Chennai. Hence, a part of cause of action has arisen at Chennai, within the jurisdiction of this Court. Further, irregular admission forms to the courses at Chennai campus have been issued and several other administrative actions have emanated from the said administrative office at Chennai. The 1st defendant also owns properties at Adayar & Gandhinagar and the defendants 1 & 2 have bank accounts in Indian Bank at Anna Nagar, Chennai. There is an administrative office at Door No. W-73, Anna Nagar, Chennai. Since the defendants are residing outside the jurisdiction of this

Court, the present application has been filed seeking leave of this Court to institute the suit.

7. Application No.3335 of 2013 has been filed under Order XIV Rule 8 of Original Side Rules r/w Section 92 of CPC, seeking leave of the Court to institute the suit against the 1st Defendant-Trust, with the following averments__

(1)There has been diversion of huge amount of money of over Rs.22 crores to another Trust in Chandigarh, which is absolutely unconnected with the 1st defendant-Trust.

(2)Without there being any approval from 2010 onwards, there has been admission for students in Chennai campus. The UGC has approved it only prospectively from 2013 onwards. Hence, the gullible students and parents are taken for a ride.

(3)There has been encroachment of government properties.

(4)No approval of sanction or sanction of building plan from concerned authorities.

(5)There has been indiscriminate cash drawings. The mode adopted is stated in the plaint.

(6)There has been wide spread misappropriation of

trust funds for the personal benefit of trustees and aggrandizement of wealth.

(7)The accounts of the trust are not properly maintained in the regular course of business.

8.The said Applications, being A.Nos.3334 & 3335 of 2013, have been filed by the plaintiffs before this Court on 26.07.2013 and this Court has granted leave in both the applications on 30.07.2013.

9.Thereafter, the 2nd defendant had taken out the two applications one in Application No.3559 of 2013 to revoke the leave granted under Clause 12 of Letters Patent and another in Application No.3560 of 2013 to revoke the leave granted under Section 92 of Civil Procedure Code. Sum and substance of the averments made by the 2nd defendant in the above applications to revoke the leave are as follows_

9-1.No part of cause of action has arisen within the jurisdiction of this Court. Leave was obtained by the plaintiffs without notice to the 2nd defendant, who is a caveator on record. The unequivocal position of law relating to notice under Section 148A of C.P.C. makes it obligatory to serve notice on the caveator on any application, even in an application for leave to file the suit. Hence, the leave granted by this Court has to be revoked on this ground alone.

9-2.The plaintiffs had abused the process of the Court by

deliberately showing the 2nd defendants address as if it is situated outside the jurisdiction of this Court; but, for the purpose of claiming a part of cause of action within the jurisdiction of this Court, the plaintiffs had mentioned the address of the 2nd defendant as if it is having administrative office at No.W-73, Annanagar East, Chennai. The plaintiffs cannot mention two addresses for the same cause; one outside the jurisdiction of this Court and another within the jurisdiction of this Court simultaneously. Factually, there is no administrative office for the 2nd defendant situated within the jurisdiction of this Court. The premises in Chennai shown by the plaintiff viz., No.W-73, Annanagar West, Chennai is only a rental house and it is mainly used as a godown house and it is not used to conduct any administration of the Trust.

9-3.All the averments made in the plaint seeking to invoke Section 92 of CPC are totally irrelevant and unconnected with the alleged breach of Trust within the terms of Section 92 of CPC. The allegations like admitting students without approval and constructing buildings in the encroached lands etc., are all matters connected with the concerned authorities. Such averments have no connection to the ingredients of Section 92 of CPC. Even the transfer of fund, alleged by the plaintiffs, was made only by legal manner, to which the plaintiffs themselves are parties as they have also signed the fund transfer authorization. The exparte leave obtained by the plaintiffs is a clearing illustration of gross abuse of process of Court. Thus, the 2nd defendant/applicant herein prayed for revocation of the leave granted by this Court in A.Nos.3334 & 3335 of 2013 on 30.07.2013.

10.The learned senior counsel appearing for the 2nd defendant/applicant herein has made the following submissions_

Submission with regard to Section 148A of CPC for non-serving of notice to the caveator

10-1.Before leave applications were moved by the plaintiffs, the 2nd defendant has already filed two caveat applications in No.1644(A) & 1645 of 2013 on 22.07.2013 before this Court. But, the plaintiffs, without serving notice to the 2nd defendant, have obtained exparte orders of leave under Clause 12 of Letters Patent in A.Nos.3334/2013 and under Section 92 of CPC in A.No.3335 of 2013 on 30.07.2013. In this regard, the learned senior counsel for the 2nd defendant/applicant herein submitted that serving notice on the caveator is a procedure mandated under Section 148A of CPC. But, the plaintiffs failed to comply with the mandatory procedure contemplated under Section 148A of CPC, which is a procedure established by the Court. The learned senior counsel appearing for the applicant/2nd defendant further submitted that the object of caveat under Section 148A of CPC is to afford an opportunity of hearing to a person, against whom the suit/application is expected to be instituted. In this regard, the learned senior counsel appearing for the 2nd defendant/applicant, by inviting the attention of this Court to Section 148(A) of CPC, made an elaborate argument. In support of his contention, the learned counsel appearing for the 2nd defendant/applicant

relied upon the decision reported in **2009(2) CTC 395 (Manimegalai Ramu Vs. K.Rashid Khan)**, wherein the learned Single Judge of this Court has held that_

“if an application is moved by the applicant seeking a relief under Order II Rule 2 of CPC, it is the duty of the applicant to serve the copies of application along with documents on the caveators and it cannot be said that the application filed under order II Rule 2 of CPC is a matter between the Court and the applicant alone”.

In this regard, the learned counsel appearing for the 2nd defendant/applicant herein has also relied upon the judgment reported in **2005(1) CTC 285 (Ananthara E.V. Vs. Rajas Educational Trust)**, wherein it has been held by this Court that_

if an application is moved, during the currency of lodging of a caveat, the applicant is expected to serve a copy of the application made by him and also with copies of any paper or document which has been or may be, filed by him in support of the application, on the caveator as required under Section 148-A(4) of C.P.C.

Thus, by relying upon the above said judgments, the learned senior counsel for the applicant/2nd defendant submitted that the leave granted by this Court

is liable to be revoked on the ground of failure to serve notice on the caveator.

Submission with regard to Section 92 of CPC:-

10-2. It is the submission of the learned senior counsel for the 2nd defendant/applicant herein that when leave of the Court is granted, it is a judicial order. Prior to Amendment Act 104 of 1976, consent of the Advocate General had to be obtained for instituting a suit under Section 92 of CPC. Since it was a consent of the Advocate General, the order granting leave to institute a suit was considered as an administrative order. Now, after the Amendment Act 104 of 1976, the words 'consent of the Advocate General' were substituted by the words 'leave of the Court'. Hence, after the Amendment Act 104 of 1976, the order of granting leave being passed by the Court is considered only as a judicial order and it cannot be said to be an administrative order. In this regard, the learned counsel appearing for the 2nd defendant/applicant herein relied upon the judgment reported in **2012(2) KLJ 529 (Church of South India Vs. T.J. John)**, wherein it has been held that 'to say that the order allowing or declining leave under Section 92 of the Code is an administrative order, which is not amenable to Judicial Review is *per se* wrong. If that be so, a wrong order declining such leave would also foreclose a party from instituting a suit even wherein breach of trust and sufficient grounds are available to institute a suit under Section 92 of the Code.

