IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 08.08.2019	Delivered on 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application No.375 of 2019
in CS No.497 of 2018

Hindustan Unilever Limited,
Having office at "Ponds House"
101 Santhome High Road,
Chennai 600 028. ... Applicant

Vs

1. Agila Munnal Pond's Employees Nalasangam,
   Rep. By its President
   Mr.K.J.Mohankumar,
   having General Secretary

2. MR.J.C.Sebastian
   General Secretary of Agila Munnal Pond's
   Employees Nalasangam,
   Both are having their office at
   No.139-142, AA Blcok, 4th Avenue,
   Shanthi Colony, Anna Nagar,
   Chennai 600 040.

3. Ponds Employees Welfare Trust

4. Ponds Management Staff Welfare Trust

5. Ponds Supervisory Staff Welfare Trust
Having office at
"Ponds House"
101 Santhome High Road, Chennai 28. ... Respondents

Prayer : Application is filed under Order XIV Rule 8 Order III Rule 1 of the Original Side Rules read with Clause 12 of Letters Patent, praying to revoke the leave granted in Application No.5036 of 2018 in C.S.No.497 of 2018.

For Applicant : Mr.Krishna Srinivasan
for M/s.Ramasubramaniam & Associates

For Respondents : Mr.M.K.Kabir, SC
for M/s.S.Sridhar for 1 & 2

O R D E R

This application has been filed seeking revocation of leave granted by order dated 10.07.2018 in Application No.5036 of 2018.

2. The Suit namely, CS No.497 of 2018 has been filed by the plaintiffs seeking framing of scheme in respect of defendants 1 to 3, which are, according to the plaintiff, Public Trusts falling within the purview of Section 92 of the Code of Civil Procedure.

3. It is the grievance of the plaintiffs that the Trusts are not being managed properly and the beneficiaries are deprived the benevolent objects of the Trust. Considering the plaint averments, this Court had granted leave by an order dated 10.07.2018, upon notice, the respondents had entered appearance and this application has been taken out by the fourth defendant in the suit seeking revocation of leave.

4. According to the applicant, the Trusts in question are not Public Trusts and therefore, a suit under Section 92 is not maintainable, the plaintiffs are not interested persons in the Trusts, the requirements of Section 92 of the Code of Civil Procedure, have not been satisfied, as no allegation of mismanagement has been made. While the applicant seeks revocation of the leave on the above grounds, the same is resisted by the respondents/plaintiffs contending that the provisions of Section 92 could be applied even to a Trust, which is not a Public Trust.

5. It is also contended that the plaintiffs cannot be treated as persons, who are not interested in the Trust, inasmuch as, the beneficiaries of the Trusts will be even the retired employees of Ponds Limited (now part of Hindustan Unilever Limited) and their spouses, children and dependants also. Therefore, according to the respondents, the suit as framed is maintainable and there is no ground for revocation of the leave.

6. I heard Mr.Krishna Srinivasan learned counsel appearing for M/s.Ramasubramaniam & Associates, for the applicant and Mr.M.K.Kabir,

learned Senior Counsel appearing for Mr. S. Sridhar for respondents 1 and 2.

7. Mr. Krishna Srinivasan learned counsel appearing for the applicant would contend that the suit itself is barred by *res judicata*. According to him, one Ponds India (Ltd.) Retired Employees Welfare Association and others, attempted to file a similar suit and obtained leave for instituting the suit in Application No.2918 of 2002. Upon leave being granted the suit was numbered as CS No. 579 of 2002. Upon service, the defendants in the said suit filed an Application seeking revocation of the leave in Application No.938 of 2003. The said Application came to be allowed on 17.02.2004. The said order was challenged by the plaintiffs in the said suit in OSA No.181 of 2004 and the Division Bench confirmed the order of the learned Single Judge holding that the Trusts in question are not Public Trusts and as such a suit under Section 92 would not be maintainable.

8. In doing so, the Division Bench had relied upon the judgment of

the Hon'ble Supreme Court in ***Commissioner of Income Tax v. Kamla Town Trust,*** reported in ***1996 (217) ITR 699***, wherein, the Hon'ble Supreme Court had held that a Trust which is the benefit of the workmen, staff and other employees of the Company is only a Private Trust and cannot be deemed to be a Public Trust. Having found that the Trusts in question are only Private Trusts, the Division Bench held that the Suit under Section 92 would not be maintainable. Relying heavily upon the above said judgment, Mr.Krishna Srinivasan, learned counsel appearing for the applicant would contend that the suit as framed is not maintainable and therefore, the leave granted has to be revoked.

