

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11003 OF 2017

Shri Harishchandra Dhondiram Kalgude & Ors. Petitioners

vs

Shri Suresh Maruti Mhaske & Ors. Respondents

Mr. A. S. Khandeparkar a/w Mr. Amogh K. Karandikar, Mr. Satish Kalke, Mr. Rohit P. Mahadik and Mr. Rajdeep D. Gude i/b. Khandeparkar & Associates, for the Petitioners.

Mr. Rajesh S. Datar, for Respondent Nos.1 to 6.

CORAM : MADHAV J. JAMDAR, J.

DATE : 10th AUGUST, 2021

ORAL ORDER :

The petitioners are the members of Mahad Taluka Maratha Seva Sangh, Kalyan East, (hereinafter referred to as “said Trust”), which is a trust registered under the provisions of the Maharashtra Public Trust Act (Bom. Act XXIX of 1950) (hereinafter referred to as “the said Act”) as well as Societies Registration Act, 1860.

2. The petitioners have challenged by way of the present writ petition filed under Article 227 of the Constitution of India Order dated 17th June 2017 passed by learned 5th Joint Civil Judge, Junior Division, Kalyan below Exh.1A in R.C.S. No.402/2016. By the impugned Order, the leave sought by the petitioners to institute the suit under Section 92 of Code of Civil Procedure, 1908 (for short ‘C.P.C.’) was rejected. The learned Trial Court inter alia while

rejecting leave application observed that remedy is provided under Sections 50 and 51 of the said Act.

3. Mr. Datar, learned Counsel appearing for the respondent Nos.1 to 6 at the outset pointed out Section 52 of the said Act and submitted that Section 92 and 93 of the C.P.C. are not applicable to the public trusts. He submitted that therefore, application bearing Exh.1A seeking leave is not at all maintainable. He submitted that in these circumstances no interference is warranted in the impugned order rejecting Exh.1A application.

4. Mr. Khandeparkar, learned Counsel appearing for petitioners submitted that the relief claimed by the petitioners in respect of appointment of new trustees in view of the misuse of powers on the part of the respondents as provided under the bye-laws resulting into breach of the trust by act of removing the petitioners from managing committee squarely falls under Section 92 of C.P.C. He submitted that the petitioners have also prayed for a decree of the accounts from the respondents which also squarely falls within the purview of Section 92 of C.P.C. He submitted that the Learned Trial Court while passing the impugned order has not properly considered the prayers in the Plaint and Section 92 of C.P.C.

5. Mr.Khandeparkar, learned Counsel of the petitioners alternatively submitted that if the Court comes to the conclusion that in the light of Section 52 of the said Act, application seeking leave filed under Section 92 of C.P.C. is not maintainable then liberty be

given to him to file application under Section 50 of the said Act and appropriate orders be passed. He pointed out Judgments of this Court reported in *(i) 1996 (1) All.M.R. 354 in the case between Shankar Waman Thatte v/s. Madhav Krishna Joshi and Others; (ii) 2001 (4) All M R 211 in the case between Mr. Maulana Mohamed Yusuf Ismail v/s. Madarsa Vejajulu Ulum Kuran & Ors. and; (iii) 2005 (4) Bom. C. R. 570 Minoo Rustomji Shroff & Others v/s. Charity Commissioner & Others* in support of his contention.

6. Before considering the rival contentions it is necessary to examine the averments in the plaint. Perusal of the proposed plaint to be filed in the Court of learned Civil Judge, Junior Division Kalyan, at Kalyan shows that the plaintiffs i.e. petitioners claim to be the members of the Managing Committee of the said Trust. It is contended in the plaint that the directions of the Court are necessary for the administration of the Trust. The petitioners have inter alia raised following contentions in the plaint :-

(i) There are as may as 800 to 850 members of the said Trust. The defendants were the trustees of the said Trust and since 03.11.2015 they ceased to be the Trustees of the said Trust.

(ii) The plaintiffs are the members of Managing Committee of the said Trust. All of them are duly elected in the Annual General Meeting of Mahad Taluka Maratha Samaj Seva Sangh, held on 28.09.2014. Since then the present Managing members i.e. plaintiffs are looking after the day-to-day Management and entire functioning of the said Trust.

(iii) Until 12.09.2015, the administration of the Trust was going on

smoothly. Thereafter, the relations between them got strained.