10-3.The learned senior counsel appearing for the 2nd defendant/applicant herein has also by inviting the attention of this Court to the judgment of the Division Bench of this Court reported in **1996(2) LW 364 (R.Kannan Adityan & 4 others Vs. Adityan & 6 others)** fairly submitted that even after Amendment Act 104 of 1976, in the said Judgment, the Division Bench of this Court has held that the order passed under Section 92 of CPC granting leave to sue is only an administrative order; however, when this matter was taken to the Hon'ble Supreme Court, on appeal, the issue as to *whether the order granting leave under Section 92 of CPC is an administrative order or a judicial order* was not decided by the Hon'ble Supreme Court. Further, the Hon'ble Supreme Court in the said judgment has also not decided the question as to *whether a caveator should be served with a notice or not?*

10-4.The learned senior counsel by inviting the attention of this Court to the judgment delivered by the learned Single Judge of this Court in a case reported in **2012(5) MLJ 1023 (Sengunthar Charitable Trust and others Vs. R.Manikam and others)** fairly contended that in the said case those cases it has been held that notice to caveator is not necessary, since granting leave under Section 92 of CPC is only administrative in nature.

10-5.But, according to the learned senior counsel for the 2nd

defendant/applicant that a reading of Section 148 of CPC makes it clear that it does not require serving of notice based on the nature of the order passed; therefore, whether it is an administrative order or judicial order, caveator ought to have been served with notice and failure in following the mandatory requirements will render the order granting leave illegal.

Submission with regard to non-serving of notice to the caveator in the application filed under Clause 12 of Letters Patent for leave to sue.

10-6.The learned senior counsel appearing for the 2nd defendant/applicant, by relying upon the judgment reported in **2005(1) CTC 285** in the case of ***E.V.Anandram Rao Vs Rajes Educational Trust,*** submitted that if an application is moved during the currency of caveat, the applicant is expected to serve a copy of the application and other connected documents, which are filed or may be filed by him in support of the application, on the caveator as required under Section 148A of CPC; but, in the instant case, no notice was served to the caveator in the application filed under Clause 12 of Letters Patent; hence, on that ground also, the application is liable to be rejected.

Submissions with regard to territorial jurisdiction of this Court

10-7.The learned senior counsel for the 2nd defendant/applicant, by inviting the attention of this Court to the entire averments made in the plaint as well as the documents filed along with the plaint, submitted that neither

the plaint averments nor the documents filed along with the plaint disclose that a part of cause of action arose within the jurisdiction of this Court or the residence of the defendants situate within the jurisdiction of this Court. It is further submission of the learned counsel for the 2nd defendant/applicant herein that all the defendants are residing outside the jurisdiction of this Court; only with an intention to bring the suit within the jurisdiction of this Court, purposely two places were shown by the plaintiffs as addresses of the 2nd defendant/applicant i.e., one at Katpadi -Tiruvalam Road, Vellore, and another at No.W-73, Annanagar West, Chennai; stating as if the administrative office of the 2nd defendant is situated at No.W-73, Annanagar West, Chennai. But, according to the learned counsel for the 2nd defendant/applicant, the premises at No.W-73, Annanagar, Chennai is not an administrative office and it is only used as a godown. Further, the learned counsel for the 2nd defendant/applicant herein submitted that the plaintiffs have not produced any material or document to establish that the 2nd defendant is having administrative office at Annanagar, Chennai, within the jurisdiction of this Court. Moreover, the 2nd defendant is not a trustee and it has no nexus with the 1st defendant-Trust. Thus, the learned senior counsel for the 2nd defendant/applicant herein submitted that absolutely no cause of action arose within the jurisdiction of this court for filing the suit.

Submission made on the ground that the plaint does not contain averments to make out a case under Section 92 of CPC

10-8. The learned senior counsel for the 2nd defendant/applicant, by inviting the attention of this Court to Section 92 of CPC, submitted that the plaintiffs have not fulfilled the essential ingredients of Section 92 of CPC in order to institute the suit under the said provision. In this regard, the learned counsel for the 2nd defendant/applicant, by inviting the attention of this Court to the entire averments made in the plaint, submitted that the plaint does not contain any specific allegation of breach of trust; the allegations pertaining to breach of trust should be relatable to any express trust created for the public purpose and the direction from the Court for administration of such trust should be relatable only to the scope and object of the Trust and mis-administration against such objects which are expressed in the Trust Deed. But, in the instant case, the entire averments in the plaint only pertain to certain statutory violations. Section 92 of CPC is not intended for enforcing the statutory obligations of the Trust. Further, actions for violations of respondent's obligations of the persons, every statute regulates and punishes the breach of those statutory provisions in a manner known to law, say for example, if a public charitable Trust violates IT Act, Land Encroachment Act, UGC Act or any other statutory provisions, such violations are dealt by such of those authorities under those Acts and it cannot be passed on to a judicial investigation and action under suit under Section 92 of CPC, which is not the intention of the legislature.

10-9. In this regard, the learned senior counsel for the 2nd defendant/applicant has also invited the attention of this Court to prayer (d)

in para 33 of the plaint and submitted that the said prayer was made by the plaintiffs to reinstate the 1st plaintiff to the post of Vice-President of the 2nd defendant and to allow the 1st plaintiff to discharge his duties as Trustee of the 1st defendant Trust. The said prayer is outside the purview of Section 92 of CPC; the said prayer would manifest the intention of the plaintiffs that the suit has not been filed in public interest, but for resolving their private interest. In this regard, the learned counsel for the 2nd defendant/applicant relied upon the decision in the case of ***S.Gurcharan Singh Bhasin Vs. M/s.S.S.Mota Singh (Nila) & ords dated 18.04.2012***, wherein the Hon'ble Supreme Court held that where a suit is for vindication of a private right in a public Trust, such a suit is not a suit which falls within the four corners of Section 92 of CPC. Thus, the learned counsel for the 2nd defendant/applicant submitted that the leave granted by this Court is liable to be revoked.

Counter Submissions of the counsel for the plaintiffs

Submission with regard to issuance of notice

11.Countering the submissions made by the learned senior counsel appearing for the 2nd defendant, the learned senior counsel appearing for the plaintiffs/respondents 1 & 2 submitted that actually the 2nd defendant has not filed any caveat claiming a right of hearing in the application for leave to sue either under Clause 12 of Letters Patent r/w Order III Rule I of CPC or under Section 92 of CPC. In this regard, the learned senior counsel for the plaintiffs

invited the attention of this Court to the caveat filed by the 2nd defendant in No.1644A and 1645 of 2013, wherein it has been stated as follows_

1644A:- *The Caveators state that the respondent/Expected Plaintiff is expected to file a Civil Suit in respect of Vellore Institute of Technology (VIT) University and move an application for interim injunction.*

1645:- *The Caveators state that the Respondent/Expected Plaintiff is expected to file a Civil Suit in respect of Vellore Institute of Technology Trust and move an application for interim injunction.*

Thus, by relying upon the statements made in the caveat applications, the learned senior counsel for the plaintiffs would submit that the 2nd defendant/caveator wanted notice only in an injunction application, which is or may be filed by the plaintiffs and the 2nd defendant is not claiming a right of hearing in the application for leave to sue; therefore, absolutely there is no caveat in the eyes of law so far as the applications filed by the plaintiffs for leave to sue.

12.In this regard, the learned Senior Counsel appearing for the plaintiffs has invited the attention of this Court to Section 148A of CPC and submitted that Section 148A of CPC has been introduced only to give an opportunity of hearing to the respondent in an application which is expected to be filed, seeking for any interlocutory orders. The learned Senior Counsel appearing for the plaintiffs further submitted that a reading of Section

148A(1) of CPC would show that where an application is expected to be made, or has been made, in a suit or proceedings instituted, or about to be instituted, in a Court, then any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof. The applications for leave to sue under Clause 12 of Letters Patent and under Section 92 of CPC are not interlocutory applications seeking any interim orders and leave application is a proceeding in itself and therefore, notice to the caveator in the application for leave either under Clause 12 of Letters Patent or under Section 92 of CPC is not mandatory, because such application is only for enabling the plaintiff to institute the suit.

