IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04-11-2020

Orders Pronounced on : 18-12-2020

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Review Application Nos.52 and 53 of 2020
in

O.S.A.No.250 of 2019

(Heard through video-conferencing)

Review Application No. 52 of 2020

1. Nestore
2. Mrs. Hilda Pappy Nestore .. Review Applicants

Versus

1. Mrs. Regeena
2. S. Murali
3. Ms. Jeppiar Sheela
4. A. Karol Udaya Baskar
5. Nisha Mot Bronson

6. Jeppiar Educational Trust
rep. by Managing Trustee
Old No.12, New No.29

Ganapathi Street
Royapettah, Chennai - 600 014

7. Mrs. Remibai Jeppiar
8. Mrs. Vijaya Rajeswari
9. Dr. Chinnadurai
10. Dr. Babu Manoharan
12. Dr. Mariazeema Johnson
13. Marie Johnson
14. Ms. Jessie Priya
15. Ms. Maria Bernadette Tamilarasi .. Respondents

Review Application No. 53 of 2020

1. Sathyabama Educational Trust
represented by Managing Trustee
Sathyabama University Campus
Jeppiar Nagar, Rajiv Gandhi Salai
Chemmancherry, Chennai - 600 119

2. Dr. Mariazeema Johnson
3. Marie Johnson .. Review Applicants

Versus

1. Nestore
2. Mrs. Hilda Pappy Nestore
3. Ms. Maria Bernadette Tamilarasi
4. Mrs. Regeena
5. S. Murali
6. Ms. Jeppiar Sheela
7. A. Karol Udaya Baskar
8. Nisha Mot Bronson

9. Jeppiar Educational Trust

rep. by Managing Trustee
Old No.12, New No.29
Ganapathi Street
Royapettah, Chennai - 600 014

10. Mrs. Remibai Jeppiar
11. Mrs. Vijaya Rajeswari
12. Dr. Chinnadurai
13. Dr. Babu Manoharan
14 Ms. Jessie Priya .. Respondents

Review Applications filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review the Judgment and decree dated 13.02.2020 passed in O.S.A. No. 250 of 2019 on the file of this Court.

Review Application No. 52 of 2020

For Review Applicants : Mr. Kumar Shashank
for Mr. N.C. Ashok Kumar

For Respondents : Mr. P.R. Raman, Senior Advocate
for Mr. C. Seethapathy for RR1 & 2

Mr. V. Ayyathurai, Senior Advocate
for Mr. A. Durai Ishwar for RR3 to 5

Mr. R. Subramanian
for Mr. E. Sankar for RR6 and 8

Mr. T.R. Rajagopalan, Senior Advocate
for Mr. A. Arun Babu for RR7, 12 & 13

Mr. S. Rajasekar for RR11 and 14

No appearance for RR9 and 10

Review Application No. 53 of 2020

For Review Applicants	:	Mr. T.R. Rajagopalan, Senior Advocate for Mr. A. Arun Babu
For Respondents	:	Mr. Kumar Shashank for Mr. N.C. Ashok Kumar for RR1 to 3
		Mr. P.R. Raman, Senior Advocate for Mr. C. Seethapathy for RR4 & 5
		Mr. V. Ayyathurai, Senior Advocate for Mr. A. Durai Ishwar for RR6 to 8
		Mr. R. Subramanian for Mr. E. Sankar for RR9 and 10
		No appearance for RR11 and 12
		Mr. S. Rajasekar for RR13 and 14

COMMON ORDER

R. Subbiah, J

Both these Review Applications have been filed to review the Judgment and Decree dated 13.02.2020 passed in O.S.A. No. 250 of 2019.

2. By the said Judgment dated 13.02.2020, this Court dismissed two

Original Side Appeal Nos.115 and 250 of 2019, which were filed as against the order dated 03.08.2018 passed by the learned Single Judge in Application No.60 of 2018.

3. Application No. 60 of 2018 was filed seeking to revoke the leave granted on 23.10.2017 in Application No. 6404 of 2017 in C.S. No. 908 of 2017.

4. By order dated 03.08.2018, the learned Single Judge refused to revoke the leave granted on 23.10.2017 and dismissed Application No.60 of 2018 for revocation of leave.

5. Aggrieved by the order dated 03.08.2018, as mentioned above, two Original Side Appeals have been filed before this Court. While O.S.A.No.115 of 2019 was filed by the defendants 7 and 10 in the suit, the other appeal in O.S.A.No.250 of 2019 has been filed by third parties, who are the Trustees of Sathyabama Educational Trust, challenging the leave granted by the Court. Now, the present Review Applications have been filed only to review the Judgment and Decree dated 13.02.2020 passed in O.S.A. No. 250 of 2019.

6. For better understanding of the array of parties, reference is made

to the Review Applicants as well as respondents in these Review Applications as per their litigative status in the suit as "plaintiffs" and "defendants".

7. As we have already dealt with the factual matrix of the case, which led to the filing of O.S.A. Nos. 115 and 250 of 2019 in the Judgment under review, we are not inclined to reiterate them any further in this order.

8. The present Review Applications are filed mainly on two grounds and they are (i) *the findings rendered by this Court to the effect that a single suit is maintainable for framing a scheme decree in respect of two public trusts and* (ii) at *the time of consideration of an application for revocation of leave, it is sufficient to go into the plaint averments alone*, are contrary to well settled legal principles of law and there is error apparent on the face of records, and therefore, the Judgment of this Court is required to be reviewed.

