* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 1st November, 2018.

\+ **CS(OS) 119/2016, IA No.3237/2016 (of the plaintiffs u/S 92(1) CPC), IA No.9266/2016 (for clarification of order dated 12th May, 2016), IA No.10217/2016 (u/O XXXIX R-1&2 CPC) and IA No.10218/2016 (u/O VII R-11 r/w O-I R-10 CPC)**

RAM GANDHI & ANR ..... **Plaintiffs**

Through: Mr. Rajiv Bahl and Mr. S.P. Srivastava, Advs.

Versus

PREM DAAN SANSTHAN TRUST & ORS ..... **Defendants**

Through: Mr. Dayan Krishnan, Sr. Adv. with Ms. Julien George, Advs. for D-1 to 6.
Mr. Lovleen Goyal, Adv. for D-7.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The two plaintiffs, namely Shri Ram Gandhi and Naresh Chander Sharma, have instituted this suit under Section 92 of the Code of Civil Procedure, 1908 (CPC) and the plaint in this suit was accompanied with an application under Section 92(1) read with Section 151 of the CPC for grant of permission to sue the defendant no.1, a Public Charitable Trust.

2. The suit along with the application came up first before this Court on 10th March, 2016, when summons of the suit and notice of the said application were ordered to be issued. Vide subsequent order dated 12th May, 2016, direction for filing of written statement was issued.

3. The defendants no.1 to 5 namely (i) Prem Daan Sansthan Trust; (ii) Rakesh Chabra; (iii) Renu Saxena; (iv) Vinit Saxena; and, (v) Poornima R. Chabra, filed IA No.9266/2016 for clarification of the order dated 12th May,

2016 to the effect that they were not required to file the written statement till the decision of IA No.3237/2016 under Section 92(1) of the CPC. Notice of the said application was also ordered to be issued. The defendant no.7 Axis Bank has also filed an application under Order VII Rule 11 of the CPC. Pleadings in the applications have been completed.

4. The counsel or the plaintiffs and the senior counsel for the defendants no.1 to 6 (defendant no.6 is Shri Vivekanand Sahoo) were heard on 31st October, 2018 on the application of the plaintiffs to sue the defendant No.1, a public charitable trust and on request of the counsel for the plaintiffs, the hearing was adjourned to today and the counsels have been heard further today on the maintainability of the suit under Section 92 of the CPC.

5. The plaintiffs, in the plaint plead that (i) that on 30th August, 2004 one Shri Yashpal Chabra resident of California (USA) executed a registered Trust Deed at New Delhi appointing himself, defendant no.2, plaintiff no.1 and one Shri Prashant Bhalla as the permanent trustees, for providing support to any individual, group or organization in promoting education, both formal and informal to children and adults and for upliftment of the under privileged and for certain other public purposes; (ii) the Trust was declared to be known as Premdaan Sansthan; (iii) Shri Yashpal Chabra being the founder of the Trust was also the Managing Trustee of the Trust; (iv) Shri Yashpal Chabra died on 14th July, 2010; (v) the plaintiff no.1 is a founder permanent trustee of the Trust; (vi) the management and control of the Trust and the Trust properties vested in the Board of Trustees of the Trust; (vii) two immovable properties of the Trust are situated at New Delhi; (viii) all the activities of the Trust were being carried out on the instructions