13. In this regard, the learned Senior Counsel appearing for the plaintiffs has also relied upon Order 52 Rule 1 of CPC and submitted that Order 52 Rule 1 deals about lodging of caveat in respect of an application, which is expected to be made or has been made in a suit, appeal, revision or any proceeding instituted or about to be instituted in a Court to which the **Code** applies. In the instant case, leave to sue application was filed by the plaintiffs under Clause 12 of Letters Patent r/w Order III Rule 1 of OS Rules. For the application under Clause 12 of Letters Patent, the Civil Procedure Code will not apply. When that being the legal position, serving notice in the application for leave filed under Clause 12 of Letters Patent is not mandatory. The question of serving notice to the caveator will arise only after numbering of the Interlocutory Application/Suit. In this regard, the learned senior

counsel for the plaintiffs relied upon the judgment reported in ***AIR 1955 BOMBAY 55 (Vol 42. C.N.13)(1) [Fazlehussein Haiderbhoy Buxamusa and others Vs. Yusufally Adamji and others]***, wherein it has been held that *"the Court's jurisdiction to entertain a suit under Section 92 of Civil Procedure Code depends only upon the existence within the jurisdiction of property which is the subject matter of suit; Clause 12 of Letters Patent can only apply to those cases regarding which no provision is made in the Civil Procedure Code relating to the jurisdiction of the High Court."*

14. The learned Senior Counsel appearing for the plaintiffs, by drawing the attention of this Court to Section 2(1) of CPC, would further submitted Section 2(1) of CPC defined the Code as "Code" includes rules. Section 121 of CPC says that the rules in the First Schedule shall have effect as if enacted in the body of the Code until annulled or altered in accordance with the provisions of this Part. Therefore, 'rules' referred to under Section 2(1) of CPC only refers the rules in First Schedule of CPC; whereas so far as High Courts are concerned, the High Court can make the rules. In this regard, the learned Senior Counsel appearing for the plaintiffs invited the attention of this Court to Section 122 of CPC, which give powers to the High Court to make the Rules. Therefore, the High Court Original Side Rules framed by this Court, under which the leave to sue application was filed, will not form part of the Civil Procedure Code; when that being the legal position, the procedure stipulated under Section 148A of CPC cannot be made applicable to the

application for leave filed under Clause 12 of Letters Patent.

15.It is another submission of the learned senior counsel appearing for the plaintiffs that the suit filed under Section 92 of CPC is a special proceeding and it provides for an application for leave to sue under section 92 of CPC itself. It is a self-content Code; therefore, Section 148A of CPC and Order 52 Rule 1 of CPC will not apply to the application under Section 92 of CPC to grant leave.

16.The learned senior counsel appearing for the plaintiffs by relying upon the judgment reported in **1996(2) LW 364 (R.Kannan Adityan & 4 others Vs. Adityan & 6 others)** submitted that the Division Bench of this Court, by considering various decisions, held that the order granting leave under Section 92 of CPC is only an administrative order and since it is an administrative order, the issuance of notice is not mandatory. In this regard, the learned Senior Counsel appearing for the plaintiffs relied upon the decision of the Hon'ble Supreme Court reported in **(1991)1 SCC 48 [R.M.Narayana Chettiar and another Vs. N.Lakshmanan Chettiar and others]** and submitted that the issuance of notice in the application for leave under Section 92 of CPC is not a statutory requirement. When that being the legal position, non-issuance of notice to the caveator does not suffer from any infirmity.

Counter submission with regard to Territorial Jurisdiction of the Court:-

17. With regard to territorial jurisdiction of this Court to try the suit, it is the submission of the learned Senior Counsel appearing for the plaintiffs that this is a suit filed under Section 92 of CPC and if the subject matter of the Trust or a portion of the subject matter of the Trust is situated within the jurisdiction of this Court, that would suffice to file the suit before this Court. In the instant case, the administrative office of the 2nd defendant is situated at Door No.W-73, Anna Nagar, Chennai, within the jurisdiction of this Court. Further, the 1st defendant also owns properties at Adayar & Gandhinagar and the defendants 1 & 2 have bank accounts in Indian Bank at Anna Nagar, Chennai. Thus, a part of subject matter of the suit is situated within the jurisdiction of this Court; therefore, this Court gets jurisdiction to try the suit under Section 92 of CPC. Since a suit under Section 92 of CPC is a special proceeding, for filing a suit under Section 92 of CPC, cause of action or part of cause of action or defendants' residence/work place have no significance.

18. In support of the said above contention, the learned senior counsel for the plaintiffs has relied upon the following decisions_

(i) AIR 1932 Calcutta 444 (Padampat Singhanya and others Vs. Narayandas Jhunhunwalla and others);

(ii) AIR 1935 Madras 983 (M.Ar.Rm.M.Annamalai Chettiar and others Vs. Al.A.C.T.Solaiyappa Chettiar and another);

(iii) 2005(2) CTC 368 (Mazdoor Welfare Trust Vs. The Southern

Railway Mazdoor Union).

Counter submission with regard to averments in the plaint contain necessary avermetns to make out case under Section 92 of CPC

19. With regard to the submission made by the learned senior counsel appearing for the 2nd defendant that the plaint does not contain necessary averments to make out a case under Section 92 of CPC and the allegation made in the plaint are only on certain statutory violations, it is the reply of the learned senior counsel appearing for the plaintiffs that the question as to *whether the alleged breach of trust is true or not* cannot be decided while granting leave. Further, to attract the provisions under Section 92 of CPC, there must be averment of breach of trust or direction of the Court is necessary; if any one of the said requirements is available then the Court will get jurisdiction. In this regard, the learned senior counsel appearing for the plaintiffs invited the attention of this Court to the Trust Deed and submitted that the Trust Deed clearly states that it is a public charitable Trust. In this regard, the learned senior counsel appearing for the plaintiffs has also invited the attention of this Court to various clauses in the Trust Deed and made an elaborate argument.

20. The learned senior counsel appearing for the plaintiffs invited the attention of this Court to the letter dated 01.01.2010 from the University Grant Commission to the Vice Chancellor, VIT and submitted that UGC has

given a specific direction to the defendants 1 & 2 that no student should be admitted to the academic programs of the proposed Chennai Campus under the enrollment of Vellore Institute of Technology (Deemed to be University) till the time the proposed Chennai Campus is approved by the Government of India, Ministry of Human Resources Development. In spite of that, the students were admitted in Chennai Campus by the defendants. It is the duty of the Trustees to see that the law of the land is obeyed. Therefore, according to the learned senior counsel for the plaintiffs, there is a clear breach of trust by the trustees. Therefore, a direction of the Court is necessary to set right the administration of the public Trust - 1st defendant.

21. Further, the learned senior counsel appearing for the plaintiffs, by inviting the attention of this Court to the allegation made in the plaint that the defendants 1 & 2 have encroached the government poramboke land measuring about 14.53 acres, submitted that the law of the land does not permit any one to encroach the government poramboke land, which is illegal and unlawful. Further, the questions *whether the Court will have jurisdiction for the alleged breach of public trust and whether a direction of the Court to take charge of the administration of the Trust*, can be decided under Section 92 of CPC. Similarly, the learned senior counsel for the plaintiffs submitted that there is withdrawal of huge funds of the 1st defendant-Trust by the defendants 1 & 2, for which the defendants are not able to substantiate with proper and valid reasons; the defendants have used the cash withdrawals for

their personal benefit and aggrandizement, without spending the same for the propagation of the purpose and object of the Trust. There are allegations in the plaint against the defendants 3 to 6 that they have misused and diverted the funds of the defendants 1 & 2 for their personal benefit and aggrandizement and they have committed acts of breach of trust and misappropriation. The accounts of the 1st defendant-Trust are never presented to the Board of Trustees and all accounts are only handled by the 3rd defendant and the transactions are shrouded in secrecy.