9. (i) Mr.Kumar Shashank, learned counsel appearing for the Review Applicants in Review Application No. 52 of 2020 has invited our attention to Section 92 of the Code of Civil Procedure (in short "CPC") and submitted that a suit can be filed for administration of a Trust, as has been

contemplated under Clauses (a) to (h) of Section 92 of CPC. The plaintiffs have filed this suit under Section 92 (g) of the CPC for settling a scheme in respect of the two public Trusts, which are the defendants 1 and 2 in the suit. It is his submission that the filing of the suit for framing a scheme in respect of two public Trusts, itself, is contrary to the object with which Section 92 of CPC had been enacted. According to him, a suit can be filed against 'a Trust' in case of necessity for administration of such Trust, for settling a scheme. Since in this case, the suit had been filed for framing such a scheme in respect of two public Trusts, the suit itself cannot be entertained. In this context, the learned counsel appearing for the review applicants placed reliance on a decision of the Supreme Court in the case of **Ashok Kumar Gupta Vs. Sitalaxmi Sahuwala Medical Trust**, reported in **2020 (4) SCC 321**, wherein it was held that unless the conditions specified under Section 92 of the CPC are fulfilled, an action against a public Trust is not maintainable. The learned counsel appearing for the review applicants invited the attention of this Court to the relevant portion of the said judgment, which reads as follows:-

> "12. Three conditions are, therefore, required to be satisfied in order to invoke Section 92 of the Code and to maintain an action under the said section, namely, that;
>
> (i) the Trust in question is created for public purposes of a charitable or religious nature;
>
> (ii) there is a breach of trust or a direction of Court is necessary in the administration of such a Trust; and
>
> (iii) the relief claimed is one or the other of the reliefs as enumerated in the said Section.
>
> Consequently, if any of these three conditions is not satisfied, the matter would be outside the scope of said Section 92.

9. (ii) Therefore, the learned counsel submitted that the scheme can be framed only if the above three conditions specified by the Supreme Court are satisfied in respect of "**a Trust**" and the suit, as filed by the plaintiffs to frame a scheme in respect of two public Trusts, is not maintainable. Therefore, the observations made in para No.43 of the judgment under review, passed by this Court, holding that a single suit filed against two independent trusts for framing a scheme decree, is maintainable, are required to be reviewed.

9. (iii) It is further submitted by the learned counsel that the observation made in the appeal under review to the effect that, at the time of

granting leave or revoking leave to institute a suit, the averments made in the plaint alone can be looked into, is liable to be reviewed. The very purpose of filing an application to revoke the leave is to consider the case of the defendants and to conduct minimum enquiry to arrive at a prima-facie conclusion as to whether this Court had allowed to continue the suit filed under Section 92 CPC or not. Therefore, the learned counsel for the Review Applicants in Review Application No.52 of 2020 prayed for allowing this Review application as prayed for.

10.(i). Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the defendants 2, 8 and 9, who are the Review Applicants in Review Application No.53 of 2020, vehemently contended that the defendants 1 and 2 are two independent entities and they are governed by separate Trust Deeds. The management of the two Trusts is totally different. The second defendant-Trust, namely Sathyabama Educational Trust, had been constituted for the purpose of declaring Sathyabama Educational Institution to be upgraded as a Deemed University. Thus, the second defendant-Trust was constituted for a specific purpose. Further, the second defendant-Trust is having its registered office at Jeppiar Nagar, Semmancherry, Chennai-

600 019, which is situated outside the jurisdiction of this Court. In this regard, the learned Senior Counsel appearing for the defendants 2, 8 and 9 submitted that, this Court, by applying the principles of Order II Rule 3 of CPC, has come to the conclusion that a single suit against two public Trusts, is maintainable. In this regard, the learned Senior Counsel submitted that Order II Rule 3 of CPC commences with the words, "Save Otherwise provided", to mean that, if there is any other specific provision otherwise provided in the CPC, then Order II Rule 3 of CPC cannot be pressed into service for maintaining a suit. In the present case, the suit was filed under Section 92 of CPC, which falls under Part V of CPC. Section 92 of CPC is a special proceeding and it is a code in itself. When a suit is filed under Section 92 of CPC, it makes the applicability of provisions under Order II Rule 3 of CPC ineffective and it will not over-ride the special provision prescribed under Section 92 of CPC, because, a special provision will always exclude the general provision. Consequently, clubbing or mixing up of the causes of action in respect of framing a scheme for two public Trusts, cannot be maintained. In such event, Order II Rule 3 of CPC has no application, as it relates to clubbing of causes of action only. Moreover, the

second defendant-Trust in the suit is situated outside the territorial jurisdiction of this Court and therefore, the suit as against the second defendant-Trust cannot be maintained before this Court. While so, a single suit as against two public Trusts, cannot be maintained by the plaintiffs and consequently, the findings rendered by this Court in para No.43 of the judgment under review to the effect that as per the provisions of Order II Rule 3 of CPC, the suit for formulating schemes for two different Trusts, is maintainable, is required to be reviewed by this Court.

10. (ii). The learned Senior Counsel invited the attention of this Court to Clause 14 of the Letters Patent and submitted that as per the provisions of Clause 14 of the Letters Patent, combining the causes of action as against a defendant is permissible, provided leave was obtained. The suit filed before the Original Side of this Court is bound by the Letters Patent and the Original Side Rules of this Court and therefore also, Order II Rule 3 of CPC is not applicable. Here, the plaint has been filed by combining the causes of action in respect of two different entities, which is not permissible as per Clause 14 of the Letters Patent. Even as per the plaint averments, certain allegations were made as against the defendants 1 and 2 and if those

allegations are taken as a whole, it will not give rise to a cause of action for framing a scheme decree in a single suit as against two public Trusts. Therefore also, the leave granted by the learned Single Judge has to be revoked by reviewing the Judgment passed by this Court in the appeal.

10. (iii). The learned Senior Counsel further proceeded to contend that an application seeking revocation of the leave granted to institute a suit under Section 92 of CPC, cannot be treated as an application filed under Order VII Rule 11 of CPC for rejection of the plaint, since, under Order VII Rule 11 CPC, the averments in the plaint alone have to be looked into. Further, in an application under Order VII Rule 11 of CPC, the fulfilment of certain parameters with respect to adequacy of Court fee, jurisdiction of the Court, cause of action for filing the suit etc., will be looked into. On the other hand, in an application seeking revocation of leave to sue under Section 92 of CPC, it has to be considered as to whether the plaintiffs are having any public interest in the Trust or their interest is purely personal. In the present case, the plaintiffs have raised several allegations in the plaint as regards the personal dispute among the Trustees of the two different Trusts. By rebutting those allegations, an application seeking to revoke the leave

was filed by the defendants. In such circumstances, this Court can very well go into the correctness or otherwise of the allegations raised in the application for revocation of leave, by considering the averments made in the application for revocation of leave and the plaint averments alone cannot be taken as a gospel truth. Therefore, it is submitted that, while considering an application seeking revocation of leave, the averments made in such application can also be looked into by the Court to ensure that a public Trust is not unnecessarily dragged to the Court with frivolous claims. This Court, as a custodian of Trust properties, has to consider the application of the rival submission of the defendants on merits in the application for revocation of leave. Therefore, the reasoning assigned by this Court that at the time of considering an application for revocation of leave, it is sufficient only to look into the averments in the plaint, is required to be reviewed. The non-consideration of the plea of the Review Applicants while passing the judgment, certainly entitles the Review Applicants to maintain these Review Applications. When there is an error apparent on the face of the records, a Review Application is always maintainable. Further, when it is pointed out that there is an error with regard to exercise of jurisdiction, the Court has a duty to recall the order. In this context, the learned Senior Counsel placed reliance on a decision of the Supreme Court in the case of **Chairman and Managing Director, Central Bank of India and others Vs. Central Bank of India Scheduled Castes/Scheduled Tribes Employees Welfare Association and others**, reported in **2016 (13) SCC 135**, wherein it has been held as follows:-