of Yashpal Chabra only; (ix) since the demise of Yashpal Chabra, neither any activity of the Trust has been carried out nor any meeting of the permanent trustees have been held; (x) it has come to the knowledge of the plaintiff no.1 that large amounts from the bank account of the Trust had been transferred to some unknown accounts, to the detriment of the defendant no.1 Trust; (xi) both the properties of the Trust had been let out and are earning rent; (xii) the defendants are required to furnish details of rental income to the plaintiff no.1; (xiii) the plaintiff no.1 has been requesting the defendant Trust to call meetings of the Trustees and to start its activities, to achieve the aims and objectives of the Trust and ultimately got issued a legal notice to the defendant no.2 trustee and to Prashant Bhalla, another trustee of the Trust; (xiv) from the reply to the said legal notice, the plaintiffs for the first time were informed that vide Resolution dated 1st February, 2008, the plaintiff no.1 was removed from the Board of Trustees of the Trust and some new trustees were appointed; (xv) on request of the plaintiffs, a copy of the Resolution was supplied by the defendant no.1 Trust and wherefrom the plaintiffs learnt of the appointment of defendants no.3 to 6 as the trustees of the Trust; (xvi) the removal of the plaintiff no.1 as trustee from the Board of Trustees of the defendant no.1 Trust and the induction of the defendants No.3 to 6 as trustees, is contrary to clause 6 of the Trust Deed; (xvii) the plaintiff no.2 Naresh Chander Sharma has been involved and associated with the various charitable and philanthropic activities of many social organizations in Delhi and Gurgaon and Shri Yashpal Chabra, the founder and Managing Trustee of the defendant no.1 Trust, in his lifetime had also assured financial help to one of the philanthropic initiatives of the plaintiff no.2; (xviii) the plaintiff no.1 was not given any notice before his alleged removal; (xix) the plaintiff no.1 as a founder permanent trustee could not have been removed; (xx) the defendants have not controverted the averment of the plaintiff no.1 in his letters and legal notice, of removal of amounts from the bank account of the Trust; (xxi) the plaintiff no.1 has issued a letter to the defendant no.7 Bank with which the defendant no.1 Trust had an account, to freeze the accounts of the Trust which was refused; and, (xxii) the defendants, inspite of demand from the plaintiffs, have not recalled the removal of the plaintiff no.1 as trustee and/or the appointment of the defendants no.3 to 6 as trustees.

6. The plaintiffs, on the aforesaid pleas, have sought (i) declaration that the plaintiff no.1 is the founder permanent trustee and continues to be so; (ii) direction to the defendants no.1 to 6 to render actual details of accounts of rental income of the properties of the Trust; (iii) declaration that the Resolution dated 1st February, 2008 passed by the defendants no.1&2 removing the plaintiff no.1 as a trustee is illegal and contrary to the terms of the Trust Deed and of no legal consequence; (iv) setting aside of the defendants no.3 to 6 as the trustees; and, (v) direction to the defendant no.1 Trust and its trustees to give financial aid to the philanthropic initiative of the plaintiff no.2 as assured by late Yashpal Chabra.

7. It was the contention of the counsel for the plaintiffs on 31st October, 2018, (i) that there was no clause in the Trust Deed for removal of a trustee; (ii) that there was no clause in the Trust Deed for appointment of a new trustee; and, (iii) that no accounts of the defendant No.1 Trust had been prepared.

8. The senior counsel for the defendants No.1 to 6 during the hearing on 31st October, 2018 handed over a copy of the order dated 21st February, 2014 of this Court in ITA No.61/2014 titled ***Director of Income Tax (Exemption) Vs. Prem Daan Sansthan Trust*** to controvert the allegation of the plaintiffs, of accounts of the defendant No.1 Trust having not been prepared.

9. The counsel for the plaintiffs has today handed over an additional affidavit with respect to the aforesaid order and which affidavit is taken on record.

10. However, the aforesaid have no relevance to the question for consideration i.e. the maintainability of the present suit under Section 92 of the CPC and/or of the grant of permission to the plaintiffs under Section 92(1) of the CPC.

11. The senior counsel for the defendants has argued, (i) that the plaintiffs have not filed the present suit to vindicate any public rights and instead have sought to assert only their alleged individual or personal rights against the defendants; (ii) the plaintiffs have failed to substantiate any allegations of breach of trust against the defendants; (iii) the plaintiff no.2 does not have the necessary *locus standi* to qualify as a person 'having an interest in the trust' within the meaning of Section 92 of the CPC; (iv) that a suit under Section 92 of the CPC does not lie if it is only for seeking declaration qua an individual or personal right of any person against a Trust; (v) to assess the true objective of the suit, the Court has to go beyond the reliefs sought in the suit and gauge the dominant purpose of filing the suit; (vi) reliance is placed on (a) ***Swami Paramatmanand Saraswati Vs. Ramji Tripathi*** (1974) 2 SCC 695, (b) ***Vidyodaya Trust Vs. Mohan Prasad R*** (2008) 4 SCC 115, (c) ***Vinay***

