**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on : 07.08.2020

Delivered on : 29.09.2020

**CORAM**

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**A.No.8700 of 2019**
**in**
**C.S.Sr.No.140703 of 2019**

1.Ramesh Rajan

2.M.Thirumurthy ... Applicants

Vs

1.Palanivel Thiagarajan

2.Indira Subramaniam

3.Selvi Rao

4.Thamizhavel Thiru.P.T.Rajan Commemoration
Trust, No.28, Second Street, East Abhiramapuram,
Mylapore, Chennai – 600 004. ... Respondents



(Respondents 2 to 4 are suo moto impleaded as per order dated 14.02.2020)

**Prayer**: Judges Summons filed under Order XIV Rule 8 of the Original Side Rules read with Section 92 of the Code of Civil Procedure to grant leave to the plaintiffs / applicants to institute the present suit against the respondent / defendant on the file of this Court.

| | | |
|---|---|---|
| For Applicant | : | Mr.R. Parthasarathy |
| For Respondent 1 | : | Mr.V.Lakshminarayan |
| For Respondent 2 | : | Mr.K.Ravi |
| For Respondent 3 | : | Mr.Avinash Krishnan Ravi |

**ORDER**

The application for the consideration of this Court is one seeking the leave of the Court under Section 92 of the Code of Civil Procedure, hereinafter called the Code to institute the suit. The suit was originally filed only against the 1st defendant and thereafter this Court has suo moto impleaded the respondents 2 to 4.



2. In order to appreciate the case on hand, it is necessary to briefly allude to the circumstances the applicants / plaintiffs pleads which has

given the cause of action for instituting the above suit.

**Facts of the case narrated in the plaint:**

3. The plaintiffs / applicants and respondents 1 to 3 are trustees of the 4th respondent Trust. The 4th respondent Trust was founded by Justice S.Natarajan, a former Judge of the Honourable Supreme Court of India, in the year 1991 to commemorate the centenary year of late P.T.Rajan who was a former Minister and Chief Minister of the erstwhile Madras Presidency.

4. The Trust was founded with the object of providing assistance in the area of Education and Medicine apart from assistance to the poor and the needy. The Trust was running a Community Hall at Madurai and the income generated therefrom was utilised for the charity work.



5. The Trust deed provided for a maximum of seven trustees and as on date there are five trustees who are the parties to the suit.

6. From a reading of the plaint and the affidavit filed in support of the application, it appears that the differences initially arose between the trustees in relation to certain personal expenditure claimed by the relatives of the respondents and also the co-option of the Trustees to fill in the vacancies caused due to the death / resignation of the Trustees.

7. The contention of the applicants is that when Justice Natarajan had passed away the 1st respondent had attempted to take control of the Trust stating that it was only the male descendants of late P.T.Rajan who had to be appointed as Trustees of the Trust which was named after late P.T.Rajan. In fact, legal notices were exchanged in this regard. It is further contended by the applicants that since the 1st respondent had failed in his attempts to take control of the Trust he has proposed a compromise giving certain options which were not accepted by the other Trustees as it was not legally tenable. As an offshoot of this the 1st respondent and the 2nd respondent, who is also a Trustee, on the behest of the 1st respondent, made complaints to the Income Tax Authorities by filing Tax Evasion Petitions.

8. It is therefore the contention of the applicants that the 1st respondent has been acting against the interest of the Trust. As a consequence of these proceedings the Income Tax Authorities had re-opened multiple assessments and taxes have been levied on the Trust. This, according to the applicants, is a clear attempt to sabotage the functioning of the Trust and was directly opposed to the interest and functioning of the Trust.

9. In addition to this, the 1st respondent has failed to attend several meetings of the Board of Trustees despite being given sufficient notice about the same. The applicants have listed the number of meetings held and the number of meetings that the 1st respondent has attended in the affidavit filed in support of the application. The applicants would therefore contend that the 1st respondent is unfit to continue as a trustee of the 4th respondent Trust and without attending the meeting of the Trust the 1st respondent has been making baseless allegations against the decisions taken in his absence as also the validity of the same.