> "17. We would be candid in our remarks that once an error is found in the orders/judgment, which is apparent on the face of the record and meets the test of review jurisdiction as laid down in Order 47 Rule 1 of the Supreme Court Rules, 2013 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908, there is no reason to feel hesitant in accepting such a mistake and rectify the same. In fact, the reason for such a frank admission is to ensure that this kind of patent error from the record is removed which led to a wrong conclusion and consequently wrong is also remedied. For adopting such a course of action, the Court is guided by the doctrine of *ex debito justitiae* as well as the fundamental principle of the administration of justice that no one should suffer because of a mistake of the Court. These principles are discussed elaborately, though in a different context, in *A.R. Antulay vs. R.S. Nayak (1988) 2 SCC 602."*

(iv) By pointing out the above decision, the learned Senior Counsel appearing for the review applicants prayed for allowing the Review

Application No. 53 of 2020 as prayed for.

11. Mr.P.R.Raman, learned Senior Counsel appearing for the defendants 7 and 10 only contended that the defendants 7 and 10 have filed O.S.A.No.115 of 2019 as against the order passed by the learned Single Judge, dismissing the application seeking revocation of the leave granted by the learned Single Judge. However, the defendants 7 and 10 are neither supporting the prayer sought for in the Review Applications, nor opposing them and that he is leaving it for this Court to adjudicate the Review Applications on merits.

12.(i). Mr.R.Subramaniam, learned counsel appearing for the respondents 6 and 8 in Review Application No. 52 of 2020 and respondents 9 and 10 in Review Application No. 53 of 2020 (defendants 1 and 3 in the suit) contended that, as per Clause 14 of the Letters Patent, several causes of action against "*a defendant*" can be combined for the purpose of instituting a suit. However, such a suit can be instituted only after obtaining permission from the Court. There is a statutory bar for filing the suit by invoking the provisions contained under the provisions of CPC, in view of the Rules provided in the Letters Patent as well as the Original Side Rules of this Court. While so, the provisions contained under Order II Rule 3 CPC cannot be invoked for filing the suit by excluding the expressed exclusion contained in the Original Side Rules of this Court. By granting leave to institute a suit as against the first defendant and second defendant, the suit as against the second defendant was allowed to be entertained without jurisdiction, especially when the second defendant-Trust is situate outside the jurisdiction of this Court. Even though Clause 12 of the Letters Patent provides for granting leave to sue, if part of the cause of action has arisen within the jurisdiction of this Court, the suit as against the second defendant-Trust, cannot be maintained before this Court. A suit, if any against second defendant, has to be filed only before the Courts having jurisdiction at Chengalpatt or Kancheepuram. While so, the findings rendered by this Court in the judgment under Review, in Para No.43, holding that a single suit as framed against two public Trusts, is maintainable, is required to be reviewed. To buttress this submission, the learned Senior Counsel appearing for the Review Applicants relied on the decision of the Supreme Court in the case of **Sri Jeyaram Educational**

Trust and others Vs. A.G.Syed Mohideen and others, reported in **2010 (2) SCC 513**, wherein it has been held as follows:-

> "15. The provisions of Section 12 of the Civil Courts Act specifying the pecuniary limits of District Courts and Subordinate Courts, is subject to the provisions of the Code of Civil Procedure. In view of the express provisions of Section 92 specifying the courts which will have jurisdiction to entertain suits under that section, neither the provisions of Section 15 to 20 of the Code nor the provisions of Section 12 of the Civil Courts Act will apply to such suits. Section 92 is a self-contained provision, and conferment of jurisdiction in regard to suits under that section does not depend upon the value of the subject-matter of the suit. Therefore, insofar as the suits under Section 92 are concerned, the District Courts and Subordinate Courts will have concurrent jurisdiction without reference to any pecuniary limits."

12. (ii). By placing reliance on the above decision, the learned counsel submitted that, when the second defendant-Trust is situate outside the jurisdiction of this Court, a judgment, if any, passed in the suit, as against the second defendant, will be a nullity and suffers from want of jurisdiction. Thus, the learned counsel would contend that when the second defendant is admittedly situated outside the territorial jurisdiction of this Court, the leave granted to sue the second defendant before this Court

suffers from territorial infirmity. This aspect has not been considered by this Court at the time when the judgment was delivered in the appeal under review, therefore, a review is warranted.

12.(iii). Further, reliance was also placed on the decision of the Supreme Court in the case of **Dhodha House Vs. S.K.Maingi**, reported in **2006 (9) SCC 41**, wherein it has been held as follows:-

> "23. Order 2 Rule 3 of the Code provides that the plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly. The said order contemplates uniting of several causes of action in the same suit. By necessary implication, a cause of action for infringement of copyright and a cause of action for infringement of trade mark or a cause of action of passing off would be different. Even if one cause of action has no nexus with another, indisputably order 2 Rule 3 may apply. However, by reason of application of Order 2 Rule 3 of the Code *ipso facto* would not confer jurisdiction upon a court which had none so as to enable it to consider infringement of trade mark under the 1957 Act as also the 1958 Act.

12.(iv) By placing reliance on the above decision, the learned counsel submitted that the causes of action in respect of the defendants 1 and 2-Trusts, are different. They are different entities and therefore a single suit as against the defendants 1 and 2 is not maintainable.

