

121

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3161 of 2015

Date of decision: May 11, 2015

Shri Krishna Mandir Trust and others

.....Petitioners

Versus

Bal Krishan Mahajan and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Gurcharan Dass, Advocate
for the petitioners.

SABINA, J

Petitioners have filed this petition challenging the order dated 23.02.2015.

I have learned counsel for the petitioners and have gone through the record available on the file carefully.

Respondents had filed suit for declaration, mandatory injunction and permanent injunction. Petitioners filed their written statement. Vide order dated 30.10.2014, application moved under 92 Code of Civil Procedure, 1908 ('CPC' for short), was allowed. Trial Court while allowing the application has held as under:-

“As per section 92 of CPC such type of suit may be instituted by Advocate General or by two or more persons having an interest in the Trust. In this case 9 persons who are plaintiffs claiming interest in the trust. The present suit falls within the subject matter mentioned in section 92. It is the duty of the court to

protect public properties. Keeping in view that properties of trust may not be damaged or destroyed by any persons. The leave to institute the present suit is essential. The contention of counsel for defendants that plaintiffs have not obtained the leave of the court before instituting the suit is not tenable because the present application is filed along with the plaint. This court has also deemed essential to hear the defendants before the disposal of said application, although which is not mandatory, but keeping in view the principle that no party should be remained unheard. In view of the above discussion the present application is allowed. Permission is granted to plaintiffs to institute and proceed with the case.

Now for arguments on stay application the case is adjourned to 18.11.2014.”

Thereafter, the petitioners moved an application for cancellation of leave to sue granted to the respondents vide order dated 30.10.2014. While dismissing the application, the trial Court has held as under:

“After hearing the submissions, this Court has perused the file, the allegations of the counsel for defendant is that the application for leave to defend filed by the plaintiffs after the filing of written statement by the defendants. The contention of counsel for defendants is wrong. The application for leave to defend was filed with the plaint and not filed after the filing of written statement. This court after hearing both parties have passed order dated 30.10.14 finding the suit falls within the purview of section 92 of the CPC. The defendants failed to file

any appeal or revision against that order. This court finds no merits in this application, hence, this application is hereby dismissed.

Now for arguments on stay application, case is adjourned to 24.03.2015.”

In the present case, leave to sue was granted to the respondents vide order dated 30.10.2014 and the said order was passed in the presence of the counsel for the parties. Thereafter, petitioners sought cancellation of leave to sue granted to the respondents. It has been held by the trial Court while dismissing the said application, that application for leave to defend had been filed by the respondents with the plaint and had not been filed after filing of the written statement. The application for leave to sue was disposed of after hearing both the parties. In the facts and circumstances of the present case, as the leave to sue had been granted to the respondents after hearing both the sides, the application moved by the petitioners seeking cancellation of leave to sue granted to the respondents, was liable to be dismissed.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

May 11, 2015

m.singh