Rai Vs. Ram Krishan & Sons Charitable Trust (2009) 165 DLT 235 (d) ***S. Gurcharan Singh Bhasin Vs. S.S. Mota Singh*** MANU/DE/2397/12; (vii) reliance is also placed on ***Hoshiar Singh Mann Vs. Charan Singh*** (2009) 162 DLT 208 holding that where the suit is to address personal grievances and disputes and to assert personal rights, may be as office bearers of the Trust, but certainly not in public interest or in a representative capacity, it does not fall in the category of a suit under Section 92 of the CPC and further holding that every suit with respect to or against a public charitable trust does not fall within the domain of Section 92 of the CPC; (viii) seen in this light, the primary purpose of the suit, as emerges from averments of the plaint, is to seek vindication of the personal rights of the plaintiff no.1 and to obtain financial assistance for the philanthropic activities of the plaintiff no.2; (ix) that the plaintiff, in a suit under Section 92 of the CPC, is required to substantiate the allegation, particularly to claim irregularity in the administration of trust and which is required to be manifested from the record and a mere averment in this regard is not enough; (x) reliance is placed on ***R.M. Narayana Chettiar Vs. N. Lakshmanan Chettiar*** (1991) 1 SCC 48 holding that the defendant in a suit, purportedly under Section 92 of the CPC, can bring to the notice of the Court that the allegations made in the plaint are frivolous and reckless and that the persons applying for leave are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant the leave to such persons; (xi) that the latest orders show that the Income Tax Authorities have duly verified the audit report of the defendant No.1 Trust; (xii) reliance is placed on ***Rahul Jain Vs. Pradeep Kumar*** (2007) 138 DLT 329 holding that the interest required to sue under Section 92 must be a clear or a present and a substantial interest and not merely a remote, fictitious or purely illusory interest and the Court has to be satisfied that the plaintiff has a substantial interest; (xiii) that the plaintiff No.2 claims only a promise by the earlier managing trustee of the defendant No.1 Trust of financial aid and the same does not qualify as an interest in the working of the trust; (xiv) that the suit is highly belated; the allegations of wrongful removal of the plaintiff No.1 and wrongful appointment of the defendants No.3 to 6 are of the years 2008-2009 and the allegations of promise of financial aid to plaintiff No.2 are of 7th June, 2010; (xv) that the limitation for such a suit is governed by Article 58 of the Schedule to the Limitation Act, 1963 and the suit is barred by time; (xvi) reliance is placed on ***Tirathram Shah Charitable Trust Vs. Anjali Birla Sawhney*** 2016 SCC OnLine Del 1480 and on ***State of Punjab Vs. Gurdev Singh*** AIR 1991 SC 2219 in this regard; and, (xvii) that the plaintiffs have suppressed material facts.

12. Per contra, the counsel for the plaintiffs has argued (a) that it is not disputed by the defendants that the defendant No.1 Prem Daan Sansthan Trust is a public trust; (b) that in the plaint, allegations of breach of trust have been made and the plaintiffs seek directions for administration of defendant No.1 Trust by directing the defendants No.1 to 6 to furnish and render accounts pertaining to rental income received from the two trust properties and directions for removal of defendants No.3 to 6 illegally appointed as the trustees has been sought; (c) that direction has also been sought against the defendant No.1 Trust to give financial aid or Rs.2 lakhs to the plaintiff No.2 who is not related to the defendant No.1 Trust but has interest in the trust as the plaintiff No.2 is entitled to financial aid from the defendant No.1 Trust; (d) that the plaintiff No.2 is a member of the public