12.(v). As regards the maintainability of the Review Applications, it is submitted by the learned counsel that there is an error apparent on the face of the records with respect to the maintainability of the suit as against the second defendant before this Court. When there is an error of jurisdiction, it can be reviewed by this Court. The plea with respect to error of jurisdiction is not a new plea warranting rejection of the same. The learned counsel submitted that Section 114 read with Order 47 Rule 1 of CPC contemplates that if, upon discovery of new matter or evidence on record of some mistake or other sufficient reasons, the Court can review its own order. In this case, there is an error of jurisdiction insofar as it relates to entertaining the suit as against the second defendant-Trust, which is situated outside the jurisdiction of this Court. Therefore, the learned counsel vehemently contended that these |Review Applications are maintainable before this Court. To fortify this submission, he placed reliance on the decision in the case of **S.Nagaraj and others Vs. State of Karnataka and another,** reported in **1993 Supp.(4) SCC 595**, in which it was held that if the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice, then it cannot, on any principle, be precluded from rectifying the error. It was also held that technicalities apart, if the Court is satisfied of the injustice, then it is its Constitutional and legal obligation to set it right by recalling the order. By pointing out the above decision, the learned counsel contended that as there is an error apparent in the judgment passed by this Court with respect to jurisdiction of this Court to maintain the suit as against the second defendant, the Judgment is required to be reviewed by this Court.

12. (vi). The learned counsel also contended that one more reason for seeking review of the judgment is that leave was granted by this Court on being satisfied with the allegations relating to fabrication of documents and the registration of the First Information Report. To substantiate this, the plaintiffs have also filed a document dated 25.01.2016, but it is seen that the said document itself was presented for registration only on 09.03.2016 and not on 25.01.2016, as claimed by the plaintiffs. Thus, it is submitted that based on misrepresentation of facts, leave was obtained by the plaintiffs to

sue the defendants. Further, an order obtained on mis-representation, is liable to be recalled. The object of granting leave to institute a suit under Section 92 of the Code is to ensure that the Trust or Trustees are not frustrated with unnecessary and frivolous litigation. If leave is obtained by fraud or mis-representation of facts, the Court can always review its own order. To lend support to this contention, he placed reliance on the decision of the Supreme Court reported in **2007 (14) SCC 108 (Deepa Gourang Murdeshwar Katra Vs. Principal, V.A.V.College of Arts and others)**, wherein it has been held that if a case of fraud or mis-representation of such a dimension is discovered that the very basis of the order passed by a Court of law is affected, the Court can recall its order.

12.(vii). In this case, an ex-parte leave was granted by this Court to sue the defendants and therefore, the defendants have filed the application seeking revocation of leave by contending *inter-alia* that the second defendant-Trust is situated outside the jurisdiction of this Court. However, the learned Single Judge dismissed the application of leave, which was also confirmed by this Court in the appeal. As the issue with respect to jurisdiction of the second defendant-Trust goes to the root of the matter, it warrants a review by this Court. The learned counsel therefore, supports the contention of the Review Applicants and prayed for allowing the Review Applications as prayed for.

13. (i). Countering the above submissions made by the learned Senior Counsels appearing for the Review Applicants, Mr.Ayyadurai, learned Senior Counsel appearing for the respondents/plaintiffs vehemently opposed the maintainability of the Review Applications. According to the learned Senior Counsel, the Review Application No.53 of 2020 is not maintainable at the instance of the newly inducted Trustees. The Review Applicants in Review Application No.53 of 2020 are defendants 2, 8 and 9 in the suit, but they have not filed any revocation application to revoke the leave granted by the learned Single Judge, nor filed any independent appeal against the order passed in Application No.60 of 2018 on 03.08.2018. The defendants 7 and 10 alone have filed an application for revocation of leave, but they have not come forward to file any Review Application to review the order passed in the Original Side Appeals. Therefore, the defendants 2, 8

and 9 have no locus-standi to file the Review Application and hence, Review Application No.53 of 2020 is not maintainable. Similarly, the Review Applicants in Review Application No.52 of 2020 have not been impleaded as defendants in the suit and their application to implead is still pending. According to the learned Senior Counsel, the suit was filed on 25.09.2017. After institution of the suit, the Review applicants in Review Petition No.52 of 2020 were inducted as Trustees on 13.10.2017. Therefore, the Review Application filed by them is also not maintainable.

13.(ii). Similarly, the plea of the Review Applicants in Review Application No.53 of 2020, by referring to Order 47 Rule 4 of CPC, that the Appellate Court can reverse or vary the whole of the decree at the instance of any one of the plaintiffs or defendants, when the decree proceeds on ground common to all, is not sustainable, inasmuch as the Review Applicants in Review Application No. 53 of 2020 have not preferred any independent appeal at all against the order dismissing the application for revoking the leave. Further, as against the judgment in O.S.A.No.115 of 2019, which was filed by the defendants 7 and 10, there was no Review Application filed and the present Review Applications have been filed only to review the common judgment passed in O.S.A.Nos.115 and 250 of 2019. In any event, the plea of the Review Applicants that there was no cause of action, nor territorial jurisdiction to maintain the suit against Sathyabama Educational Trust, is not a ground available in common to all the parties to the suit, warranting invocation of the provisions contained under Order 47 Rule 4 of CPC to review the Judgment.

13.(iii). It is further contended by the learned Senior Counsel that none of the grounds raised in the present Review Applications will fall within the scope of Order 47 Rule 1 of CPC warranting a review. For maintaining a review application, the review applicants must fulfil certain basic legal requirements and show that there is an error apparent on the face of the record, which is conspicuously absent in this case. The learned Senior Counsel invited our attention to paragraph Nos.14, 22 and 32 of the Judgment under review and submitted that the very same plea raised in the present Review Applications were raised in the appeal and have been dealt with by this Court. A specific finding was rendered that the common founder established the two Trusts and the saving clauses contained in Jeppiar Educational Trust, can be made applicable to Sathyabama

Educational Trust as well. It is in those circumstances, this Court held that a single suit is maintainable and it is in consonance with Order II Rule 3 of the CPC. In this context, reference was made to the Judgment of a Full Bench of the Delhi High Court, reported in **2020 (2) MWN (Civil) 721 (Carlsberg Breweries A/s. Vs. Som Distilleries and Breweries Ltd)**.

