IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 08TH DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE V. PARTHIBAN

A.No. 1844 of 2021
in
C.S.Diary No. 36935 of 2021

1. Bright Joseph,
Member – YMCA : Madras
S/o. Late. J. Devadas,
Flat No.9, Brindavan Flats,
24, Papanasam Sivan Salai,
Mylapore, Chennai – 600 004.

2. V.P. Muthu Williams,
Member – YMCA : Madras,
S/o. Pakkirisamy,
No.1, Bathragiri Nagar,
Kodungaiyur,
Chennai – 600 118.

3. L.C. Joshua,
Member – YMCA : Madras,
S/o. Late Capt. Dr.G.T. Joshua,
A/7/3A, Gemini Parsen Flats,
Chennai – 600 006. ... Petitioners/Plaintiffs

Suing for themselves and in representative
capacity on behalf of members of the First Defendant

-Vs-

1. M/s. Young Men Christian Association (YMCA),
A Registered Society
Rep.by ' General Secretary,
No. 223, N.S.C. Bose Road, Chennai – 600 001.

2. Thar Board of Directors,
   YMCA : Madras,
   Rep.by it's President,
   No.223, N.S.C. Bose Road, Chennai – 600 001.

3. The Board of Trustees.
   YMCA : Madras, Rep.by it's Managing Trustee,
   No.223, N.S.C. Bose Road,
   Chennai – 600 001.

4. Mr. P. Asir Pandian,
   General Secretary, YMCA : Madras,
   and the Managing Trustee of Board of Trustees,
   223, N.S.C. Bose Road,
   Chennai – 600 001.

   <u>Also at :</u>
   No.51/1, Raghavan Colony Main Road,
   Vadapalani, Chennai – 600 026.

5. Mr. Vincent George,
   President – Board of Directors, YMCA : Madras,
   No.1, Ambali Lane,
   Karnan Street, Ambedkar Road,
   Kodambakkam, Chennai – 600 024.

6. Mr. J. Benjamin Franklin,
   Vice President – Board of Directors, YMCA : Madras, and
   Member – Board of Trustees, YMCA : Madras,
   No.10, Thangavelu Street,
   Vetri Nagar, Chennai – 600 082.

   <u>Also at :</u>
   YMCA College of Physical Education,
   Nandanam, Chennai – 600 035.

7. Mr. D. Alex Madhavan,
   Member – Board of Directors, YMCA : Madras, and
   Member – Board of Trustees, YMCA : Madras,
   No.6, Tank Road, United India Colony,
   Kodambakkam, Chennai – 600 024.

8. Mr. Vincent Sahayaraj,
Member – Board of Directors, YMCA : Madras and
Member – Board of Trustees, YMCA : Madras,
No.12/6, Buddha Street,
Kodambakkam, Chennai – 600 024.

9. Mr.B.Ravikumar David,
Member – Board of Directors, YMCA : Madras and
Member – Board of Trustees, YMCA : Madras,
No.17, Kalathiappa Mudali Street,
Choolai, Chennai – 600 112.

10. Mr. M.M. Selvakumar,
Vice President – Board of Directors, YMCA : Madras,
No. 52, 7th Cross Street,
Shenoy Nagar, Chennai – 600 030.

11. Mr. A.M. Packianathan Easter,
Member – Board of Directors, YMCA: Madras,
Room No.1, Hussain Plaza, No. 160,
Thambu Chetty Street, Chennai – 600 001.

12. Mr. Rajeev George,
Member – Board of Directors, YMCA : Madras,
No.43C, Tailors Road,
Kilpauk, Chennai – 600 010.

Also at :
YMCA College of Physical Education,
Nandanam, Chennai – 600 035.

13. M/s. Crystal Creations (India) Pvt. Ltd.,
Rep.by it's Managing Director,
No.321, (Old No.125),
T.T.K.Road, Alwarpet,
Chennai – 600 018.

14. M/s. V.A.R. Construction and Promoters Private Limited,
Rep.by it's Managing Director,
1/357, Shri Karthikeyan Laxmi Nagar,
Thuvariman Madurai, Madurai – 625016.

15. M/s. Madras Estates and Company,
Rep.by it's Managing Director,
No.24 and 25 West Cott Road,
Royapettah, Chennai – 14. ... Respondents/Defendants

Application praying that this Hon'ble Court be pleased to permit the Applicants/Plaintiffs to sue on behalf of and for the benefit of all persons interested in the suit as provided under Order 1 Rule 8 Clause 1(a) of the Civil Procedure Code.