(iv) The Managing Committee of the Trust in its meeting held on 18.11.2015, decided to conduct 32nd Annual General Meeting (A.G.M.) of the Trust on 12.12.2015, at 10.30 A.M. at Samaj's Marriage Hall, Kalyan (East) and accordingly, served a Notice of the A.G.M. to all the members.

(v) With dishonest intention to prevent the Managing Committee from conducting the scheduled A.G.M. to be held on 12.12.2015, the defendants on 11.12.2015, at midnight, locked the premises of Marriage Hall with the help of Chain and by fixing 3 additional locks to the entrance of Samaj Hall at Kalyan (East). Thus the plaintiffs could not conduct the meeting at the scheduled place and was compelled to hold the meeting at the scheduled time in the open premises close to the Samaj Hall, i.e., 'Padvi' and transacted the business of the meeting between 11.30 A.M. to 3.30 P.M. The meeting was required to be conducted in Police Protection in order to avoid any untoward incident.

(vi) Immediately after the conclusion of A.G.M. held on 12.12.2015, the defendants, on 13.12.2015, without any right and/or authority called the meeting of the members and illegally elected the New Managing Committee. According to plaintiffs, the Managing Committee meeting held on 13-12-2015 was unlawful, illegal.

(vii) The prayers sought in the proposed suit are as follows :-

"i) Decree the suit and appoint New Trustees for the Trust known as:

ii) Declare that the decision of the Trustees/Defendants dated 31.07.2015, against the

present plaintiffs, thereby dissolving the Managing Committee is unlawful, illegal, bad-in-law and hence, not binding on the Plaintiffs or any of them.

iii) Declare that A.G.M. dt. 13-12.2015, held by the defendants, was and is unlawful, illegal.

iv) Declare that new Managing committee allegedly elected in the A.G.M. dated 13-12.2015, is also unlawful, illegal.

v) Issue perpetual injunction restraining the Defendants from giving effect to their decision against the Plaintiffs and as articulated in Prayer Clause (ii); above.

vi) Issue Perpetual injunction restraining the Defendants from interfering in day-to-day administration of the Managing Committee comprising of Plaintiffs, in any manner whatsoever.

vii) Issue Perpetual Injunction restraining the Defendants from taking any Booking or giving Samaj Hall situate at Kalyan East to anybody for any private or public function/s.

viii) Decree and Order the Defendants to furnish account of money which they have collected through illegal New Managing Committee for an on behalf of the Trust for the period from 13/9/2015.

ix) Issue an Order of Temporary injunction in terms of prayer clause (v) and (vi).

x) Award Costs of this suit.”

7. The petitioners filed application seeking leave to file suit under Section 92 of the C.P.C. for institution of the abovereferred proposed plaint. Section 92(1) of C.P.C. is set out hereinbelow for ready reference “-

“Section 92. Public Charities (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or

religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit, whether contentious or not, in the principal civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject - matter of the trust is situate to obtain a decree -

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.”

8. At this stage, it is important to note that in the recent judgment of Supreme Court reported in **(2020) 4 SCC 321** in the matter between **Ashok Kumar Gupta and Another v/s. Sitalaxmi Sahuwala Medical Trust and others** regarding scope of section 92 of the C.P.C. it has been held that three conditions are required to be satisfied in

order to invoke Section 92 of the C.P.C. 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 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. Perusal of the gist of proposed plaint proposed to be filed by the petitioners and prayers sought in the plaint if examined on the touchstone of Section 92 of C.P.C. then initial impression is created to the effect that there is substance in the contentions raised by Mr. Khandeparkar, the learned Counsel appearing for the petitioners. However, the contentions of the petitioners are required to be examined on the touchstone of Section 52 of the said Act on which Mr.Datar, learned Counsel appearing for the Respondent is relying.

10. Section 52 of the said Act, provides that notwithstanding anything contained in C.P.C. the provisions of Sections 92 and 93 of C.P.C. shall not apply to public trusts. Section 92 of the C.P.C. is already set out hereinabove. Section 93 of C.P.C. is not relevant for this case.

11. Section 52 of the said Act is required to be understood in the

light of the scheme of the said Act. The important aspects of the said Act are set out hereinbelow :-

- (i) The preamble of the said Act states that the said Act is enacted with an object to regulate and to make better provision for the administration of public, religious and charitable trusts.
- (ii) Section 2 (2A) defines “beneficiary” means any person entitled to any of the benefit as per the objects of the trust explained in the trust deed or the scheme made as per said Act and constitution of the trust and no other person;
- (iii) Section 2(10) defines “person having interest” as [include] -

(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof.