13. (iv). It is the vehement contention of the learned Senior Counsel appearing for the plaintiffs that the very same grounds which were argued and urged in the appeals, are sought to be re-agitated in these Review Applications and therefore, the review of the Judgment, as prayed for, is not warranted. According to the learned Senior Counsel, the observations made by this Court in the appeals under review, on merits, cannot be subjected to review. If at all, the remedy open to the Review Applicants is to assail the judgment passed by this Court in an appeal. Even assuming that the findings rendered by this Court in the judgment under review are erroneous, such findings cannot be subjected to a review. In this context, the learned Senior Counsel placed heavy reliance on the decision of the Full Bench of this Court in the case of **Secretary to Government, Municipal**

Administration and Water Supply Department Vs. V.Marisami, reported in **2017 (2) LLN 744 (FB) (Mad)** and contended that a remedy of review is not equal to that of an appeal. For the same proposition, reliance was also placed on the decision of the Supreme Court in the case of **Ashrafi Devi Vs. State of U.P.**, reported in **2019 (5) SCC 86,** wherein it was held that every error, whether factual or legal cannot be subjected to a review under Order 47 Rule 1 of the CPC, though it can be made subject matter of an appeal. By referring to the above decision of the Apex Court, it is contended by the learned Senior Counsel that, once a finding was recorded by the Court that the parties who approached the Court did not prove their case, and the remedy open to them is to file an appeal and a review is not maintainable to re-agitate the same ground.

13.(v). By inviting our attention to Section 92 CPC, it is contended by the learned Senior Counsel that Section 92(g) CPC employs the words "a scheme", however, the words "a scheme" cannot be construed to be a bar for framing a scheme decree in respect of two public Trusts. It is his contention that the cardinal principle of interpretation of statute demands that singular should also be read as plural in the context where it requires to ensure that a harmonious interpretation is given to the statute. By applying the said principle, it is contended that there is no bar provided in the CPC for passing more than one decree in a suit.

13.(vi). With reference to jurisdiction to entertain the suit as against the second defendant-Trust in the suit, the learned Senior Counsel invited our attention to the various clauses contained in the Trust Deeds such as Clauses 4, 9, 11, 12, 33, 48, 49, 55, 57, 59 and 60 and contended that as per Clause 11, a saving clause is provided by which the other terms of the Jeppiar Educational Trust/first defendant Trust is equally applicable to Sathyabama Educational Trust/second defendant. Reference was also made to the prayer sought for in the suit in C.S. No. 908 of 2017 to the effect that a scheme is required to be formulated, whereby the institutions and properties of the defendants 1 and 2 are maintained and carried on in accordance with the objects and clauses of the deed of trust and supplemental trust deeds executed by the Founder-Trustee. Reiterating that the Founder-Trustee for both the Trusts are one and the same and the objects sought to be achieved by establishing two Trusts, are also similar, the learned Senior Counsel contended that in such a factual situation, seeking the relief of framing a scheme decree in respect of two public Trusts, is maintainable. While so, the averments such as breach of trust, fabrication of record, fraudulent entry of Trusteeship, ill design to misappropriate the Trust properties for pecuniary advantage and personal gain etc., are based on common facts involved in both the Trusts and concerning the Trustees of the Trusts. The learned Single Judge, taking note of the nature of relief sought in the suit as well as the pleadings made in support of the plaint, has granted leave to sue the defendants, which was also affirmed by this Court in the appeals under review. While so, there is no scope for reviewing the leave granted by this Court on the ground that a single suit is not maintainable for framing two scheme decrees for the defendants 1 and 2-Trusts. The object of Order II Rule 3 CPC is to institute a suit by joinder of causes of action and in such a case, the jurisdiction of the Court has to be determined on the amount of value of aggregate subject matters on the date of instituting the suit, and other matters will not be the criteria to be looked into. To buttress this submission, the learned Senior Counsel placed reliance on the decision of the Supreme Court in the case of

Iswar Bhai C.Patel Vs. Harihar Behera, reported in **1999 (3) SCC 457**, wherein, it was held that if the provisions contained under Order I Rule 3 and Order II Rule 3 of CPC are read together, it would indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined. By placing reliance on this decision, it is contended by the learned Senior counsel that even when different suits are taken up for joint trial, the criteria for such joint trial depends upon the facts of the case and not the mis-joinder of parties or mis-joinder of cause of action, as, such an issue will not be a ground for rejection of the plaint at the threshold. Therefore, the grounds sought to be urged by the Review Applicants for review of the judgment, are untenable.

13.(vii). With respect to the observations made by this Court in the judgment under review that, at the time of consideration of an application for revocation of leave, it is sufficient to go into the plaint averments alone, it is submitted by the learned Senior Counsel that the Court has to arrive at a prima-facie consideration for granting leave only on the basis of the plaint averments. Even if there are averments or opposition in the form of counter affidavit or written statement, those averments cannot be adjudicated at the stage of granting or revoking leave. In other words, at the stage of consideration of revocation of leave, the Court can derive satisfaction only on the averments in the plaint and cannot venture to determine or adjudicate the rival submissions and render a finding thereof. For granting leave or revoking leave, the Court has to only satisfy, *prima-facie*, about the allegations with respect to breach of trust, mismanagement, detrimental acts of the Trustees towards the object of the trust etc. In the instant case, it is therefore his contention that the judgment under review does not warrant a review and the observations made by this Court are perfectly valid.

14. By way of reply, the learned Senior Counsel appearing for the Review Applicants in Review Application No.53 of 2020 contended that the decision relied on by the learned Senior Counsel appearing for the plaintiffs in the case of **Carlsberg Breweries A/s. Vs. Som Distilleries & Breweries Limited,** reported in **2020 (2) MWN (Civil) 721**, has no application to the

facts of this case. In that decision, the Full Bench of the Delhi High Court has held that causes of action in respect of the same defendant could be clubbed, but in this case, the defendants 1 and 2/Trusts are two different entities, besides the second defendant-Trust is situated outside the jurisdiction of this Court. According to the learned Senior Counsel, when an error as to the jurisdiction is brought to the notice of the Court, a review can be entertained only to rectify the mistakes which had crept in, in the order. He also submitted that in the judgment under review, various averments raised by the defendants seeking revocation of leave, have not been considered by this Court while holding that it is sufficient to look into the plaint averments to form a *prima-facie* opinion. In such circumstances, when this Court did not consider the averments or objections raised by the defendants for having granted leave to sue the defendants by way of a suit, the defendants are not in a position to assail such judgment by way of an appeal. If an appeal is filed, the appellate Court may not have material to come to the conclusion as to the correctness or otherwise of the defence raised by the defendants in the judgment under review. As against the judgment which is sought to be reviewed, an appeal could not be filed by the Review Applicants, inasmuch as this Court has not rendered any finding as regards the defence raised by defendants in the form of an application seeking revocation of leave. In such circumstances, if an appeal is filed, appellate Court cannot effectively adjudicate the appeal. Therefore, it is submitted by learned Senior Counsel appearing for Review Applicants that filing of present Review application is the proper course to be adopted by Review Applicants without resorting to file an appeal. Therefore, Review Applications are maintainable and he prayed for allowing them.