10. The complaint made against the 1st respondent was that he was not co-operating in complying with the legal requirements and was consciously creating impediments for the Trust to comply with the various orders of the Income Tax Authorities. The applicant would allege that the 1st respondent was putting spokes in their attempt to regularise the functioning of the Trust vis a vis tax implications. The applicants would further contend that by making baseless allegations and marking communications to authorities such as the Commissioner of Income Tax (Exemptions), the Commissioner of Police, (Madurai), the Commissioner of Police, (Chennai) etc, the 1st respondent is exposing the Trust to penal action which includes a revocation of its status as a public Charitable Trust. Therefore, the applicants have come forward with the suit for the following relief "*To remove the defendant herein as a Trustee of the 1st plaintiff Trust, in accordance with Section 92 (1) (a) of the Code of Civil Procedure 1908*".



**Application seeking leave and counter of 1st respondent:**

11. Since the Trust is a public Charitable Trust, the applicants have

come forward with the instant application seeking the leave of this Court to institute the suit against the defendants. This petition has been opposed by the 1st respondent inter alia contending that the very object of the suit is to silence Trustees who are questioning the manner in which the applicants particularly the 1st applicant is running the Trust. An objection was taken that the Trust has not been made a party and the other trustees were also not made parties to the application.

12. The 1st respondent would submit that though the Trust was founded by Justice S.Natarajan, who was none other than the son in law of the late P.T.Rajan, it was this respondent's father Mr.P.T.R.Palanivel Rajan, the then Speaker of the Tamil Nadu Legislative Assembly who had managed to obtain a lease of a large plot of land for the purpose of setting up a Kalyana Mandapam so as to ensure generation of income for the Trust to carry out its charitable objects.



13. The 1st respondent would submit that his father had liasoned with the Government to permit the Cosmopolitan Club Madurai to lease

their lands to the Trust. In fact, the Cosmopolitan Club had leased the land to the Trust at a very nominal rent of Rs.5,000/- per month since the land which the club was leasing out was originally donated by the forefather of late P.T.Rajan to the club. The Government while permitting the lease had made it clear that the Kalyana Mandapam should be utilised only for a non-profit purpose.

14. The 1st respondent would contend that contributions poured in for the construction of the Kalyana Mandapam and the construction which had commenced in the year 1998 was completed in the year 2001. The Kalyana Mandapam was being leased out for marriage functions ever since then and the Trust was able to repay the entire loan borrowed by them for putting up such construction.

15. The 1st respondent would submit that the disputes had reached a head when the original trustees had died and their heirs had succeeded them. In fact in the year 2014, when Justice S.Natarajan had passed away the 1st applicant suo moto assumed the office of Managing Trustee though

there is no such designation in the Trust deed. The 1st respondent would further state that the Trust has never held meetings from its inception till about 2009. The 1st respondent would submit he has been time and again calling upon the 1st applicant to adhere to the Rule of law and the terms of the Trust in his functioning as Trustee.

16. In fact, the other trustees had come to know about the violations being done by the applicants only when they had received a notice from the Intelligence and Criminal Investigation Wing, Chennai at their family house at Madurai stating that large value transactions have been carried out without giving a PAN number and asking the Trust to show cause as to why the exemption granted to the Trust should not be revoked.

17. The 1st respondent would submit that in the normal course the notice would not be received by them since the registered office of the Trust was the house of the then Chairman at Chennai and all communications were being addressed to this address. However, on receiving this notice the other trustees came to know about the systematic

violations of the provisions of the Income Tax Act by the applicants. One of the anomalies that had been found out by the Commissioner of the Income Tax (Exemptions) after enquiry, was that the Trust had camouflaged a portion of the rent received from the Kalyana Mandapam as "corpus donations".