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs’

(c) in the case of Waqf, a person who is entitled to receive any pecuniary or other benefit from the Waqf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the Waqf or to participate in any religious or charitable institution under the Waqf,

(d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and

(e) in the case of any other public trust ‘[any trustee or beneficiary].

(iv) Section 2(13) defines “public trust” means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple; a math, a Waqf, [church, synagogue, agiary or other place of public religious worship,] [a dharmada] or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860

(v) Section 2(18) defines “trustee” means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager;

(vi) Section 3 is regarding Charity Commissioner. Section 3 provides that the State Government may, by notification in the ‘Official Gazette, appoint an Officer to be called the Charity Commissioner, who shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may pass, superintend the administration and carry out the provisions of this Act throughout the State.

(vii) Section 9 provides Charitable purposes as including

(1) relief of poverty or distress;

(2) education

(3) medical relief;

(3A) provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit, and]

(viii) Section 18 is regarding registration of Public Trusts. It is the duty of the trustees of public trust to which the said Act applies to make an application for the registration of the public trust.

(ix) As per Section 31 no suit to enforce a right on behalf of a public trust which has not been registered under this Act shall be heard or decided in any Court and same is also applicable to a claim of set-off or other proceeding to enforce a right on behalf of such public trust.

(x) Section 36 makes provision regarding obtaining previous sanction of the Charity Commissioner for alienation of immovable property of public trust.

(xi) Section 36A of the said Act is regarding powers and duties of, and restriction on, trustees and interalia provides that a trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the terms of the trust, usage of the institution and lawful directions which the Charity Commissioner or court may issue in respect thereof, and exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property, if they were his own.

(xii) Section 36A(2) provides that the trustee shall, subject to the provisions of this Act and the instrument of trust, be entitled to exercise all the powers incidental to the prudent and beneficial management of the trust, and to do all things necessary for the due performance of the duties imposed on him. Section 36B provides that a public trust shall prepare and maintain a register of all movable and immovable properties of such trust in such form or forms giving all

such information, as may be prescribed by the Charity Commissioner.

(xiii) Chapter VI of the said Act consist of Sections 37 to 41E and makes various provisions inter alia regarding control of the Charity Commissioner over the functioning of the public trusts. Very elaborate provisions are made regarding power of inspection and supervision, to get explanation of trustee or any person connected with the public trust regarding any matter concerning the public trust. Elaborate provisions are made regarding calling explanation on report of auditor or complaint and the Charity Commissioner is empowered to issue appropriate orders. The Charity Commissioner is empowered to issue directions for proper administration of the trust under Section 41A of the said Act. Under Section 41D the power is conferred on the Charity Commissioner to suspend, remove or dismiss trustees, if grounds set out in said Sections are existing. Section 41E provides that any trust property is in danger of being wasted, damaged, or improperly alienated by any trustee or any other person, or that the trustee or such person threatens or intends to remove or dispose of that property, the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit.

(xiv) Section 47 empowers Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees.

(xv) Section 50 is inter alia concerning suit by or against or relating

to public trusts or trustees or others. Section 51 provides that if the persons having an interest in any public trust intend to file a suit of the nature specified in Section 50 then consent of Charity Commissioner is required for institution of such suit. Section 52 specifies that provisions of Section 92 and 93 of C.P.C. shall not apply to the public trusts.

(xvi) Section 52A provides that suit against assignee for valuable consideration of any immovable property shall not be barred by any length of time.

(xvii) Chapter VII-A consisting of Sections 56C to 56T makes special provisions with respect to religious and charitable institutions and endowments which vests in or the management of which vests in the State Government.

(xviii) Chapter VIII consisting of Section 57 to 61 is concerning public trusts administration fund.

(xix) Chapter X consisting of Sections 66 to 67-A is concerning offences and penalties regarding contravention of various Sections of said Act.

(xx) Chapter XI consisting of Sections 68 to 77 are concerning duties, functions and powers of Charity Commissioner, Deputy or Assistant Charity Commissioner. Very elaborate provisions are made in this behalf. The general superintendence of the administration and carrying out the purposes of said Act vests in the Charity Commissioner. Section 70 provides that appeals from the findings or orders of Deputy or Assistant Charity Commissioner shall lie before the Charity Commissioner. Section 70A provides that Charity

Commissioner to call for and examine records and proceeding before Deputy or Assistant Charity Commissioner. Section 73 provides that officers holding inquiries under said Act have powers of Civil Court. Section 75 provides that in comprising the period of appeal preferred under Chapter XI, the provisions of Sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 shall apply to the filing of such appeals.