22.The learned senior counsel for the plaintiffs would further submit that without obtaining building approval, unauthorised construction has been made by the defendants. Though there is no planning permission from the concerned authorities for the construction, the defendants 1 & 2 managed to obtain EB Service Connection from the Electricity Department. When the plaintiffs questioned this, the Trustees informed the plaintiffs that they know how to handle it. Thus, the Trustees feel that they are above law and they can violate the statutory provisions. As the Trustees of the public Trust, the defendants cannot be allowed to violate the law. It is further submitted by the learned senior counsel for the plaintiffs that the 1st defendant transferred huge sum of money to the extent of Rs.22 crores to M/s.Gian Sagar Educational and Charitable Trust, having its registered office at HIG-1441, Phase-IX, Mohali, Punjab, as donation, when the 1st defendant itself owes huge money to banks and institutions. It is stated that the amount is given

towards donation to the corpus of the Trust and it was sent through RTGS.

23. Thus, the learned senior counsel appearing for the plaintiffs, by drawing the attention of this Court to each and every allegation made in the plaint, submitted that the allegations made in the plaint would show that there is a clear breach of trust. Hence, the suit is maintainable under Section 92 of CPC. In this regard, the learned senior counsel appearing for the plaintiffs has also relied upon the judgment reported in ***AIR 1975 SC 371 (Charan Singh Vs. Darshan Singh)***, wherein it has been held that maintainability of the suit under Section 92 of CPC depends upon the allegations in the plaint and it does not fall for decision with reference to averments in the written statement.

Reply of the counsel for defendant/applicant

24. By way of reply, the learned senior counsel appearing for the 2nd defendant/applicant herein, by inviting the attention of this Court to Order 1 Rule 4(7) of Original Side Rules, submitted that as per Order 1 Rule 4(7) of Original Side Rules, 'Interlocutory Application' means an application to the Court or to the Master or other Officer in any suit, appeal or proceedings. The proceedings mentioned in Order 1 Rule 4(7) mean all the proceedings which commence by filing a plaint. In the present case, the plaintiffs filed the plaint along with the leave applications and for the leave applications they sought reference to the plaint as part and parcel of the applications. Therefore, the application filed for leave of the Court under Section 92 of CPC

as well as application filed for leave of the Court under Clause 12 of Letters Patent, are only application as per Original Side Rules and it cannot be termed as a proceeding. The fact that the procedure for filing application and granting leave by the provisions of the Original Side Rules of the High Court will not denude the other procedure contemplated in Civil Procedure Code. In fact, even for a suit filed before the High Court including one under Section 92 of CPC, for rejecting the plaint, the defendant invokes Order VII Rule 11 CPC which is a part of the Code. Therefore, the contention of the learned senior counsel for the plaintiffs that the **Code** does not apply to suit under Section 92 of CPC is absurd and a fallacy in law.

25. The learned senior counsel appearing for the 2nd defendant/applicant invited the attention of this Court to Order 52 Rule 4 of CPC, which reads as follows__

“When a person makes an application for an interlocutory orders in a suit, appeal, revision or any other proceeding, he shall look into the Register of Caveats and made an endorsement in the application as to whether or not a Caveat has been entered with respect to his application as verified from the Register of caveats.”

Hence, as per Order 1 Rule 4(7) of Original Side Rules an application seeking leave is only an application and not a proceeding; hence, as per Order 52 Rule 4 of CPC, notice has to be served on the caveator.

26. Further, the learned senior counsel appearing for the 2nd defendant, by drawing the attention of this Court to Section 2(18) of CPC, submitted that Section 2(18) of CPC defines 'rules' as rules and forms contained in the First Schedule or made under Section 122 or section 125;.

Section 122 of CPC reads as follows_ The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Section 125 of CPC reads as follows_ High Court, other than the Courts specified in Section 122, may exercise the powers conferred by that section in such manner and subject to such conditions as the State Government may determine:

Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

According to the learned senior counsel appearing for the 2nd defendant/applicant herein, a conjoint reading Section 122 & 125 of CPC would show that the Original Side Rules framed by this Court, under which the leave to sue application is filed, would clearly form part of the **Code** and therefore, Order 52 of CPC would apply. In this regard, the learned Senior Counsel appearing for the 2nd defendant relied upon the judgment reported in **AIR 1956 (Andhra) 108 [T.Manikyam Vs. T.Narasimhan]**, wherein it has been held as follows_

"The expression 'Code' has been defined under

Section 2(1) as including rules. 'Rules' have been defined in Section 2(18) as meaning rules and forms contained in the First Schedule are made under Section 122 or Section 125. Section 122 gives to high Courts in part A and part B states to make rules regulating the procedure of the Subordinate Courts, and in pursuance of the power conferred by the Section 122 rules have been framed which are cited as civil rules of practice."

Thus, the learned Senior Counsel appearing for the 2nd defendant/applicant herein submitted that application for leave to sue under Clause 12 of Letters Patent / Application for leave to file a suit against a public Trust is only an Interlocutory Application and not a proceedings by itself. Under such circumstances, the plaintiffs ought to have served the notice to the caveator before moving the said application; since notice was not served, leave granted in those applications is liable to be revoked.

27.I have carefully heard the submissions made on either side and perused the materials available on record.

28.In view of the submissions made on either side, the following points fall for consideration_

(1)Whether the caveator has to be served with a

notice before granting leave under Clause 12 of Letters Patent and Section 92 of CPC?

(2)Whether the Original Side of this Court has territorial jurisdiction to try the present suit?

(3)Whether the plaint does not contain the averments to make out a case under Section 92 of CPC?

Point No.1:-

29-1.The 2nd defendant/applicant herein has filed two caveat applications in No.1644A and 1645 of 2013 on 22.07.2013. But, the plaintiffs/respondents 1 & 2 herein, without serving notice to the 2nd defendant, had obtained an exparte order on 30.07.2013 granting leave under Clause 12 of Letters Patent in Application No.3334 of 2013 and under Section 92 of CPC in Application No.3335 of 2013. Therefore, now the above two applications have been filed by the 2nd defendant seeking to revoke the leave granted in the said two applications.

29-2.According to the learned senior counsel appearing for the 2nd defendant, serving notice to the caveator is a procedure mandated under Section 148A of CPC. Since notice was not served before obtaining leave, the leave granted by this Court is liable to be revoked.

29-3.But, countering the submission of the learned senior counsel for

the 2nd defendant, the learned senior counsel appearing for the plaintiffs has submitted that the application seeking leave to sue either under Clause 12 of Letters Patent or under Section 92 of CPC is not an Interlocutory Application and it is only a proceedings instituted prior to move an Interlocutory Application in the suit and in other words it is a proceedings in itself; therefore, serving notice to the caveator at the stage of obtaining the leave of the Court, either under Clause 12 of Letters Patent or under Section 92 of CPC is not mandatory.

29-4. In view of the above contentions made on either side, it would appropriate to extract Section 148A of CPC, which reads as follows_

"48A.Right to lodge a caveat.

(1) Where an application is expected to be made, or has been made, in a suit or proceedings instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period."