18. That apart, donations were only made to the staff and close associates of the then chairman and the beneficiaries were not the public. Further, the Trust was charging exorbitant rates for Kalyana Mandapam and running it with a profit motive in total contravention of the terms under which the Government had permitted the lease in their favour from the Cosmopolitan Club, Madurai. The Commissioner of Income Tax also appears to have evidence of large scale transactions to unknown third parties. The Assessing Officer had also found that the charity was being run as a Commercial enterprise and not as a charitable one. There was no transparency in the running of the Trust by the applicants as also the erstwhile chairman. Since the Trust was in the name of their ancestor late P.T.Rajan, the 1st respondent and the other trustees were alarmed at the

discredit that was being brought to the name of late P.T.Rajan on account of the illegal acts of the 1st applicant.

19. The 1st respondent would submit that it is the applicant who is acting against the interest of the Trust and the 1st respondent and the other Trustees are only attempting to steer the Trust back in order by questioning the administration of the Trust by the 1st applicant. The 1st Applicant rattled by his authority being questioned by the other trustees is attempting to crush dissent among the other trustees through legal action.

20. With reference to the allegation that the 1st respondent was not attending the meetings, the 1st respondent would submit that he had requested the earlier chairman and the 1st applicant to hold the meetings during the weekends as he was a public functionary being a sitting MLA of the Tamil Nadu Assembly, Member of the Assembly's Public Accounts Committee, Executive Committee Member of the Tamil Nadu Chapter of the Common Wealth Parliamentary Association etc. He was constantly on work and travelling out of the State. However, the applicants refused to

hold the meetings on days convenient for the 1st respondent and meetings were scheduled in such a way that the 1st respondent would be forced to keep away from the meeting.

21. The 1st respondent would submit that a criminal case has been filed against the applicants and their erstwhile Manager, Ramanathan for extorting a double payment from a client who had booked the Kalyana Mandapam and the applicants have obtained Anticipatory Bail in this regard. The 1st respondent would submit that the fact that neither the trust nor the other trustees had been impleaded would clearly expose the true nature and purport of the suit, namely, an attempt to settle a private dispute camouflaged as a Section 92 Suit. Therefore, the 1st respondent would contend that the leave cannot be granted under Section 92 of the Code.



**Submissions:**



22. Mr.R.Parthasarathy, learned counsel arguing on behalf of the applicants would draw the attention of the Court to the various averments made in the complaint and in the affidavit with reference to the conduct of

the 1st respondent vis a vis the Trust. He would submit that the activities detailed therein would clearly show how the 1st respondent is acting against the interest of the Trust. He would also highlight the observation of the Income Tax Appellate Tribunal in their order dated 18.03.2016, where the Tribunal has observed that from the filing of the various proceedings by the 1st and 2nd respondents it is clear that there is a conflict of interest between assessee trust and the trustees and this cannot be decided by the Tribunal.

23. He would also contend that the 1st respondent is working against the interest of the Trust only because their demand that the Trust should comprise of trustees who were direct descendants of the late P.T.Rajan and the widows of such direct descendants have been turned down by the then Chairman. He would also submit that a settlement proposal had been mooted by the defendant, wherein the Trustees had agreed to resign from the Trust on the happening of certain conditions which is narrated in the undated note delivered at the meeting of the Board of Trustees.

24. He would also contend that despite being a trustee, the 1st respondent has not attended most of the meetings and was not in the habit of giving a leave of absence. The list of such meetings has been shown in the affidavit filed in respect of the application. Apart from this, he would bring to the notice of this Court a letter dated 23.09.2019 issued by the 1st respondent to the 1st applicant wherein copies have been marked to the Commissioner Income Tax (Exemptions) Chennai, Commissioner of Police, Madurai, Commissioner of Police, Chennai (as the registered office of the Trust is in Chennai). He would argue that this is nothing but an attempt to jeopardize the very existence of the Trust. Considering the fact that the 1st respondent was working against the interest of the Trust it became imperative to have him removed from the Board of Trustees and therefore the suit and the instant application.