9. Contending contra Mr.M.K.Kabir, learned Senior counsel appearing for the respondent would submit that the Trust in question are Public Trusts, relying upon the judgment of the Hon'ble Supreme Court in ***Deoki Nandan v. Murlidhar and others,*** reported in ***AIR 1957 SC 133***. The learned Senior Counsel would draw my attention to the observations of the Hon'ble Supreme Court, wherein, it is pointed out that where the beneficiaries are not members of a family or a specified individual or an

ascertained group of individuals, the Trust can only be regarded as Public and not as a Private Trust. He would also draw my attention to the judgment of the Hon'ble Supreme Court in ***Swami Parmatmanand Saraswati and another v. Ramji Tripathi and another,*** reported in ***AIR 1974 SCC 2141***, and submit that once the suit is not for vindication of a private right the suit will fall within Section 92 of the Code of Civil Procedure.

10. Mr.M.K.Kabir, learned Senior Counsel would also draw my attention to the judgment of the Hon'ble Supreme Court in ***Kt.N.Rm. Thenappa Chettiar & Ors. v. N.S.Kr.Karuppan Chettiar & Others,*** reported in ***AIR 1968 SCC 915***, to contend that even in cases of Private Trust if there is a breach of Trust have a Civil Suit would be maintainable. Therefore, according to Mr.M.K.Kabir, the suit is maintainable and the leave granted for institution of the suit is perfectly in order.

11. I have considered the rival submissions.

12. The contention of Mr.Krishna Srinivasan, learned counsel appearing for the applicant is that the very Trust in question has been held to be a Private Trust by the Division Bench of this Court and a Suit under Section 92 has been held to be not maintainable. Therefore, the present suit cannot be maintained by a different set of persons as plaintiffs. Adverting to the judgments relied upon by Mr.M.K.Kabir, learned Senior Counsel appearing for the respondents, I am afraid that none other judgments could be of any help to him. As regards the judgment in ***Thenappa Chettiar's case***, referred to supra, the Hon'ble Supreme Court did not consider the scope of Section 92. The Suit was not one brought under Section 92 and the question whether the Suit could be instituted for framing a Scheme, under Section 92 was not an issue raised before the Hon'ble Supreme Court.

13. The Suit was one for settlement of the Scheme for the religious Trust. In the said context, the Hon'ble Supreme Court observed that a Suit for removal of a trustee or for framing of a scheme would be maintainable even in respect of a Private Trust. The question whether a Suit under

Section 92 would lie in case of Private Trust was not gone into by the Hon'ble Supreme Court. The other two judgments, namely, the judgment in ***Deoki Nandan v. Murlidhar and others,*** as well as the judgment in ***Swami Parmatmanand Saraswati and another v. Ramji Tripathi and another,*** are not of any use deciding the question that has been raised in this application.

14. I am afraid that I cannot go into the question, as to whether, the Trust namely, defendants 1 to 3 are Private Trusts or Public Trusts, in view of the judgment of the Division Bench in OSA No.181 of 2004. The very same three Trusts were subject matter of the said proceedings and the Division Bench had categorically concluded that these are Private Trusts and the Suit under Section 92 would not be maintainable. Therefore the judgment of the Hon'ble Supreme Court in ***Deoki Nandan'***s case, cannot be applied to decide as to whether, the Trusts in question are Private Trusts or Public Trusts. Even in ***Swami Parmatmanand Saraswati***'s case, the question relating to leave under Section 92 was not considered and the only issue that was raised before the Hon'ble Supreme Court was

whether the suit against a Private Trust would be maintainable under Section 92. Even while answering the said issue, the Hon'ble Supreme Court in paragraph 10 of the said judgment had held that

> *"10. A suit under Section 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such 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 that are mentioned in the section."*

15. In view of the above, it is clear that unless the Trust in question is a Public Trust, a Suit under Section 92 seeking reliefs which fall within the scope of Section 92 is not maintainable. In view of the categorical pronouncement of the Hon'ble Division Bench of this Court in OSA No.181

of 2004, to the effect that the Trusts which are the subject matter of the present suit are Private Trusts and the Suit under Section 92 would not be maintainable, the leave granted for instituting the present suit has to be necessarily revoked and the same is accordingly revoked.

16. Application No.375 of 2019 is allowed and leave granted in Application No.5036 of 2018 is revoked, in view of the revocation of the leave, the plaint in CS No.497 of 2018 will stand rejected.

19.08.2019

Index : No
Internet: Yes
Speaking Order
jv

R.SUBRAMANIAN,J.

jv

Pre Delivery Order
Application No.375 of 2019
in CS No.497 of 2018

19.08.2019