From a careful reading of Section 148A(1) of CPC, it could be seen that serving of notice to the caveator is mandatory, where an application is expected to be made or has been made in a suit or proceedings instituted; that means, in my opinion, if an Interlocutory Application is filed in a pending suit or in a proceedings, serving of notice to the caveator is mandatory. If no Interlocutory Application is filed in a suit or proceedings, then service of notice to the caveator is not mandatory. The application seeking leave of the Court under Clause 12 of Letters Patent or under Section 92 of CPC is a proceedings in itself, since in the said application the Court is not deciding the rights of the parties. Only if any Interlocutory Application is filed pending a proceedings, serving of notice to the caveator has become mandatory. So far as the present case is concerned, by filing Application Nos.3334 & 3335 of 2013, the respondents 1 & 2 herein/plaintiff had sought for leave of the Court under Clause 12 of Letters Patent and under Section 92 of CPC. Since the said applications are proceedings in themselves, serving of notice to the

caveator is not mandatory. In fact, the Hon'ble Supreme Court in the case of *R.M.Narayana Chettiar and another Vs. N.Lakshmanan Chettiar and others reported in 1991(1) SC page 48* has held that issuance of notice to the defendants before granting leave is only a rule of caution. But, the Court is not bound to do so in all circumstances and non-issuance of notice would not render the suit bad or non-maintainable. Hence, I am of the opinion serving of notice is not a statutory requirement either in the application for leave to file a suit under Clause 12 of Letters Patent or application for leave to file a suit against public Trust under Section 92 of CPC. When that being so, serving notice to the defendant in the application for leave to file suit is not mandatory. The only remedy for the defendant is to seek for revocation of leave, if this Court has no jurisdiction to try the suit.

29-5. But, according to the learned senior counsel appearing for the 2nd defendant, as per Order 1 Rule 4(7) of Original Side Rules, '*Interlocutory Application*' means an application to the Court or to the Master or other Officer in any suit, appeal or proceedings; therefore, the application filed either under Clause 12 of Letters Patent or under Section 92 of CPC is only an Interlocutory Application it can not be termed as a proceedings by itself and under such circumstances, serving notice to the caveator is mandatory. But, in my considered opinion, the application filed under Clause 12 of Letters Patent or under Section 92 of CPC cannot be termed as Interlocutory Application. Once leave is granted, the said application automatically gets

terminated. Granting leave under Clause 12 of Letters Patent or under Section 92 of CPC is not binding upon the result of the main proceedings. If the defendant feels that the leave granted is not correct, he can seek revocation of the leave. As observed earlier in the order of granting leave under Clause 12 of Letters Patent or under Section 92 of CPC the Court is not deciding the right of the parties in the main suit. Along with the application for leave to sue under Clause 12 of Letters Patent or under Section 92 of CPC, only a plaint or copy of the plaint and other documents in support of the plaint could be filed before the Court to go through the averments made in the plaint for the purpose of granting leave. The suit can be filed only after leave to sue is granted.

29-6.Application No.3334 of 2013 for leave to sue the defendants was filed by the plaintiffs under Clause 12 of Letters Patent r/w Order III Rule 1 of OS Rules and not under the provisions of Civil Procedure Code. For the application under Clause 12 of Letters Patent, the Civil Procedure Code will not apply. When that being the legal position, serving notice in the application for leave either under Section 148A or Section 52 of CPC is not mandatory.

29-7.Similarly, as contended by the learned senior counsel appearing for the plaintiffs, the suit filed under Section 92 of CPC is a special proceeding and it provides for an application for leave to sue under section 92 of CPC

itself. It is a self-content Code; therefore, Section 148A of CPC and Order 52 Rule 1 of CPC will not apply to the application under Section 92 of CPC to grant leave.

29-8. Even assuming for a moment that the **Code** applies, the application under Section 92 of CPC is not an application for any Interlocutory order. The proposed defendant cannot have any right of hearing in the leave application, because in the application for leave to sue, the Court is not bound to issue notice to the defendant. It is purely discretion of the Court. When that being the legal position, I am of the opinion that the application under Clause 12 of Letters Patent or under Section 92 of CPC cannot be termed as interlocutory application. Therefore, serving of notice at the stage of obtaining leave is not mandatory. Application for leave is only a procedure for instituting the suit. Further, granting leave is purely a matter between the Court and the plaintiff in the initial stage. Therefore, I am of the opinion, the non-serving of notice to the caveator will not serve as a ground to revoke the leave granted by this court.

29-9. It is another submission of the learned senior counsel appearing for the plaintiffs that in Order 52 Rule 1 of CPC, which deals about the lodging of caveat, the expression '*Court to which the Code applies*' was used. According to the learned senior counsel for the plaintiffs, in respect of the application filed seeking leave of the Court under Clause 12 of Letters Patent,

Civil Procedure Code will not apply. In this regard, the learned senior counsel appearing for the plaintiffs has invited the attention of this Court to Order 3 rule 1 of Original Side Rule, which reads as follows_

"An application for leave to institute a suit in the Court shall be made by Judge's summons entitled in the matter of the intended suit, and shall be supported by an affidavit stating the residence and occupation of the defendant, and the reason for instituting the suit in the Court. The application shall be accompanied by the plaint in the intended suit, or a copy thereof."

So far as the application for leave to sue is concerned, the same is filed under Clause 12 of Letters Patent r/w Order III Rule 1 of OS Rules. If the Letters Patent Act applies, the relevant provision in the Code will not apply. Similarly, so far as the application under Order III Rule 1 is concerned, the Original Side Rules alone will apply and CPC will not apply. In fact, Order 1 Rule 3 of Original Side Rules makes it very clear that *'except to the extent specifically provided for by these rules, the provisions of the Code shall apply to all proceedings'*. Thus, for an application to leave to sue under Order III Rule 1 of Original Side Rules, Original Side Rules alone will apply and CPC will not apply. Clause 12 of Letters Patent clearly provides for jurisdiction of the Court for entertaining the suit. Hence, Section 148A of CPC r/w Order 52 of CPC will not apply to the application filed under Clause 12 of Letters Patent r/w Order III Rule 1 of Original Side Rules. Thus, for an application for leave to sue, Order III Rule 1 of Original Side Rules 1956 alone will apply. Order

III Rule 1 of O.S.Rules, 1956 says that the Court may direct notice which means that the Court may not order notice also and it is a pure discretion of the Court. The grant of leave cannot be regarded as defeated or severely prejudicing any rights of the proposed defendants because it is always open for them to file an application for revocation of leave which can always be considered on merits and according to law.

29-10. But, it is the submission of the learned senior counsel for the 2nd defendant that as per Section 2(18) of CPC, 'rules' means rules and forms contained in the First Schedule or made under Section 122 or Section 125 of CPC; Section 122 of CPC give power to the High Court to make rules; therefore, the rules framed by the High Court has to be construed as a part of the **Code**.

29-11. But, this submission made by the learned senior counsel for the 2nd defendant, cannot be accepted because under Order 1 Rule 3 of Original Side Rules it has been specifically stated that except to the extent specifically provided for by these rules, the provisions of the Code shall apply to all proceedings. Since Order III Rule 1 of OS Rules is a specific provision made for filing an application for leave to sue, under Clause 12 of Letters Patent, the Original Side Rules alone will apply to the application for leave to sue and the Civil Procedure Code will not apply. Hence, I am unable to accept the submission made by the learned senior counsel appearing for the 2nd

defendant that all the rules framed by the Court is a part of the **Code**.

29-12. Since this Court has come to the conclusion that any application filed under Clause 12 of Letters Patent or under Section 92 of CPC, is not an interlocutory application and it is only a procedure for institution of the suit, the submissions made by the learned senior counsel appearing for the 2nd defendant by relying upon Order 52 Rule 4 of CPC also cannot be accepted.