25. Mr.V.Lakshmi Narayanan, learned counsel appearing for the 1st respondent would submit that the suit is nothing but an attempt to settle personal scores. He would submit that trigger for the institution of this

suit is the delivery of the letter from the Income Tax Officer (Intelligence and Criminal Investigation) at Madurai. It was only on the receipt of this letter that the other trustees had come to know about the irregularities committed by the applicants. From the said letter they came to learn that high value transactions have been done by the Trust during the financial year 2012 -2013 without quoting the PAN number which was mandatory. It appears that thereafter the 2nd applicant had been making RTI applications to the Public Information Officer of the Chief Commissioner of Income Tax asking for the issue of the notice which was delivered at the Madurai address when the registered office of the Trust was at Chennai.

26. Thereafter, the letter dated 25.02.2015 has been received by the 2nd respondent from the Commissioner of Income Tax (Exemptions) setting out in detail the various illegal activities that has been undertaken by the Trust. A reading of the same would show that these allegations were of a very serious nature and would affect all the other trustees as well. The other trustees were also summoned and they have also deposed before the authorities clearly stating that they were in the dark about the

functioning of the Trust.

27. The learned counsel would submit that since the other trustees had started questioning the applicants with reference to the embezzlement of funds and with reference to Tax evasions and the proceedings there on, the applicants have come forward with the present suit. As regard the failure to attend the meetings, the learned counsel would submit that leave of absence has been always given to the trust whenever an appropriate notice of meeting was served on the 1st respondent and he was unable to attend the same.

28. The learned counsel would emphasis the fact that the suit was originally filed only against the 1st respondent without even impleading the trust or the other trustees which would clearly show that the suit is nothing but an attempt to settle personal scores. He would therefore submit that no public interest was involved in the above suit and that apart the applicants are guilty of approaching the Court with unclean hands. They have suppressed the fact that criminal proceedings have been initiated against

them by one of the clients who had booked the Kalyana Mandapam and that they have also obtained Anticipatory Bail. The learned counsel would submit that the plaint averments had to be read as a whole for this Court to come to the conclusion as to whether the suit is filed for safeguarding the interest of the Trust or the public or for resolving private disputes.

29. Replying to the above contentions of Mr.V.Lakshminarayanan, Mr.R.Parthasarathy, learned counsel for the applicant would submit that while considering an application seeking leave to institute a suit under Section 92 of the Code the Court should only be guided by the plaint averments and the frame of the suit. He would point out that paragraphs 8 and 9 of the plaint dealt with the attempts by the 1st respondent to take control of the Trust, paragraphs 10 to 17 sets out in detail the various acts of respondents 1 and 2 which works to the detriment of the Trust and in paragraph 19 the applicants have stated how the 1st respondent was not involving himself in the running of the Trust but still keen on taking over its management. He would rely on the Judgement of a Division Bench of this Court reported in ***2012 (6) CTC 721 - Nadigar Sangam Charitable***

***Trust and others Vs. S.Murugan @ Poochi Murugan*** in support of his argument that the Court should not adopt a hyper-technical approach while deciding an application under Section 92 CPC.

**Discussion:**

30. On hearing the respective counsels, reading the plaint and the accompanying documents as also the pleadings in the instant application it appears that the removal of the 1st respondent as Trustee of the 4th respondent Trust is sought for on the ground of two aberrations committed against the 4th respondent Trust.

*(a) That by corresponding and appearing before the Income Tax authorities and arguing against the Trust, the 1st respondent has jeopardised the very existence of the Trust as a public charitable trust; and*

*(b) The 1st respondent by continuously keeping away from the meetings was not working in the interests of Trust.*

31. A cursory glance at these statements would indicate that the applicants have made a prima facie case for grant of leave. However, the plethora of Judicial dicta has sounded a word of caution that the Courts should not encourage suits filed against Trusts to remedy an infringement or to vindicate a private right and if a detailed reading of the plaint gives out this hidden agenda then leave should definitely be refused. The 1st respondent's defense to this leave application is that the suit is filed to settle personal / private scores. It is in this backdrop that this Court is proceeding to analyse the issue on hand.