and has no vindication of individual personal rights; (e) that the defendant No.1 Trust has not been functioning for the last several years in furtherance to its aims and objectives and the funds of the defendant No.1 Trust are being illegally and unauthorisedly diverted by the defendants No.3 to 6 to some unknown persons and not being used for the benefit of the public; (f) that the additional affidavit filed by the plaintiff shows that property at Centric Plaza, Sector-XI (MLU), Plot-8, Pocket-8, Dwarka, New Delhi of the defendant No.1 Trust "was neither sold by Yashpal Chabra, the earlier managing trustee to the defendant No.1 Trust nor to M/s B and B Solutions and Consultant Pvt. Ltd. as alleged, because no sale consideration has taken place"; (g) that the defendant No.1 Trust in collusion with the Directors and shareholders of M/s B and B Solutions and Consultation Pvt. Ltd. have committed fraud; (h) that the shareholders and Directors of M/s B and B Solutions and Consultant Pvt. Ltd. are also trustees of the defendant No.1 Trust; (i) that all the ingredients of Section 92 of the CPC are satisfied, viz. defendant No.1 Trust is a public trust, the plaint has allegations of breach of trust and there is necessity to issue directions for administration of the trust; (j) reliance is placed on (a) ***All India Women Conference Vs. Salra Shah*** (2004) 13 SCC 402, (b) ***Charan Singh Vs. Darshan Singh*** AIR 1975 SC 371, (c) ***Sugra Bibi Vs. Hazi Kummu Mia*** AIR 1969 SC 884, (d) ***Hammad Ahmed Vs. Abdul Mueed*** (2006) IX AD (Delhi) 405, (e) ***Delhi Mahila Samaj Trust (Regd.) Vs. Rumma S. Sunder*** MANU/DE/2335/2009 and (f) ***Imayam Trust Vs. Balakumar*** 2015 SCC OnLine Mad 2685.

13. I have considered the rival contentions.

14. I may at the outset state that, at this stage, the arguments of the senior counsel for the defendants No.1 to 6 of the suit being highly belated and/or the plaint being liable to be rejected on the ground of being barred by limitation or laches is not to be considered and the only question for consideration is, whether the suit qualifies as under Section 92 of the CPC and whether the plaintiffs are entitled to permission under Section 92(1) of the CPC.

15. Section 92(1) of the CPC is as under:

> *"**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 inquiries;*
> > *(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".

16. Supreme Court in ***Swami Paramatmanand Saraswati*** supra, concerned with the question, whether the suit falls within Section 92 of the CPC, held that (i) a suit under Section 92 is of a special nature, such a suit can proceed only on the allegation that there was a breach of trust or that the direction of the Court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs mentioned in Section 92(1) of the CPC; (ii) if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under Section 92 would fail; (iii) even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92; (iv) 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 this section; (v) only such suits can be brought under Section 92 which besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights; (vi) in deciding whether a suit falls within Section 92, the Court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which

the suit is brought; (vii) trustees are precluded from suing in this section to vindicate their individual or personal rights; and (viii) when the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92. Finding the plaintiff in that case to have filed the suit to vindicate his individual or personal right, the suit was dismissed.

17. In ***Vidyodaya*** Trust supra also, the Supreme Court was concerned with the question of maintainability of a suit under Section 92 of the CPC. The High Court whose judgment was under challenge in that case, had taken a view that though the plaintiffs had claimed some personal reliefs also but the same was not sufficient only to hold that the suit was not for protection of interest of public trust but only to claim and enforce private or personal rights, and the suit was held to be maintainable. Setting aside judgment of the High Court, it was held (i) to find out, whether the suit was for vindicating public rights, there is necessity to go beyond the relief and to focus on the purpose for which the suit is filed; it is the object and purpose and not the relief which is material; (ii) a co-trustee is not remediless if the leave is not granted under Section 92; (iii) if on analysis of the averments contained in the plaint, it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons, an action under Section 92 does not lie; (iv) when the plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, Section 92 has no application; (v) it is only the allegations in the plaint that should be looked into in the first instance to see, whether the suit falls within the ambit of Section 92; (vi) reliance was placed on ***Sugra Bibi*** supra holding that the mere fact that the

suit relates to public trust of religious or charitable nature and the reliefs claimed fall within some of the clauses of sub-section (1) of Section 92 would not by itself attract the operation of the section, unless the suit is of a representative character, instituted in the interest of the public and not merely for vindication of the individual or personal rights of the plaintiffs; (vii) it is not every suit claiming reliefs specified in Section 92 that can be brought under the Section; but only the suits which besides, claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights; (viii) as a decisive factor, the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought; (ix) the Courts have to be careful to eliminate the possibility of a suit being laid against public trusts under Section 92 by persons whose activities were not for protection of the interests of the public trusts. On a reading of the plaint averments, it was found to be clear that though the colour 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.