15. With regard to submission made by the learned counsel appearing for the plaintiffs that Review Applicants in Rev.A.No.52 of 2020 have no locus-standi to file Review Application, since they have not been impleaded as defendants in the suit, it is replied by the learned Senior Counsel appearing for the Review Applicants in Rev.A.No.52 of 2020 that they are inducted as Trustees of the second defendant-Trust and the application filed by them to implead them as the defendants, is still pending, but they have filed O.S.A.No.250 of 2019 as against dismissal of application to revoke the leave by obtaining the leave of the Court. Therefore, they have locus-standi to file the Review Application, since the

O.S.A. filed by them was dismissed on merits. In this regard, the learned counsel appearing for the Review Applicants placed reliance on the decision of a Division Bench of this Court, reported in **AIR 1953 Madras 485 (Sm.K.Ponnalagu Ammal Vs. The State of Madras)** and submitted that the Review Application can be filed by them as aggrieved persons. Thus, they sought for allowing the Review Application.

16. We have heard the learned counsel for the respective parties in these Review Applicants and perused the materials placed on record. On consideration of the arguments advanced by the counsel on either side, the following questions emerge for our consideration in these Review Applications and they are:-

(i) Whether the findings rendered in the Judgment and decree dated 13.02.2020 made in O.S.A. No. 250 of 2019 to the effect that "*a single suit is maintainable in respect of two public trust*" and

(ii) The observations made in the Judgment and decree dated 13.02.2020 made in O.S.A. No. 250 of 2019 to the effect that "at the time of granting or revoking the leave granted to institute the suit, the allegations in the plaint alone is sufficient to be looked into" are errors apparent on the face of record warranting a review of the said Judgment?

17. The Plaintiffs have instituted the suit under Section 92 of CPC alleging various acts of breach of trust of the defendants/Trustees of the Trusts, misappropriation of funds and properties of the Trust for personal gain and the attempts on the part of the defendants to get into the Trust Board by deceitful means, *inter-alia,* to grab the management of the Trust. According to the plaintiffs, to protect the properties which are within the administrative fold of the public Trusts, namely defendants 1 and 2, it is necessary to frame a scheme decree. Therefore, the plaintiffs filed Application No.6404 of 2017 seeking leave to sue the defendants. The learned Single Judge granted leave, against which an application for revocation of leave was filed by the defendants 7 and 10 in Application No. 60 of 2018. The application seeking revocation of leave was dismissed by this Court, against which the defendants 7 and 10 filed O.S.A.No.115 of 2019. Some of the Trustees of the second defendant Trust also filed O.S.A.No.250 of 2019. Admittedly, defendants 7 and 10, who have filed O.S.A. No. 115 of 2019 did not prefer any Review Application seeking

Review of the Judgment in O.S.A. No. 115 of 2019. The present Review Applications are filed by the third party appellants and the defendants 2, 8 and 9 in the suit.

18. One of the main contentions urged by the learned Senior Counsel appearing for the plaintiffs in these Review Applications is that, the defendants 7 and 10, who have filed O.S.A.No.115 of 2019, did not file any Review Application before this Court. Further, the Review Applicants in Review Application No.52 of 2020 are yet to be impleaded as parties to the suit and therefore at their instance, the Review Applications are not maintainable. Further, Review Application No.53 of 2020 was filed by the defendants 2, 8 and 9, and they were cited only as respondents in the OSA filed by the defendants 7 and 10 as well as by the new Trustees of the Trust, who did not file any of the Original Side Appeals before this Court. Therefore, the persons, at whose instance the present Review Applications have been filed, are not entitled to maintain these Review Applications and they have no *locus-standi* to file these review applicaitons. Therefore, the learned Senior Counsel appearing for the plaintiffs vehemently assails the maintainability of these Review Applications.

19. Admittedly, the Review Applicants in Review Application No.52 of 2020 are the appellants in O.S.A.No.250 of 2019. The other Review Application No. 53 of 2020 was filed by the defendants 2, 8 and 9, who are also parties to the O.S.A. Therefore, it cannot be said that persons, who have no semblance of right in the "*lis*", have come forward with these Review Applications and as parties to the "lis" as aggrieved persons, they can maintain the Review Applications. For maintaining a Review Application, it must be shown that there are certain legal errors apparent on the face of the record and such error has to be rectified by re-visiting them. Such an error can be brought to the notice of this Court by a party to the "*lis*" and who may be aggrieved by the Judgment under review, either directly or indirectly. Whether the points urged by them would warrant a review or there is no merits in the Review Application, is a question to be considered at the time of hearing the Review Applications. Therefore, we are of the view that the present Review Applications are maintainable at the instance of the Review Applicants herein and we are not inclined to reject the Review Applications at the threshold without examining the questions raised on legal grounds. This is evident from the decision of a Division

Bench of this Court reported in **AIR 1953 Madras 485 (Sm.K.Ponnalagu Ammal Vs. The State of Madras)**.

20. One of the grounds raised in these Review Applications, with much force, is that a single suit under Section 92 of the CPC is not maintainable to frame a scheme decree for two public Trusts. While dealing with this submission, this Court, in Para No.43 of the Judgment under review, has held that a single suit, as filed by the plaintiffs, against the two public Trusts, viz., defendants 1 and 2, is maintainable and it is not hit by the provisions of Order II Rule 3 of CPC. This observation made in para No.43 of the Judgment under review is mainly assailed on the ground that the cause of actions arose for filing the suit as against the defendants 1 and 2, are totally different and they cannot be clubbed together. Further, the second defendant-Trust is situated outside the jurisdiction of this Court and therefore, the suit as against the second defendant cannot be tried by this Court. In this context, it is worthwhile to refer to Order II Rule 3 of CPC which reads as follows:-

> "Order II: Frame of suit:
> Rule 3: Joinder of causes of action:- (1) Save as otherwise provided, a plaintiff may unite in the same suit several

causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit."