(xxi) Section 79 provides that any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner. An appeal lies against such decision to the Charity Commissioner.

(xxii) Section 79D specifies that notwithstanding contained in the Court Fees Act, 1870 payment of Court Fees will be as per Schedule B of the said Act. Schedule B specifies payment of Court Fees on various applications to be filed before various authorities under said Act as provided under various Sections and also appeals to be preferred under various provisions of the said Act.

(xxiii) As per Section 80 of the said Act jurisdiction of Civil Court is barred.

(xxiv) Section 84 empowers the State Government to make rules for the purpose of carrying into effect the provisions of said Act.

Thus, it is clear that elaborate provisions are made by enacting the said Act regarding public trust, registration of the same, control of the management and affairs of the public trust by the Charity Commissioner and other officials under the said Act. It is apparent

that detail provisions are made to regulate the affairs of the public trusts, its management, etc. The provisions of the Act clearly show that the Act is a complete code in itself.

12. The extent of bar of jurisdiction of Civil Court under Section 80 of the said Act was the question examined by the Supreme Court in the judgment reported in (2005) 10 Supreme Court Cases 760 in the matter between ***Church of North India Vs. Lavajibhai Ratanjibhai & Ors.*** After examining the statutory scheme of the said Act, it has been held that the said Act is Special Act. It confers jurisdiction upon the Charity Commissioner and other authorities named therein. The statute has been enacted in the public interest to safeguard the properties vested in the trusts as also control and management thereof so that the trust property may not be squandered or the object or purport for which a public trust is created may not be defeated by the persons having control thereover. It has been further held that the provisions of the said Act and the scheme thereof leave no manner of doubt that the said Act is a complete code in itself. It provides for a complete machinery for a person interested in the trust to put forward his claim before the Charity Commissioner who is competent to go into the question and to prefer appeal if he feels aggrieved by any decision. The bar of jurisdiction created under Section 80 of the Act clearly points out that a third party cannot maintain a suit so as to avoid the rigours of the provisions of the said Act. As regards ouster of jurisdiction of the Civil Court it has been held as follows:-

“83. With a view to determine the question as regard exclusion of jurisdiction of civil court in terms of the provisions of the Act, the court has to consider what, in substance, and not merely in form, is the nature of the claim made in the suit and the underlying object in seeking the real relief therein. If for the purpose of grant of an appeal, the court comes to the conclusion that the question is required to be determined or dealt with by an authority under the Act, the jurisdiction of the civil court must be held to have been ousted. The questions which are required to be determined are within the sole and exclusive jurisdiction of the authorities whether simple or complicated. Section 26 of the Act must be read in that context as it specifically refers to those questions wherewith a court of competent jurisdiction can deal with and if the same is not expressly or impliedly barred. Once a decision is arrived at, having regard to the nature of the claim as also the reliefs sought for, that civil court has no jurisdiction, Section 26 per force will have no application whatsoever.”

13. After analyzing various decisions in said case of Church of North India (Supra), the Supreme Court has held as follows:-

“98. The principle enunciated in each of the decision laid down relate to the fact situation obtaining therein. In each case indisputably the lis arose for determination of a question relating to interpretation of one or the other clause enumerated in different provisions of the BPT Act which come either within the exclusive jurisdiction of the statutory authorities or otherwise. The Civil Court will have no jurisdiction in relation to a matter wherever the statutory authorities have the requisite jurisdiction. On the other hand, if a question arises, which is outside the purview of the

Act or in relation to a matter, unconnected with the administration or possession of the trust property, the Civil Court may have jurisdiction. In this case, having regard to the nature of the lis, the jurisdiction of the Civil Court was clearly barred.”

14. A Division Bench of this Court in the judgment reported in **2013 (3) Mh. L.J. 269** in the matter between **Charu K. Mehta Vs. Lilavati Kirtilal Mehta Medical Trust** analysed Section 80 of the said Act. In said case it has been held as follows:-

“32. The salient features of Section 80 are the following :

(i) The bar under Section 80 is subject to an express provision to the contrary in the Act;

(ii) No Civil Court shall have jurisdiction to decide or deal with any question where

(a) such a question is required by or under the Act to be decided or dealt with by any officer or authority under the Act; and

(b) where a decision or order of such officer or authority has been made final and conclusive by the Act.”