32. The suit, as narrated hereinabove, was originally filed only against the 1st respondent. This Court suo moto by order dated 14.02.2020 has impleaded the Trust and the other Trustees. The applicants would submit that the 1st and 2nd respondents' correspondence and filing of proceedings before the Income Tax Department has brought disrepute to the Trust. These proceedings are as follows:

*(a) Filing Tax Evasion petitions with the Income Tax Authorities against the Trust. Summons issued to all Trustees consequent to these*

*complaints.*

*(b) Contending before the Commissioner (Exemptions) and in the appeal before the ITAT that the Trust should be treated as a Commercial enterprise and not as a Public Trust.*

*(c) The ITAT observes that the 1st and 2nd respondents were trying to settle a personal dispute and that the 1st respondent's attempt was to have the appeal dismissed.*

*(d) The 2nd respondent challenges her non-impleadment before the ITAT in Writ proceedings by filing W.P.No.49 of 2016 which was dismissed.*

*(e) On the representation of the 1st respondent the assessments for the Assessment years 2013 - 2014, 2014 - 2015 and 2015 - 2016 reopened by the respondent as a result exorbitant rates of tax raised by Department.*

These are the primary allegations against the 1st respondent and the reason for seeking his removal.



33. Since the reason for seeking the removal of the 1st respondent is on the ground that he is working against the interests of the Trust and

considering the response denying these allegations, it is necessary for this Court to prima facie analyse these reasons. A perusal of the various correspondence between the parties clearly shows that all was not well between the 1st applicant and the 1st respondent. The 1st respondent has time and again sent letters questioning the lack of transparency in the running of the Trust. The 1st applicant has been accusing the 1st and 2nd respondent of working against the interest of the Trust as they have appeared before the ITAT against the Trust. The 1st respondent would explain the background as to why they had sought to approach the Income Tax Authorities. He would contend that by accident a notice from the department had been received at the family house of the 1st respondent wherein it was stated that high value transactions had been done by the Trust without quoting the PAN number. It was only after this that the respondents have questioned the applicant and demanded documents from the 1st applicant.



34. From a perusal of the pleadings and documents filed along with the plaint it has to be culled out as to whether the suit is an attempt to

settle a private dispute and does not involve any public interest or whether it is a suit in the interests of the public Trust. It would make useful reading to peruse the contents of some of the letters exchanged by the parties. In a letter dated 03.03.2017 (page no.109 of the Typed set dated Nov 2019 filed along with the plaint) addressed to the Trust by the 1st respondent, the 1st respondent would state as follows:

> *"To the best of my knowledge, the trust is a charitable organization and therefore I am unable to understand how one of the taxable services will be legal consultancy services.*
>
> *In the past, you have not kept me informed of the happenings in the trust, which amongst others include things like not keeping me informed of the VCES declaration, not keeping me informed of finalization of accounts, not keeping me informed of the Income Tax Assessment Orders and appeals, etc.,"*



35. A letter dated 03.09.2019 (page no.137 of the Typed set filed along with the plaint) from the 1st applicant with a copy marked to the

Commissioner of Income Tax (Exemptions) would contain the following statement:

> *"2. However, your allegations that the trustees have suppressed the said facts, or that we have attempted to keep you in the dark, are wholly misplaced and baseless. In fact, the following steps have been taken by the Trust to remedy the malfeasance of the employee:*
>
> *i. Removal of the concerned employee from his position to avoid any further acts of malfeasance;*
>
> *ii. Initiation of criminal proceedings against the concerned employee to discover the true extent of the acts of malfeasance committed;*
>
> *iii. Issuance of General Public Notices in leading newspapers (both Vernacular and English) informing the public of Mr. S. Ramanathan's termination of employment*