29-13. But, it is the submission of the learned senior counsel appearing for the 2nd defendant/applicant herein that prior to the Amendment Act 104 of 1976, leave application under Section 92 of CPC could be instituted with the consent of the Advocate General; but after the Amendment Act 104 of 1976, the words 'consent of the Advocate General' were substituted by the words 'leave of the Court'; therefore, it cannot be construed as an administrative order, but it is only a judicial order. In this regard, the learned senior counsel appearing for the 2nd defendant/applicant herein submitted that in the decision reported in **1996-2 LW 364 [R.Kannan Adityan & 4 others Vs. Adityan & 6 others]**, referred to above, though the Division Bench of this Court has held that granting of leave under Section 92 of CPC is an administrative order, the Division Bench has not taken into consideration the Amendment Act 104 of 1976.

29-14. But, on a careful perusal of the said judgment, I find that the

Division Bench of this Court, by relying Mulla 15 edition and page 634 and 630 has come to the conclusion that the Amendment of the Code in 1976 requiring leave of the Court in place of consent by the Advocate-General does not change the nature of the order. The relevant portion in the said judgment reads as follows_

“19.Before considering the validity of the respective contentions, it is necessary for us to advert to the general principles governing an application for leave under Section 91, C.P.C.:-

A.(i) A proceeding under Section 92, C.P.C. is administrative in character and neither judicial nor quasi-judicial. An order granting leave does not affect the rights of any party, though an order refusing to grant leave may affect the rights of the persons who seek such leave. In any event, the nature of the proceedings is only administrative. In Mulla's Code of Civil Procedure, 15th Edition, Volue 1, at pages 634 and 635, the following passage occurs:-

“10.Nature of the order granting leave by the Court_ Under the section as it stood before its recent amendment and when what was required was the consent of the Advocate-General, there was some divergence of opinion on the question whether the proceedings for consent before the Advocate-General were quasi-judicial in character, and if they were, whether they were open to challenge in writ proceedings under Article 226 of the Constitution. In *Abu Backer Vs. Advocate General* (AIR 1954 Travancore -

Cochin 331) the High Court of Travancore-Cochin held that such proceedings were *quasi-judicial* and that view was shared by the Pepsu High Court in *Sadhu Singh Vs. Mangal Gir Mohatmin* (AIR 1956 Pepsu 65). But a contrary view was taken by the High Court of Rajasthan in *Srimali Vs. Advocate-General* (AIR 1955 Raj.166), Allahabad in *Shanthanand Vs. Advocate-General* (AIR 1955 Allahabad 372), Madras in *Raju Vs. Advocate-General* (AIR 1962 Madras 320 = 75 L.W. 240), and in *Abdul Kasim Vs. Mohd. Dawood* (AIR 196 Madras 244 = (1960) 73 L.W. 649), and *Jammu and Kashmir* (AIR 1962 J & K 86). A Full Bench of the Kerala High Court later on reconsidered the position and held reversing *Abu Backer's case* (*Supra*) that the proceedings before the Advocate-General were only administrative (*A.K.Bhaskar Vs. Advocate-General* (AIR 1962 Kerala 90 F.B.)). Further, it has also been held that the function of the Advocate-General not being a judicial one, notice by him to the trust or its trustees was not obligatory and that the absence of such notice did not invalidate the consent given by him. All that was required of him at that stage was to satisfy himself that it was worth while to institute the suit. (*Shav Vs. Masood Hasin* AIR 1965 A.P.143). Notice to the defendants before granting leave is not

mandatory. The Supreme Court now so held. Although as a rule of caution, such notice should be given, leave granted without notice is not bad in law. The proposed defendants can always apply for revocation of leave already granted. (*R.M.Narayan Chettiar Vs. Lakshmanan Chettiar* (AIR 1991 SC 221 = 1990-2 L.W 468). The mere fact that the amended section now requires leave of the Court in place of consent by the Advocate-General does not seem to change the nature of the order of leave made by the Court. In making such an order the Court, like the Advocate-General earlier, would no doubt have to apply its mind but that is only to satisfy itself whether the persons asking leave have interest in the trust, whether the trust is a public trust specified in the section and whether there are *prima facie* grounds for thinking that there has been a breach of the trust. At that stage the Court would not have before it all the parties to the proposed suit nor the evidence from which it would call upon to adjudicate any issue. All that it would have to see is whether it is in the interest of the trust to file the suit for which leave is sought."

We are entirely in agreement with the view expressed by the learned author that the amendment of the Code in 1976 requiring leave of the Court in place of consent by the Advocate-General does not change the nature of the order."

In view of the dictum laid down in the above said judgment, I am of the opinion that the order granting leave to sue is only an administrative order. Hence, on that ground also notice is not necessary under Section 92 of C.P.C.

29-15. In this regard, a reference could be placed in the judgment reported in ***AIR 1989 Allahabad 194 (Ambrish Kumar Singh Vs. Raja Abhushan Bran Bramhshah and others)***, wherein it has been held that giving notice to the defendant/respondent is not contemplated under Section 92 of CPC.

29-16. In the judgment reported in ***(1991) 1 SCC 48 (R.M.Narayana Chettiar Vs. N.lakshmanan Chettiar)*** it has been held by the Hon'ble Supreme Court as follows_

"17. 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 of 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.

18. 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."

A reading of the said dictum would show that giving notice prior to grant of leave under Section 92 of CPC is not a statutory requirement, because order of granting leave does not affect the right of any party.

29-17. Therefore, in my considered opinion, serving of notice to the caveator in the application filed under Clause 12 of Letters Patent or under Section 92 of C.P.C., is not mandatory. If the Court is *prima facie* satisfied, it can straight away allow the application for leave to sue, under Clause 12 of Letters Patent or under Section 92 of CPC, without issuing any notice to the defendant. Further, in my considered opinion, if the proposed defendant obstructs the application for granting leave at initial stage it will prolong the matter and cause only irreparable hardship to the plaintiff. However, the defendant can always file an application for revocation of leave if this Court

has no jurisdiction to try the suit. Hence, for the foregoing reasons, I am of the opinion that non-serving of notice to the caveator in the application for leave to sue under Clause 12 of Letters Patent or leave to file a suit against the public Trust under Section 92 of CPC will not serve as a ground to revoke the leave.

Territorial jurisdiction

Point No.2

30-1.It is the submission of the learned senior counsel for the 2nd defendant/applicant herein that neither the plaint averments nor the documents filed along with the plaint disclose any part of cause of action or residence of the defendants within the jurisdiction of this court. It is further submitted that the defendants are residing outside the jurisdiction of this Court. Only in order to bring the suit within the jurisdiction of this Court, the plaintiffs have shown purposely two places as addresses of the 2nd defendant in the plaint.

30-2.But, according to the learned senior counsel for the plaintiffs, if subject matter of the suit or a part of the subject matter of the suit is within the jurisdiction of this Court that would suffice to file the suit under Section 92 of CPC before this Court. In this regard, it would be appropriate to extract Section 92 of CPC_

"92. Public charities.

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree,—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquires;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863) or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a

charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more the following circumstances, namely :

—

(a) where the original purposes of the trust, in whole or in part,—

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust;

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.”

A reading of Section 92 of CPC would show that cause of action or a part of cause of action arose within the jurisdiction of the Court is immaterial; if a portion of the subject-matter of the Trust is situated within the jurisdiction of this Court, that would suffice to file the suit before this Court.

30-3. It is the averment made in the plaint that the 2nd defendant's administrative office is situated at No.W-73, Anna Nagar, Chennai. Further, the trust is holding bank account in Indian Bank at Anna Nagar Branch, Chennai; therefore, a part of the subject-matter of the suit is situated within the jurisdiction of this Court. Hence, this Court has got jurisdiction to try the suit. In this regard, a useful reference could be placed in some of the judgments relied upon by the learned counsel for the plaintiffs_

In ***AIR 1932 Calcutta 444 (Padampat Singhanya and others Vs. Narayandas Jhunjhunwalla and others)***, it has been held as follows:-

"The words 'within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate' must apply both to 'the principal civil Court of original jurisdiction' and to the words 'or in any other Court empowered in that behalf by the Local Government'. Section 92 must, therefore, be taken as overriding Clause 12, Letters patent, which permits a suit to be instituted in the High Court if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within the local limits of its ordinary original jurisdiction.