It has been further held that the test under Section 80 is whether the question which is raised before the Civil Court is a question which is required by the said Act to be decided or dealt with by an officer or authority constituted under it. Where that is so and such a decision of an officer or authority is made final and conclusive under the provisions of the Act, the jurisdiction of the Civil Court would stand barred. It has been also held that the said Act is complete code.

15. In the judgment of Supreme Court reported in ***AIR 2005 Supreme Court 3081*** in the matter between ***Vinayaka Dev Idagunji & Ors. Vs. Shivaram & Ors.***, the question for consideration was whether a suit to establish a right to be hereditary “archaks” (Pujaris) in a temple and a share in the offerings made to the deity, is a suit in relation to personal/private right of the “archaks” or it is a suit in the nature of exercising a public right in a public trust ? The said question arose in the context of bar created by Section 50 of the said Act. Regarding suits falling within the categories enumerated in Section 50 of the said Act, either the Charity Commissioner has to file them or they have to be filed after obtaining consent in writing of the Charity Commissioner. In this context, the Supreme Court in paragraph 14 of the said judgment has held as follows:-

“14. We have seen the object of the Bombay Public Trusts Act. Appropriately the Act seeks to regulate and make better provision for administration of public religious and charitable trusts. Such trusts cater to things of public interest, i.e. things which concern large sections of public. Unless such trusts are properly administered public interest will suffer. Therefore, matters affecting administration of such trusts are covered under Section 50 of the Bombay Public Trusts Act. This situation is somewhat similar to suits under Section 92 of the Code of Civil Procedure. These suits are suits in representative capacity and pertain to matters of public interest. In contrast the suit which has given rise to the present appeal is a suit to establish an individual right. The plaintiffs claim that they are hereditary archaks of the temple since time immemorial and are entitled to exercise this right which cannot be taken away from them. No public interest is involved. Public is not concerned whether A acts as an archak or B

acts. Such a suit, therefore, cannot be covered by Section 50 of the Act. Law is settled on this aspect as per various judgments of this Court.”

16. This Court in the judgment reported in **2012(3) Mh.L.J. 594** in the matter between **Vanmala v/s. Deputy Charity Commissioner** as regards functions to be performed by Charity Commissioner under the scheme of the said Act held that, the function of the Charity Commissioner while acting under the provisions of the Act is administrative, judicial as well as quasi-judicial and even that he acts as a watchdog and a delegate of the Government for superintendence and control over the Public Trusts. It is further held in said Judgment that, Charity Commissioner acts even as a litigant on behalf of the Trust he having been empowered to file appeals or other proceedings before the Court or he is even entitled to defend on behalf of the Public Trusts or actions of Charity Commissioner under the said Act. It has been held that nature of powers and functions performed by the Charity Commissioner shows that the Charity Commissioner functions as an administrative, inquisitive, quasi-judicial as well as judicial authority under the different provisions of the said Act and has also to act/defend as a litigant for the public trusts as parents patriae.

17. For appreciating the objection taken on the basis of section 52 of the said Act raised by Mr.Datar, learned Counsel appearing for the respondents it is necessary to see Sections 50 and 51 of the said Act. Section 50 of said Act is concerning suit by or against or relating to public trusts or trustees or others. Section 50 of said Act is set out

hereinbelow :

50. Suit by or against or relating to public trusts or trustees or others

In any case --

(i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees,

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee,

(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or

(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs
1 Section 50 was substituted by Mah. 20 of 1971, s.34.

(a) an order for the recovery of the possession of

such property or proceeds thereof;

*(b) the removal of any trustee or manager;
(c) the appointment of a new trustee or manager;
(d) vesting any property in a trustee,
(e) a direction for taking accounts and making certain enquiries;*

(f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;

(g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(h) a direction to apply the trust property or its income cy pres on the lines of section 56 if this relief is claimed along with any other relief mentioned in this section;

(i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem necessary;

(j) the settlement of a scheme, or variations or alterations in a scheme already settled;

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same;

(l) an order for winding up of any trust and applying the funds for other charitable purposes;

(m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust;

(n) an order exonerating the trustees from technical breaches, etc.;

(o) an order varying, altering, amending or superseding any instrument of trust;

(p) declaring or denying any right in favour of or against, a public trust or trustee or trustees or

beneficiary thereof and issuing injunctions in appropriate cases; or-

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid reliefs or is necessary in the interest of the trust:

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof;

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled:

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under sub-section (4) of section 1.]”