*and cautioning the public not to deal with him*

*iv. Commissioning of a detailed review of the Trust's books and records by a firm of Chartered Accountants, to gather all information regarding the malfeasance committed, which would enable the Trust to decide upon suitable recovery or remedial measures in relation to the same.*

*3. As such, we have acted in consultation with our legal advisors to take timely action, in accordance with the policies in place for such eventualities, upon discovery of the fraudulent transactions. Regarding your other queries, the fraud has been perpetrated by an employee who was in-charge of the Hall operations. While proper records have been maintained and audits have been regularly conducted, the fraud has been perpetrated by the employee by accepting bookings mostly during the past five to six months, in exchange for unaccounted cash payments. The same appears* *to be an individual act of dishonesty by a long-time employee. Should you have any further queries where clarifications are required, the same may be raised at the next meeting of the Board of Trustees for detailed discussion.*

*4. It may not be out of place to mention here for the record that you have also indulged in various acts that are prejudicial to the interests of the Trust. Illustratively, two acts of breach of trust on your part are set out below for you to ponder over:*

*i. You have consistently failed to attend several meetings of the Board of Trustees, despite being given sufficient notice, on some pretext or the other. Often, you have cited your busy schedule as a corporate executive and subsequently a public representative as excuses to avoid attendance at trust meetings. In fact, you have not attended 20 of the 28 meetings (mostly without seeking leave of absence) that were held after your co-option as a trustee on the 10th of November 2006 While we do appreciate your* *other commitments including as a public functionary, the consistent failure on your part in discharging the duties of a trustee vis a vis our trust, including but not limited to attending the periodical meetings of the trust board over the past decade, would still constitute a breach of trust*

*ii. Making matters worse is your persistent act of preferring complaints against the Trust itself to the Commissioner of Income Tax (Exemptions), Chennai seeking, among other things, the withdrawal of the trust's registration and tax exemption. In fact, one of your complaints has culminated in a categorical finding by the Income Tax Appellate Tribunal that you have placed yourself in a situation where your interest and that of the trust were in conflict. Such repeated complaints by you to the Income Tax department, even if unsubstantiated, that too as a trustee against the Trust would have a deleterious impact on the Trust itself and would be grossly prejudicial to its proper functioning. I wish to add that our mandate as trustees places* *upon us responsibility to act fervently at this juncture to ensure that no further loss is occasioned to the Trust.*

*5. We therefore call upon you to withdraw your complaints given to the Income Tax department, as the same would be severely damaging to the Trust's interests. If you have any grievance you are welcome to raise the same with full particulars (rather than making bald accusations) at Trust meetings in a constructive manner.*

*6. In view of the above, you are hereby called upon to withdraw the complaints made by you to statutory authorities; and to raise any grievances that you may have at the next meeting of the Board of Trustees. If, despite this letter, should you continue to act in any manner prejudicial to the interests in the Trust, we will be constrained to initiate such action/s as may be deemed necessary to safeguard the interests of the trust as well as the reputation of the trustees,* *while holding you liable for all costs and consequences arising there from."*

36. This is followed by letter dated 12.09.2019 calling for a meeting of the Board of Trustees on 26.09.2019 at the Registered Office of the Trust. This has been responded to by the 1st respondent vide his letter dated 16.09.2019 (pages 144 and 149 of the Typed set filed along with the plaint) as follows:

*"Why was no meeting of Trustees convened post the alarming discovery of the alleged misdemeanors & misappropriation of public monies? Why were the Trustees other than Mr. Ramesh Rajan and Mr. Thirumurthy not taken Into consideration before making decisions that impact the reputation of the trust? You should know that any reference to the Trust will have a direct impact on my family and I, in particular, as I am in elected office, and identified as the grandson of Sir P.T.Rajan.*