Where what the settlor had settled was money standing to his credit in the books of a firm in Madras, but at the time when suit under Section 92 was instituted the firm was carrying on business in Calcutta, the subject-matter of the trust was held to

be situated within the local limits of the Calcutta High Court when the suit was instituted and hence, the High Court was held to have jurisdiction to entertain the suit.”-

In **AIR 1935 Madras 983 (M.Ar.Rm.M.Annamalai Chettiar and others Vs. Al.A.C.T.Solaiyappan Chettiar)** wherein it has been held that a suit under Section 92 of CPC should be brought where the subject matter of the trust that is to say, the trust property or the trust money or any part of it, is situate.

In **2005 (2)CTC 368 (Mazdoor Welfare Trust Vs. The Southern Railway Mazdoor Union)** it has been held that_

“Plaint further disclosed that registered office of trust is only at Chennai and donations and contributions were credited in Bank Account in Chennai and intention of plaintiff appeared to be in proper maintenance of trust and its affairs; trust property means money belong to trust and trust having bank account in Chennai would come within the jurisdiction of this Court.”

30-4. In the instant case also, according to the learned senior counsel for the plaintiffs, administrative office of the 2nd defendant is at Chennai and the Bank Account is also being maintained in the Indian Bank at Anna Nagar, Chennai. But, the learned senior counsel for the 2nd defendant/applicant

herein submitted that it is incorrect to state that it is an administrative office. According to the 2nd defendant, it is a godown being used from 2004 and that an income of the Trust or accretion to its property cannot be the subject matter of the Trust. Further, according to the learned senior counsel for the 2nd defendant, Trust is not having any bank account in Chennai; the plaintiffs have not produced any document to show that the defendants are having Bank Account in Chennai, falling within the jurisdiction of this Court. Further, no subject matter of the Trust or part of the subject matter of the Trust is within the jurisdiction of this Court and only for the purpose of filing the suit before this Court, the godown house of the 2nd defendant was shown as an administrative office by the plaintiffs. Thus, it is submitted by the learned senior counsel appearing for the 2nd defendant that the submission made by the learned senior counsel for the plaintiffs relying upon the judgment reported in **2005 (2) CTC 386** (cited supra), cannot be made application to the facts of this Court because in the present case the registered office of the Trust is not situated in Chennai.

30-5. Though the learned counsel for the 2nd defendant disputes stating that absolutely there is no subject-matter or part of subject-matter of the suit is within the jurisdiction of this Court and only for the purpose of filing the suit, it has been stated by the plaintiffs as if the administrative office of the 2nd defendant is within the jurisdiction of this Court and they are having bank account in Indian Bank in Anna Nagar Branch at Chennai, I am of the opinion that same may be a defence of the 2nd defendant in the suit. For the

purpose of granting leave to sue, the averments in the plaint alone can be taken into consideration. If so taken, I am of the opinion that the application filed under Section 92 of CPC is maintainable within the jurisdiction of this Court. The issues as to *whether the premises at the address of the 2nd defendant in the plaint is only a godown or not and whether the Bank Account is maintained in Chennai by the Trust or not*, are all matter of the trial and the same cannot be looked into at this stage. Therefore, I am not inclined to accept the submission made by the learned senior counsel for the 2nd defendant in this regard.

Point No.3

31-1. It is the submission of the learned senior counsel for the 2nd defendant that the plaint does not contain necessary averments to make out a case under Section 92 of CPC. In this regard, the learned senior counsel for the 2nd defendant has made an elaborate argument by drawing the attention of this Court to each and every allegation made in the plaint and submitted that the allegations pertaining to breach of trust should be relatable to any express Trust created for the public purpose and the direction from the Court for administration of such Trust should be relatable only to the scope and object of the Trust and mis-administration against such objects which are expressed in the Trust Deed. According to the learned counsel for the 2nd defendant, in the instant case, the entire averments in the plaint only pertain to certain statutory violations, which are out of the scope

of Section 92 of CPC. Expanding the scope of Section 92 of CPC to correct the statutory violations, if any, would only amount to abdication and usurpation of the power by the Court under Section 92 of CPC against the powers of other statutory authorities in their respective statutes; if that is allowed, it would amount to trial before trial.

31-2. But, according to the learned senior counsel for the plaintiffs, the allegations made in the plaint clearly make out a case within the ambit of Section 92 of CPC; that at the time of granting leave, the Court has to see as to *whether there is the averment of alleged breach of trust or direction of the Court is necessary*. If any one is satisfied, the Court will get jurisdiction.

31-3. It is the submission of the learned senior counsel for the 2nd defendant/applicant herein that the prayer (d) in para 33 of the plaint was made by the plaintiffs to reinstate the 1st plaintiff to the post of Vice-President of the 2nd defendant and to allow the 1st plaintiff to discharge his duties as Trustee of the 1st defendant Trust. Thus, by referring to the said prayer, the learned senior counsel for the 2nd defendant submitted that the said prayer in the plaint would go to show that absolutely no public interest is involved in the suit and only to vindicate their private interest, the present suit has been filed by the plaintiffs. In this regard, the learned senior counsel for the 2nd defendant/applicant herein relied upon the decision reported in **(1974) 2 SCC 695 (Swami Paramatmanand Saraswati and**

another Vs. Ramji Tripathi and another), wherein it has been held as follows_

“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 s. 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. ”

Reliance was also placed by the learned senior counsel for the 2nd defendant/applicant on the decision reported in **(2008) 4 SCC 115 [Vidyodaya Trust Vs. Mohan Prasad R & Ors]**, wherein it has been held as follows_

“The High Court in the impugned judgment focused the adjudication to the issue as to whether the plaintiffs in the case at hand can be said to be laying the suit on behalf of the beneficiaries and members of the public to protect the interests of the public trust or whether they were airing only private and personal grievances. The High Court took the view that though there were certain personal reliefs claimed as evident from the prayer portion, but that was not sufficient to hold that the suit was not for protection of interests of public trust but to claim and enforce private or personal rights. It was held that the insistence of law was only that the discretionary reliefs under Section 92 CPC shall not be granted when the plaintiffs have no genuine interest or intention to protect the public right of the beneficiaries but are only using the forum provided by Section 92 to air private and personal grievances. It was further held that there was prayer to supplement the plaintiffs 1 to 3 and also 4th defendant in the School Management Committee. The same cannot be construed to be any prayer for enforcement of the personal rights. ”

The learned senior counsel appearing for the 2nd defendant has also relied upon the decision in the case of ***S.Gurcharan Singh Bhasin Vs. M/s.S.S.Mota Singh (Nila) & Ors, dated 18.04.2012***, wherein it has been held as follows__

“The Nature of a suit under Section 92 CPC is no longer res intergra and it has been held by the Supreme Court in a catena of judgments that where the suit is for vindication of a private right in a public Trust such a suit is not a suit which falls within the four corners of Section 92 of CPC. A suit for the same to fall under Section 92 of CPC is really a representative suit on behalf of the public and where there are allegations of mismanagement of the Trust, siphoning off of the property or moneys of the Trust, and, other issues of mismanagement of the Trust which require various reliefs including of removing of a trustee, appointment of a new trustee, framing of a scheme and passing of such other necessary orders as specified under Section 92 of CPC”

31-4. On perusal of the plaint, I find that allegations have been made in the plaint to the effect that UGC has given a specific direction to the defendants 1 & 2 that no student should be admitted to the academic programmes of the proposed Chennai Campus under the enrollment of Vellore Institute of Technology (Deemed to be University) till the time the proposed Chennai Campus is approved by the Government of India, Ministry

of Human Resources Development. Inspite of that, the students were admitted in Chennai Campus by the defendants. The Trustees of the public Trust cannot be permitted to act against the law. Therefore, a direction of the Court is necessary to set right and to see that the Trustees of public Trust are not above the law.