18. Relying on the aforesaid two judgments of the Supreme Court, this Court in ***Vinay Rai*** supra, finding that the plaintiff, though the managing trustee, had allowed the defendant to run the affairs of the trust from 2000-2008 and further finding the suit, though under Section 92, having been brought owing to personal disputes of the trustees, it was held that the plaintiff, though the managing trustee, having not bothered to look into the affairs of the trust for eight years, could not be said to have brought the suit in public interest and/or in a representative capacity. Permission to sue under Section 92(1) was thus denied and the suit dismissed. In addition, it

was held that (i) mere averment of irregularities in the trust is not enough in a suit under Section 92 of the CPC, unlike in a case of normal civil action, where the Court has to take every pleading on its face value; (ii) the requirements of Section 92 mandate a slight higher standard in the sense that the legislative intention was to spare public charities from needless litigation; (iii) if someone feels that public charitable trust is being mismanaged or mal-administered, he can seek leave of the Advocate General to sue for one or more reliefs which the Court can grant under Section 92; (iv) however, if such leave is not forthcoming, he has to necessarily approach the Court and disclose why such leave is needed; and, (v) the duty cast upon the plaintiffs is thus not merely to aver but also to establish whether the allegations pertaining to irregularities in the administration of the trust at least *prima facie* manifested from the record.

19. The aforesaid forms the mainstay of the argument of the senior counsel for the defendants No.1 to 6.

20. I have minutely perused the judgments relied on by the counsel for the plaintiffs and do not find any of them to be a judgment on the aforesaid contention of the senior counsel for the defendants No.1 to 6 as to the non-maintainability of the suit under Section 92 of the CPC. In ***All India Women Conference*** supra, though the question was of grant of leave under Section 92(1) of the CPC and the Division Bench of the High Court in that case had set aside the judgment of the learned Single Judge refusing leave on the ground of the suit being for vindication of personal rights, but the Supreme Court merely expressed agreement with the view taken by the Division Bench, without discussing law and without referring to ***Swami***

Paramatmanand Saraswati supra. In fact, what is reported, is nomenclatured as an "order" and not as a "judgment". As far as ***Charan Singh*** supra relied upon by the counsel for the plaintiffs is concerned, I fail to see, as to how the same supports the plaintiffs. The same is rather found to be against the plaintiffs. Relying on ***Swami Paramatmanand Saraswati*** supra, it was held therein that the suit did not qualify under Section 92 of the CPC. Reliance by the plaintiffs on ***Sugra Bibi*** which was relied upon by the Supreme Court, both in ***Swami Paramatmanand Saraswati*** and ***Vidyodaya Trust*** supra, is also misconceived. Passages in isolation, in the judgments do not constitute precedent. As far as ***Hammad Ahmed*** supra is concerned, a Coordinate Bench of this Court therein, after considering the judgments in ***Sugra Bibi*** and ***Swami Paramatmanand Saraswati*** and on a reading of the plaint in that case, came to the conclusion that the plaintiffs had not come to the Court for vindication of any personal right or interest and thus leave was granted. The Division Bench of this Court in ***Delhi Mahila Samaj Trust (Regd.)*** supra was not even concerned with the question of maintainability of a suit under Section 92 of the CPC. The challenge before the Division Bench was only to the interim order granted in the suit. Needless to state, the judgments aforesaid, were not even placed before the Court or considered. Though the learned Single Judge of the High Court of Madras in ***Imayam Trust*** supra was concerned with the question of maintainability of the suit under Section 92 of the CPC and ***Vidyodaya Trust*** supra was cited before the Court but on a reading of the plaint in that case, it was found that the suit was for vindication of public right and not private right. It is for this reason that I have observed hereinabove that the judgments cited by the counsel for the plaintiffs do not meet the mainstay of the argument of the senior counsel for the defendants No.1 to 6.