*Also, if the books were maintained properly, how is it* *possible for one individual to embezzle Rupees 47 Lakhs without the knowledge of either the accountant, or Mr. Thirumurthy who is supposedly managing the hall, and Mr. Ramesh Rajan, the self-appointed "Managing Trustee"?*

*Furthermore, who appointed Ramanathan? Who set the terms of his appointment? Who did Ramanathan report to? Who had access to the CCTV footage while Ramanathan was still employed by the Trust? Was it regularly audited?*

*Under these circumstances, I believe that at the meeting of the Trustees convened on 26.09.19, we must thoroughly discuss the following*

*1. Embezzlement of public monies by Ramanathan*

*2. Complaints filed by Patrons against the Trust*

*3. Complaint filed by Mr. Thirumurthy against Mr. Ramanathan*

*4. Impleading of Mr. Thirumurthy into Ramanathan's Anticipatory Bail plea*

*5. Mr. Thirumurthy double charging patrons for the hall* *bookings*

*6. Mr. Ramesh Rajan's role in the actions of Mr. Thirumurthy*

*7. Mr. Ramesh Rajan's role in the hiring and firing of Ramanathan*

*8. Access to CCTV footage and activities in the P T Rajah Hall*

*9. Putting up of boards displaying Names of trustees and advising on mode of payment.*

*10. Hiring of Legal Counsel, Chartered Accountants without the prior and express approval of all Trustees.*

*Unless the aforementioned issues are discussed in detail during the meeting and suitable remedies are agreed upon, no further decision must be taken with regards to the administration of either the Trust or the P T Rajah Hall.*

*Under these circumstances, I insist that the meeting* *must be conducted at the P.T.RajanHall at Madurai in order to ensure the availability of records to all Trustees, and to facilitate the scrutiny to understand how the alleged double book-keeping worked and for how long, and to inspect the premises as necessary".*

37. The 1st applicant has responded vide his letter dated 19.09.2019 (Copy of which is not filed) and to this the 1st respondent has sent a detailed letter dated 23.09.2019 reiterating the lack of transparency in the administration of the Trust. The meeting has been held on 26.09.2019 as indicated in the letter of the Trust and the 1st and 2nd respondents have not attended the meeting.

38. A perusal of the plaint and the documents filed along with the plaint would prima facie show that both the parties allege breach of Trust against the other. This Court is not analysing any of the allegations on merits but is referring to the same only for the purpose of considering the instant application. The applicants would contend that the 1st and 2nd

respondents have been preferring series of complaints against the Trust before the Income Tax Department as a result of which the Commissioner of Income Tax has contemplated the withdrawal of Trust's Registration and the Tax exemptions which would have a serious impact on the functioning of the Trust. The respondent would submit that there is lack of transparency and mismanagement in so far as the applicants are concerned. The 1st respondent would submit that criminal charges are pending against the applicants for double charging a customer who had booked the Kalyana Mandapam and in anticipation of being arrested the applicants have moved this Court and obtained anticipatory bail.

39. It is not in dispute that the Trust in question is a public charitable Trust set up with the laudable object of providing assistance for education, medical and religious charity. It appears that by reason of discord between the applicants and the respondents 1 and 2, the functioning of the Trust itself is being jeopardised. Amongst the documents filed there is a statement of donations made by the Trust which would indicate that the Trust has been donating to Schools and such

donations are also for providing for shoes, uniform, books, equipments etc. The Trust is also contributing to hospitals, providing assistance for medical treatment, donations to religious institutions etc. Therefore it is seen that the public at large are benefited from these donations. It is therefore imperative that the administration of the Trust should be smooth and effective and Trustees should work in tandem to achieve the laudable objects of the Trust. Being a public charitable Trust its functioning requires to be more transparent and inclusive.