21. In the present case, the plaintiffs have instituted the suit under Section 92 of the CPC, which is a self-contained code. Before proceeding further, it is necessary to refer to Section 92 of CPC, which reads as follows:-

"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 trustee

(f) authorising 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 the 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 *cypres* in one or more of 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; or

(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 purpose; or

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

(e) where the original purposes, in whole or in part, have, since they were laid down;-

(i) been adequately provided for by other means, 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."

22. The suit in the instant case was filed by the plaintiffs invoking Clause (g) of Section 92 (1) (g) of CPC for settling a scheme. The prayer in the suit is for formulating a scheme in respect of the defendants 1 and 2/ Trusts, apart from other allied reliefs. On an impressive reading of Section 92 CPC, it indicates that the words used thereof are "trust" and "suit" in singular. Similarly, the provisions contained under Order II Rule 3 of CPC,

on a meaningful reading, show that a suit can be instituted on the strength of several causes of action against a defendant or with the very same cause of action against several defendants. The object with which Order II Rule 3 of CPC is to ensure that for one and the same cause of action, one or more than one defendant(s) are sued. Therefore, Order II Rule 3 CPC will be applicable when the combining of causes of action in respect of same defendant. So far as the present case is concerned, the suit has been filed as against two different entities. The cause of action for framing a scheme decree in respect of two different Trusts cannot be clubbed under the provisions of Under Order II Rule 3 of CPC. In this context, reliance was placed in the judgment of the Supreme Court reported in **2006 (9) SCC 41 (Dhodha House Vs. S.K.Maingi)**. By placing reliance on this judgment, it was argued by Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the Review Applicants that the attempt on the part of the plaintiffs to club the causes of action in respect of the two public Trusts, vis-a-vis, defendants 1 and 2, in one suit, would only result in frustrating the Trusts and its Trustees, besides it will result in trying the suit as against the second defendant, without jurisdiction. In this context, useful reference can be made to Clause 14 of the Letters Patent, which reads as under:-

> "Clause 14. Joinder of several causes of action:- And We do further ordain that where plaintiff has several causes of action against defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as the High Court shall seem fit."

23. Clause 14 of the Letters Patent also makes it clear that the plaintiff can unite several causes of action in one suit, but he cannot maintain a suit against more than one defendant. Therefore, as per Clause 14, several causes of action against a defendant can be combined, only after obtaining permission from the Court under Order I Rule 3 of the Original Side Rules of this Court. Thus, there is a specific statutory bar to invoke the provisions contained in the CPC in view of Clause 14 of Letters Patent as well as the Original Side Rules of this Court. Consequently, the provisions contained under Order II Rule 3 of CPC cannot be invoked in this case, in

view of specific exclusion in the Original Side Rules of this Court. But, on the contrary, Mr.Ayyadurai, learned Senior Counsel appearing for the plaintiffs placed reliance on a decision of a Full Bench of the Delhi High Court in the case of **Carlsberg Breweries A/S. Vs. Som Distilleries & Breweries Limited,** reported in **2020 (2) MWN (Civil) 721**. In that decision, it has been held as follows:-

> "23. Order I, Rule 3 prescribes that all persons may be joined as defendants in a suit against whom any right to relief exists provided that such right is based on the same act or transaction or series of acts or transactions against those persons whether jointly, severally or in the alternative. Further, if separate suits were brought against such persons, common questions of law or fact would arise. The purpose of the Rule is to avoid multiplicity of suits. It is evident that this provision to some extent, also deals with the joinder of causes of action inasmuch as when the plaintiff frames the Suit, he impleads persons as Defendants against whom he claims to have a cause of action. Joinder of causes of action has been provided for in Order 2, Rule 3. These two provisions, i.e., Order 1, Rule 3 and Order 2, Rule 3, together, indicate that the question of joinder of parties also involves joinder of causes of action. The underlying principle is that if one is made a party to a suit because of a cause of action against him; when causes of action are joinder, the parties too are joined. Parties to a suit may be necessary or proper parties. A necessary party is one whose presence is essential and against whom relief is sought. A necessary party also is one in whose absence, no effective decree can be

passed. Conversely, a proper party is one without whom a decree can be passed and whose presence is not necessary for a complete adjudication of the dispute. Order 1, Rule 1, CPC requires joining of all persons in one suit against whom any right to relief arising out of the same act or transaction or series of acts is alleged to exist, jointly, severally, etc., and if such person brings several suits, common question of fact or law arise. This provision deals with joinder of parties, and to a certain extent, with the joinder of cause of action. Order 2 Rule 3, CPC deals with joinder of causes of action. Order 1, Rule 4, CPC of the Code too has to be read along with Order 1, Rule 1. It states that a Judgment may be given without any amendment (a) for such one or more plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to; or (b) against such one or more defendants as may be found to be liable, according to their respective liabilities.

27. Joinder of causes of action - dealt with in Order 2, Rule 3 enables the plaintiff to "unite in the same suit several causes of action against the same Defendant, or the same Defendants jointly; and any Plaintiffs having joinder of causes of action in which they are jointly interested against the same Defendant or the same Defendants jointly may unite such joinder of causes of action in the same suit". Rule 3 (2) states that if there is such joinder of causes of action, "*jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.*".

24. The above ratio laid down by the Full Bench of the Delhi High

Court cannot be disputed. The Full Bench of the Delhi High Court has held that a cause of action in respect of the same defendant can be clubbed and not otherwise. In the instant case, the defendants 1 and 2 are two different entities. By joinder of causes of action of the defendants 1 and 2, the plaintiff cannot confer jurisdiction upon this Court and moreover, the second defendant is situated outside the jurisdiction of this Court.