21. Applying the aforesaid law, what is found is that the plaintiff No.1 in the present case, though a trustee of the defendant No.1 Trust, does not claim to have been involved in the affairs of the defendant No.1 Trust at any point of time. As per his own admission, the affairs of the defendant No.1 Trust were being managed by Yashpal Chabra. Though Yashpal Chabra died on 14th July, 2010 but the plaintiff No.1 even thereafter did not bother about the defendant No.1 Trust and has woken up only in the year 2016, when this suit was filed. To the said extent, the facts of the present case are similar to that of ***Vinay Rai*** supra.

22. A perusal of the reliefs claimed in the suit also show that though the reliefs as fall under Section 92(1) have been claimed but not in public interest or in a representative capacity. The plaintiff No.1 is more interested in partaking in the management of the defendant No.1 Trust and which is a personal interest and not in representative capacity. The plaintiff No.1, from a perusal of the averments in the plaint, is found to be aggrieved from the defendant No.2 appropriating the rental income of the defendant No.1 Trust and is found to be wanting a share therein. It is inexplicable as to why Prashant Bhalla, another trustee of the defendant No.1 Trust has not been impleaded. The emphasis of the plaintiff No.1 is on illegality in his removal as the trustee and appointment of defendants No.3 to 6 as trustees and whose removal also is sought in the plaint. I am unable to decipher from the plaint, any concern of the plaintiff No.1 for the beneficiaries of the defendant No.1 Trust and qua whom no relief has been claimed.

23. Mulla, in his treatise on the Code of Civil Procedure 19th Edition, 2017 under Section 92 of the CPC, has included the head “Suits to Enforce Private Rights” and has authored that “the mere fact that a suit claims relief specified in the section does not bring the suit under it; it must be brought by individuals as representatives of the public, for vindication of public rights; in deciding whether a suit falls within this section, the Court must have regard to the capacity in which the plaintiffs are suing and the purpose for which it is brought; where the right to the office of a trustee is asserted or denied the suit is outside the section; such suits are instituted in the ordinary manner and not under this section”. The learned author, referring to various judgments, listed the instances of suits which do not fall under Section 92. Notable amongst them are:

(A) ***Visalakshi Vs. Veerayya*** AIR 1965 Mad 531, where the suit was by a trustee claiming a share with the defendant trustee in the management and profits;

(B) ***Jamiat Dawat Vs. Mohamad Sharif*** AIR 1938 Lah 869, where the suit was by a person claiming to be a trustee, against a rival claimant, for management of the institution as such trustee;

(C) ***Budree Das Vs. Chooni Lal*** (1906) ILR 33 Cal 789, where the suit was between two persons, as to which of them was the lawful trustee of a charity; and,

(D) ***Manijan Vs. Khadem Hossein*** (1905) ILR 32 Cal 273, where the suit was between two individuals, each claiming certain rights as *Mutawali* over *wakf* property.

24. Mention may also be made of ***Aurobindo Ashram Trust Vs. R. Ramanathan*** (2016) 6 SCC 126, reiterating what was held in ***Vidyodaya Trust*** supra i.e. if the allegations in the plaint indicate that the suit has been filed to remedy the infringement of a private right or to vindicate a private right, then the suit would not fall within the ambit of Section 92 of the CPC and that the Court must consider the purpose for which the suit was filed.

25. The purpose/object of this suit, in so far as the plaintiff No.1 is concerned, on an analysis of the averments in the plaint, is vindication of personal rights.

26. As far as the plaintiff No.2 is concerned, his interest disclosed in the plaint is in the nature of specific performance of the promise claimed to have been made by Yashpal Chabra. The same is again a private interest and the relief claimed, of direction to the defendant No.1 Trust to give financial aid to the plaintiff No.2 as assured by Yashpal Chabra, is again a personal right of the plaintiff No.2. "Interest", within the meaning of Section 92 of the CPC, has to be an existing interest and not a mere contingency. The promise, even if made by Yashpal Chabra to the defendant No.2, did not create any interest of the plaintiff No.2 in the defendant No.1 Trust.

27. For the aforesaid reasons, the suit is not found to fall within the ambit of Section 92 of the CPC and IA No.3237/2016 of the plaintiffs under Section 92(1) of the CPC is dismissed and resultantly the suit along with other pending applications is also dismissed. However, no costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 01, 2018/'pp/bs'
(corrected and released on 12th December, 2018)