40. The Constitution Bench of the Honourable Supreme Court while considering the scope of Section 92 (1) in ***Madappa Vs. M.N.Mahanthadevaru - AIR 1966 SC 878*** had observed that Section 92 (1) provides for two classes of cases:

*a) Where there is a breach of Trust in a Trust created for public purposes of a charitable of religious nature.*

*b) Where the direction of the Court is deemed necessary for the administration of any such Trust.*

In the said Judgement the Bench had observed as follows:

*"The reliefs to be sought in a suit under section 92(1) are indicated in that section and include removal of any trustee, appointment of a new trustee, vesting of any property in a trustee, directing a removed trustee or person who has ceased to be a trustee to deliver possession of trust property in his possession to the person entitled to the possession of such property, directing accounts and enquiries, declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust, authorisation of the whole or any part of the trust-property to be let, sold, mortgaged or exchanged, or settlement of a scheme. The nature of these reliefs will show that a suit under section 92 may be filed when there is a breach of trust or when the administration of the trust generally requires improvement."*



This dicta has been followed in subsequent Judgements and in ***Sugra Bibi Vs. Hazi Kummu Mia - AIR 1969 SC 884***, the Honourable Supreme Court had restated that Section 92 would have no application unless the following three conditions are fulfilled:

*"(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 other of the reliefs as enumerated in said Section."*

Therefore apart from the contingencies provided under Section 92 (1) of the Code the Courts can be approached when breach of Trust is alleged and when the administration of the Trust requires improvement.

41. It has also been time and again reiterated by the Honourable Supreme Court as well High Courts that a Section 92 suit cannot be filed to settle private disputes.

The Hon'ble Supreme Court in the Judgement reported in ***2008 (4) SCC 115 – Vidyodaya Trust Vs. Mohan Prasad R and others*** at paragraph no.19 would state as follows:

*"In the suit against public trusts, 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 the provision does not lie. As noted in Swami Parmatmanand case a suit under Section 92 CPC is a suit of special nature, which presupposes the existence of a public trust of religious or charitable character. 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 persons or persons in whom they are interested, Section 92 has no application.*

42. Finally in paragraph no.26, would sum up the issues on the following lines:

*"To put it differently, 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. 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. 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. In that view of the matter the High Court was certainly wrong in holding that the grant of leave was legal and proper. The impugned order of the High Court is set aside. The appeal is allowed but without any order as to costs."*

43. In the case on hand serious allegations of breach of Trust has been alleged by both the parties and the same has to be proved by letting in evidence on either side and therefore the suit cannot be thrown out at the threshold on the ground that the suit is filed to vindicate private disputes. That apart from a reading of the correspondence between the parties this Court is of the prima facie view that the Trust having been constituted for the benefit of the public at large, the inter se disputes between the parties which has been escalating over a period of time would affect the very administration of the Trust. The respondents have pleaded that there is a

total lack of transparency on the part of the applicants and that there is no consultation in the running of the Trust. The applicants on the other hand would state that the respondents by their actions are causing harm to the very existence of the Trust. The respondents 1 and 2 are accused of preferring complaints to the Commissioner of Income Tax (Exemptions) for withdrawal of the Trust's registration and Tax exemption. There are serious allegations of breach of trust on either side which if proved, during the Trial, would clearly show that the Trust is mismanaged. The Court will then have to formulate a scheme of management of the Trust properties and for the proper application of the income of the Trust to achieve the object of the Trust. No doubt, the relief claimed is only for removal of the 1st respondent as a Trustee. The allegations made by each against the other would clearly show that the interests of the Trust and the objects for which it was set up is being relegated to the background.



44. Considering the fact that this Court is *parens patriae* for the Trust, if the Court during the Trial comes to the conclusion that the Trust is being mismanaged, this Court has to step in to frame a scheme for the

management of the Trust. It is made clear that the observations made in this order is solely based on perusing the averments made in the plaint, affidavit and the documents filed along with the plaint without examining the same in detail.

45. In the above circumstances, the leave as prayed for is granted.

29.09.2020

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
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**P.T. ASHA. J,**

kan

**A.No.8700 of 2019**
**in**
**C.S.Sr.No.140703 of 2019**



**29.09.2020**