18. Section 51 is regarding consent of Charity Commissioner for institution of suit. It is provided that if the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. It is further provided that if the Charity Commissioner after hearing the parties and making such enquiries as he thinks fit is satisfied that there is a prima facie case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. It is

further provided that the order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal. The order passed by the Charity Commissioner under Section 51(1) of the said Act is appealable under sub-section (2) of the Section 51.

19. Thus the submissions of Mr. Khandeparkar, the learned Counsel appearing for the petitioners regarding maintainability of their application seeking leave filed under Section 92 of C.P.C. is required to be examined by keeping in mind following parameters :-

- (i) The said Act is a complete code in itself;
- (ii) As per section 52 of the said Act section 92 of C.P.C. is not applicable to the public trusts;
- (iii) Suits which fall within the categories enumerated in section 50 of the said Act, either the Charity Commissioner has to file them or they have to be filed after obtaining consent in writing of the Charity Commissioner.
- (iv) The said Act seeks to regulate and make better provision for administration of public religious and charitable trusts. Such trusts cater to public interest and concern large sections of public. Unless such trusts are properly administered public interest will suffer. Therefore, matters affecting administration of such trusts are covered under Section 50 of the said Act. This situation is somewhat similar to suits under Section 92 of C.P.C. These suits are suits in representative capacity and pertain to matters of public interest.
- (v) Section 51(1) provides that :-

(a) if the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent.

(b) The order passed by the Charity Commissioner under Section 51(1) of the said Act is appealable under sub-section (2) of the Section 51.

20. Perusal of the contentions raised in the proposed plaint and prayer clauses set out in earlier part of this order clearly show that provisions of Section 50 of said Act are attracted to the same. Section 50(iii) contemplates that in any case where the direction of the Court is deemed necessary for the administration of any public trusts and Section 50(iv) contemplates when in any case any declaration or injunction in favour of or against a public trusts or trustee or trustees or beneficiary thereof is required. The reliefs set out in the proposed plaint falls in category (b), (c), (p) and (q) of Section 50. Thus, once it is held that, Section 50 is attracted to the contentions raised in proposed plaint and prayers set out therein then it is obvious that application filed under Section 92 of C.P.C. by the petitioners seeking leave of the Court to file suit is not maintainable.

21. The Judgment in case of ***Minoo Rustomji Shroff and Others*** (supra) on which Mr. Khandeparkar has relied is regarding the modification of the scheme already settled under Sections 92 and 93 of the C.P.C. In that context, it has been held that in such cases the provisions of Sections 92 and 93 of C.P.C. will continue to govern the situation and provisions of Section 52 r/w Section 50 of the said Act will not apply. However, the said Judgment is not applicable to the

facts of the present case. It is not the case of either of the parties that the scheme of the said Trust was framed under Section 92 of C.P.C. and that proposed suit is for variation of the scheme.

22. Mr. Khandeparkar, the learned Counsel of the petitioners relied on the case of ***Shankar Waman Thatte*** (supra). In said case in paragraphs 14 to 16, it has been held as follows :-

“14. It is now well settled that Section 50 of the Act for all purposes substitutes Section 92 of the Code of Civil Procedure. Section 50 of the Act excludes applicability of Section 92 of the Code of Civil Procedure to the public trusts. The concept embodied in Section 92 of the Code of Civil Procedure is engrafted in Section. 50 of the Act. Section 92 of the Code of Civil Procedure as it stood before the amendment by Act No. 104 of 1976 provided that 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 interest in the trust and having obtained consent in writing of the Advocate General, 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 limit of whose jurisdiction the whole or part of the subject-matter of the trust is situate to obtain a decree for the reliefs as enumerated in Clauses (a) and (b) of that Section.

Section 50 of the Act also provides for a suit to be filed in any case where it is alleged that there is a breach of public trust, negligence, misapplication or misconduct on the part of the trustee or trustees or where a direction or a decree is required to recover

possession of or to follow a property belonging or alleged to be belonging to a public trust or proceeds thereof for an account of such property or proceeds from a trustee, ex trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee, or where the direction of the Court is deemed necessary for the administration of any public trust or for any declaration or injunction in favour or against a public trust or trustee or trustees or beneficiary thereof.”