31-5. Similarly, there are allegations in the plaint against the defendants 3 to 6 that they have misused and diverted the funds of the defendants 1 & 2 for their personal benefit and aggrandizement and they have committed acts of breach of trust and misappropriation. Likewise there is allegation in the plaint to the effect that the defendants 1 & 2 have encroached the government poromboke land measuring about 14.53 acres, which is illegal. The law of the land does not permit any one to encroach the government poromboke land, which is illegal and unlawful. In my considered opinion, the questions as to *whether the Court will have jurisdiction for the alleged breach of public trust and whether a direction of the Court to take charge of the administration of the Trust*, can be decided under Section 92 of CPC. Similarly, the learned senior counsel for the plaintiffs submitted that there is withdrawal of huge funds of the 1st defendant-Trust by the defendants 1 & 2, for which the defendants are not able to substantiate with proper and valid reasons. Further, there is allegation in the plaint to the effect that there is unauthorised construction by the defendants and without obtaining building approval, unathorised construction has been made by the

defendants. Though there is no planning permission from the concerned authorities for the construction, the defendants 1 & 2 have obtained EB Service Connection from the Electricity Department. When the plaintiffs questioned this, the Trustees informed the plaintiffs that they know how to handle it. Thus, the Trustees feel that they are above law and they can violate the statutory provisions. As the Trustees of the public Trust, the defendants cannot be allowed to violate the law.

31-6. It is further allegation of the plaintiffs that the 1st defendant transferred huge sum of money to the extent of Rs.22 crores to M/s. Gian Sagar Educational and Charitable Trust, having its registered office at HIG-1441, Phase-IX, Mohali, Punjab, as donation, when the 1st defendant itself owes huge money to banks and institutions. It is stated that the amount is given towards donation to the corpus of the Trust and it was sent through RTGS. This transfer of funds requires an explanation from the defendant as to why such a huge amount was transferred to the Trust, which is unconnected to the 1st defendant-Trust.

31-7. Thus, the learned senior counsel appearing for the plaintiffs submitted that there is a clear breach of trust in the present case and as such, a direction of this Court is necessary to set right the administration of the Trust; therefore, the suit cannot be said to be a vexatious or has been filed to vindicate the private interest.

31-8. In this regard, a reference could be placed in the judgment of the Hon'ble Supreme Court reported in **(1975) 1 SCC 298 (Charan Singh and another Vs. Darshan Singh and others)**, wherein it has been held that it is well settled that the maintainability of the suit under Section 92 of the Code depends upon the allegations in the plaint and does not fall for decision with reference to the averments in the written statement. Though it is submitted by the learned senior counsel appearing for the 2nd defendant that the prayer (d) in para 33 of the plaint to reinstate the 1st plaintiff to the post of Vice-President of the 2nd defendant and to allow the 1st plaintiff to discharge his duties as Trustee of the 1st defendant Trust, falls outside the purview of Section 92 of CPC, I am of the opinion that the said prayer cannot take the suit out of the scope of Section 92 of CPC. In this regard, a reference could be placed in the judgment reported in **AIR 1972 RAJASTHAN 263 [Association of Radhaswami Dera Baba Bagga Singh & another Vs. Gurnam Singh & others]**, wherein it has been held as follows:-

"22. In the present case, the facts are quite different from those covered in the above-referred to cases. Substantially the plaintiffs' suit is for reliefs specified in Section 92. There is of course an additional prayer for declaring Exs. 1, 2 and 3 as void; but, in our opinion, mere addition of a prayer for declaration cannot take the suit out of the ambit of Section 92, C.P.C., when substantially all other

conditions of the section are otherwise fulfilled.”

31-9. In this regard, one more reference could be placed in the case reported in ***Chennai Vazhai Duraiyur Nadar Union Murai Magamai Sangam .vs. K.A.Gurusamy [2004(1)CTC 481]***, wherein a Division Bench of this Court has held as follows:

"8. Before dealing with the contentions raised on behalf of the appellants/plaintiffs and the respondents/defendants on merits, we would like to deal with the scope of Sec.92 of the Code.

"92. Public Charities - In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree,—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquires;

- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require".

The above said provision is provided to give protection to the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. The following conditions have to be specified to apply Sec.92 of the Code:

- (a) There should be a trust created for public purpose of charitable or religious nature.
- (b) In case of any alleged breach of such trust, direction of the Court is necessary for administration of such a trust;
- (c) The suit must be representative one on behalf of the public and is not by individuals for their own interest;
- (d) The relief claimed in the suit must be one or other reliefs mentioned in the provision;

The expression "charitable trust of a public nature" contemplates the trust to be both charitable one and a public one, the beneficiaries must be public though not public at large, yet a classified section of it, no specified individuals must be unascertained persons. It is no doubt true, the Court *prima facie* satisfies either of breach of trust or of necessity for obtaining direction of the Court before granting the relief. The Apex Court in the decision in **Charan Singh v. Darshan Singh, AIR 1975 SC 371**, decided the scope of Sec.92 of the Code and further 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."

A reading of the above judgments would show that the plaintiffs have to satisfy that there should be a trust created for the public purpose of charitable and religious nature and in case of any alleged breach of such trust, direction of the Court is necessary for administration of such a trust. The suit must be representative one on behalf of the public and is not by individuals for their own interest. The relief claimed in the suit must be one or other reliefs mentioned in the provision. In the instant case, the existence of public trust was admitted by the defendants.

31-10. According to the learned senior counsel appearing for the 2nd defendant/applicant herein that the allegations made in the plaint are only pertaining to statutory violations. But, according to the learned senior counsel for the plaintiffs, the allegations in the plaint are pertaining to the breach of trust; therefore, a direction of this Court is necessary to set right the administration of the Trust.

31-11. I am of the opinion that if *prima facie* this Court finds that there is allegation with regard to breach of trust and a direction of this Court is necessary, that would suffice to grant leave to sue at the initial stage. Only

when there is a strong material before this Court to come to a conclusion that the suit is vexatious, then the Court can deny the leave already obtained, otherwise the leave cannot be rejected at the threshold stage. So far as the present case is concerned, from a reading of averments in the plaint and from the other materials, I find that there is an existence of a public Trust. There is allegation of breach of trust and a direction of this Court is necessary to set right the administration of the Trust. In the present case, two clauses are considered for grant of leave to sue under Section 92 of CPC; 1) a part of subject-matter of is within the jurisdiction of this Court and as such this Court gets jurisdiction to entertain the suit under Section 92 of CPC; 2) the allegations made in the plaint show that a direction of this Court is necessary to set right the administration of the Trust. The contentions made by the learned senior counsel for the 2nd defendant may be his defence which could be considered at the time of trial. Hence, I am of the opinion, a *prima facie* case has been made out to grant leave under Section 92 of CPC. Therefore, leave cannot be revoked.

For the foregoing reasons, the above applications are liable to be dismissed and accordingly, the same are dismissed.

.02.2015

Internet : Yes / No

Index : Yes / No

SSV

R.SUBBIAH, J.,

SSV

Pre-delivery order

in
A.Nos.3559 & 3560 of 2013
in
C.S.No.518 of 2013

.02.2015