25. On the other hand, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the Review Applicants in Review Application No.53 of 2020 relied on the decision of the Supreme Court in **Dhodha House Vs. S.K.Maingi**, reported in **2006 (9) SCC 41**, which arises out of an action for infringement in a Trade Mark suit. In that judgment, it was held that cause of action, if arisen within the jurisdiction of the Court concerned, only then such Court is empowered to entertain the matter. Even if there arises a composite cause of action, the same may not be relevant for the purpose of determining the jurisdiction or forum before which a "*lis*" can be instituted. Therefore, even assuming in this case that cause of action arises for the plaintiff(s) to institute a "*lis*" against the defendants 1 and 2-Trusts, it will

not *ipso-facto* decide the forum before which such a *lis* can be maintained. In the light of the above, we are of the view that while rendering the judgment in the Original Side Appeals, the maintainability of the suit filed by the plaintiffs as against the second defendant was omitted to be considered by us and it warrants a review by us. In any event, when there is a legal error which has been brought to our notice, interest of justice demands that a corrective course has to be adopted to put the records straight without harping on technicalities. A review is the proper course to be resorted to in such circumstances, which is largely considered as a correctional course or jurisdiction to rectify an error. This conclusion which we have reached is supported by the decision of the Supreme Court in the case of **S.Nagaraj and others Vs. State of Karnataka and another**, reported in **1993 Supp (4) SCC 595**. Useful reference can be made to the said decision which reads as follows:-

> " 19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statues lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially

have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Coudhury v. Sukhraj Rai (1941) 1 MLJ Supp 45* the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh (1836) 1 Moo PC 117* that an order made by the Court was final and could not be altered;

".....nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in.....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments, or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

Basis for exercise of the power stated in the same decision as under:

"It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard."

> Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Code of Civil Procedure. The expression 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

26. The next question that falls for our consideration is that, at the time of consideration of an application for revocation of leave, is it sufficient to look into the averments in the plaint alone or the objections

raised in the counter also needs to be considered. According to the learned Senior Counsel appearing for the plaintiffs, at this stage, the Courts are required to consider only as to whether the averments made in the plaint would prima-facie bring to the fore the breach of trust, financial embezzlement or mismanagement etc., This Court, in the judgment under appeal, had extensively considered the averments in the plaint and held that the learned single Judge is right in refusing to revoke the leave granted to institute the suit. Such an observation, according to the learned Senior counsel for the plaintiffs, needs no review.

27. On the other hand, the learned counsel for the defendants, in unison, contended that the averments in the plaint cannot be taken as a gospel truth to either grant leave or refuse to grant leave. When the defendants denies or disputes the averments made in the plaint and opposes the leave granted to sue them, this Court also has to look into those contra averments in the form of counter to conduct a minimum enquiry to arrive at a prima-facie satisfaction to permit the plaintiff to continue the suit further, under Section 92 of CPC

28. Keeping this submission, if we look into Para No.39 of the

judgment under review, this Court has observed that the plea of the defence raised in the application for revocation of leave cannot be looked into at the preliminary stage in the suit for framing a scheme for two trusts and it has to be best left open to be decided only during the course of trial. This piece of observation made in the judgment in the appeal is sought to be reviewed on the ground that while granting leave or revoking the leave granted, the defence of the defendants also has to be looked into and they cannot be totally ignored from being considered. If the defence of the defendants is not considered when they filed an application seeking revocation of leave, it will lead to a situation where public Trusts will be burdened with unnecessary litigation. By clever drafting and argument, the plaintiffs can circumvent the mandatory provisions contained under Section 92 of CPC. While so, those averments in the application seeking revocation of leave also has to be looked into and if the averments made therein are satisfied, then the leave granted can be revoked.

29. We find considerable force in such submission made by the defendants. It is true that in the application seeking revocation of leave, very many averments have been made as to why the leave granted to

institute the suit, be not revoked. In the application for revocation of leave, while denying the plaint averments as false, the defendants went to the extent of asserting that the suit itself is not maintainable or the prayer sought for in the suit need not be granted. Some of the averments made in the application for revocation of leave is that the suit has not been filed in public interest. The plaintiffs are seeking to project a personal vengeance as against the defendants to gain unlawfully. The suit has been filed to frustrate the defendants and to ensure that the plaintiffs take over the administration of the Trusts either directly or indirectly. On considering the averments made in the application seeking revocation of leave, we are of the view that those averments cannot be ignored from being considered. We are of the opinion that the defence raised in the application for revocation of leave can be considered to the limited extent as to whether the plaintiffs have made out a prima-facie case to permit the plaintiff to continue the suit or the suit is filed only to wreck personal vengeance against the Trustees or not. If the averments of the defendants are not considered at this stage, it will enable a plaintiff to make allegations, which could not be substantiated by them during the trial. At the same time, while considering the averments in the application seeking revocation of leave, elaboratory enquiry such as a trial cannot be conducted. It will be only a minimum enquiry to arrive at a prima-facie conclusion as to whether the Court can allow the plaintiff to continue the suit or not. In the light of the above observation, we are of the view that the observations made in the judgment under review, are liable to be reviewed by holding that the averments in the application seeking revocation of leave by the defendants also have to be considered to a limited extent as to whether the Court can allow the plaintiff to continue the suit or not.

30. For the reasons aforestated, we conclude that there is an error apparent on the face of the record, which warrants a review of the judgment passed in the Original Side Appeals. Consequently, we hold that the findings rendered by this Court in the Judgment dated 13.02.2020 passed in O.S.A. Nos. 115 and 250 of 2019 to the effect that :

(i) *a single suit is maintainable for framing a scheme decree in respect of two public trusts is hereby reviewed holding that a single suit is not maintainable when the relief sought for in the suit is to frame a scheme decree for two different public trust,* *(ii) the observations made in the Judgment that at the time of granting leave or considering an application for revocation of leave, it is sufficient to go into the plaint averments alone,* are hereby reviewed holding that at the time of granting leave or considering an application for revocation of leave, the averments in the application for revocation of leave can also be gone into to the limited extent as to whether the Court can allow the plaintiff to continue the suit or not.

31. In the light of the above discussion and findings, Judgment and decree dated 13.02.2020 passed in O.S.A. No. 250 of 2019 is hereby reviewed to the extent indicated above, since this Court had come to the conclusion that the suit in respect of two public Trusts to frame a scheme, is not maintainable. Consequently, both the Review Applications are allowed. No costs. Connected miscellaneous petitions are closed.

(R.P.S.J.,) (T.K.J.,)
18-12-2020

rsh/cs
Speaking Order: Yes
Index : Yes

To
The Sub-Assistant Registrar,
Original Side,
High Court,
Madras.

R. SUBBIAH, J
and
T. KRISHNAVALLI, J

cs

Pre-delivery Common order
in
Rev.Appln.Nos.52 & 53/2020

Order pronounced on 18-12-2020