“15. In the contingencies referred to in Section 50 of the Act as aforesaid, the Charity Commissioner after making such inquiry as he thinks necessary is empowered to file a suit for the reliefs as enumerated in Clauses (a) to (q) of that Section. That section also empowers two or more persons having interest as referred to in the section, and who have obtained the consent in writing of the Charity Commissioner as provided in Section 51 of the Act to file a suit for the same reliefs as could be prayed by Charity Commissioner in his suit.”

“16. Thus it is clear that the concept that is there in Section 92 of the Code of Civil Procedure has been brought in the Act by Section 50 of the Act and by Section 52 of the Act the application of Section 92 of the Code of Civil Procedure is excluded in the matter of public trusts.”

The last Judgment on which Mr. Khandeparkar, learned Counsel of the petitioners relied is the judgment reported in the case of **Mr. Maulana Mohamed Yusuf Ismail** (supra). In the said Judgment in paragraph 9 it has been observed as follows :-

“9. In Shree Gollaleshwar Dev and others vs.

Gangawwa Kom Shantayya Math and others (supra), it was observed by the Apex Court that the provisions of section 50 of the said Act creates and regulates a right to institute a suit by the Charity Com-missioner or two or more persons interested in the Trust in the form of supplementary statutory provisions without defeasance of the right of the manager or a trustee or a shebait of an idol to bring a suit in the name of idol to recover the property of the Trust in the usual way. It has been held by the Apex Court that there is no reason why the two or more persons interested in the Trust should be deprived of the right to bring a suit as contemplated by Section 50(ii) (a) of the Act and that although sub- section (1) of section 52 makes Sections 92 and 93 of the Code inapplicable to public trust registered under the Act, it has made provision by section 50 for institution of such suits by the Charity Commissioner or by two or more persons interested in the trust and having obtained the consent in writing of the Charity Commissioner under section 51 of the said Act. The decision rather than rendering any assistance to the respondents, supports the case putforth by the appellant. The decision of the Apex Court nowhere provides that the suits in respect of the administration of the Trust or for recovery of the Trust property can be instituted by two or more individuals without prior consent of the Charity Commissioner. Much to the contrary, the Apex Court has insisted upon prior written consent of the Charity Commissioner under section 51 of the Act in cases of filing of such Suit.”

Both the above authorities support the contentions that Section 92 of C.P.C. will not apply to the present case and the applicable provisions are Section 50 r/w Section 52 of the said Act.

23. Thus, it is very clear that as Section 92 of the C.P.C. is not applicable to the public trust as per Section 52 of the said Act, and therefore, the application bearing Exh.1A filed by the petitioners before the learned Trial Court is not at all maintainable. As the application Exh.1A is not maintainable, impugned order dated 17th June 2017 passed by learned 5th Joint Civil Judge, Junior Division, Kalyan is required to be quashed and set aside. Mr. Khandeparkar, learned Counsel for the petitioners as per his alternate submission and Mr. Datar, learned Counsel for respondent Nos.1 to 6 both agree that the application filed before the lower Court seeking leave under Section 92 is not maintainable in view of provisions of Section 52 r/w Section 50 of the said Act.

24. In view of above discussion, the writ petition is disposed of in following terms :-

(i) Impugned order dated 17th June 2017 passed by learned 5th Joint Civil Judge, Junior Division, Kalyan passed below Exh.1A in Regular Civil Suit No.402 of 2016 is quashed and set aside as said application bearing Exh.1A filed seeking leave to institute suit under Section 92 of C.P.C. is not maintainable.

(ii) Mr. Khandeparkar, learned Counsel for petitioners states that the petitioners i.e. original plaintiffs will file application under Section 50 read with Section 51 of the Maharashtra Public Trusts Act within a period of four weeks from today before Deputy Charity Commissioner, Thane, or any other appropriate authority under Maharashtra Public Trusts Act. If such application is filed before

Deputy Charity Commissioner, Thane or any other authority within a period of four weeks from today, the concerned Deputy Charity Commissioner/appropriate authority to dispose of the same as early as possible and in any case, within a maximum period of six months from the date of filing of application.

(iii) All the contentions of the parties on merits are expressly kept open.

(MADHAV J. JAMDAR, J.)