This Application having been heard on 18.08.2021 in the presence of Mr.N.Rajan, Advocate for the applicants herein and Mr.V.Ayyadurai, Senior Counsel for Mr.S.Dharmakhan, Advocate for the respondents 1, 3 & 4, Mr.V.Anand and S.Babu, Advocates for the respondents 6 & 12 and Mr.AR.L.Sunderasan, Senior Counsel for V.R.Thangavelu, Advocates for the 5th respondent, and Mr.B.Sivakumar, Advocate for the 10th respondent and Mr.Shan and Shal Advocate for the respondents 7 to 9 and Mr.L.Chandrakumar, Advocate for the 11th respondent herein and the respondents 2, 13, 14 and 15 herein, not appearing in person or by advocate and upon reading the Judges Summons and the affidavit of D.Bright Joseph filed herein, and having stood over for consideration till this date and coming on this day before this Court for hearing in the presence of said

advocates for the parties hereto and this Court having observed that this leave application is not intended to vindicate any public interest, but intend to furtively advance personal interests, particularly, of the second plaintiff. Even otherwise, when the other suit (un-numbered) is pending, the plaintiffs herein can always join hands and prosecute the said un-numbered suit, in such circumstances, this Court does not find any acceptable legal reason for laying the second suit by the members of the first respondent-Association and this Court does not find any merit in the application seeking leave under Section 92 CPC. **it is ordered as follows:-**

That the A.No.1844 of 2021, be and is hereby dismissed.

2. That the Registry, be and is hereby directed to return the plaint and records to the learned counsel for the plaintiffs, after replacing the same with a xerox copy for record purpose.

3. That there shall be no costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 08TH DAY OF OCTOBER 2021.

Sd/-
ASSISTANT REGISTRAR (O.S-I)

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

ED
11.02.2022

A.No. 1844 of 2021
in
C.S.Diary No. 36935 of 2021

ORDER:-

DATED : 08.10.2021

THE HON'BLE MR. JUSTICE
V. PARTHIBAN

FOR APPROVAL: 11.02.2022

APPROVED ON : 11.02.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 18.08.2021

Orders Pronounced on : 08.10.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application No.1844 of 2021
in
C.S.Diary.No.36935 of 2021

1. Bright Joseph,
   Member-YMCA, Madras,
   S/o Late J.Devadas

2. V.P.Muthu Williams,
   Member-YMCA, Madras,
   S/o Pakkirisamy

3. L.C.Joshua,
   Member-YMCA, Madras,
   S/o Late Capt.Dr.G.T.Joshua .. Applicants/plaintiffs

Vs.

1. M/s.Young Men Christian Association (YMCA),
   A Registered Society,
   Rep. by its General Secretary,
   No.223, NSC Bose Road,
   Chennai-600 001.

2. The Board of Directors,
   YMCA, Madras,
   Rep. by its President,
   No.223, NSC Bose Road,
   Chennai-600 001.

3. The Board of Trustees,
   YMCA, Madras,
   Rep. by its Managing Trustee,
   No.223, NSC Bose Road,
   Chennai-600 001.

4. Mr.P.Asir Pandian,
   General Secretary, YMCA, Madras,
   and the Managing Trustee of
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   and Member, Board of Trustees, YMCA, Madras,
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   Vetri Nagar, Chennai-600 082.
   Also at:
   YMCA College of Physical Education,
   Nandanam, Chennai-600 035.

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Member, Board of Directors, YMCA, Madras, and
Member, Board of Trustees, YMCA, Madras,
No.17, Kalathiappa Mudali Street,
Choolai, Chennai-600 112.

10. Mr.M.M.Selvakumar,
Vice-President, Board of Directors, YMCA, Madras,
No.52, 7th Cross Street,
Shenoy Nagar, Chennai-600 030.

11. Mr.A.M.Packianathan Easter,
Member, Board of Direcrors, YMCA, Madras,
Room No.1, Hussain Plaza,
No.160, Thambu Chetty Street,
Chennai-600 001.

12. Mr.Rajeev George,
Member, Board of Directors, YMCA, Madras,
No.43-C, Tailors Road,
Kilpauk, Chennai-600 010,
Also at:
YMCA College of Physical Education,
Nandanam, Chennai-600 035.

13. M/s.Crystal Creations (India) Pvt. Ltd.,
Rep. by its Managing Director,
No.321 (Old No.125),
TTK Road, Alwarpet,
Chennai-600 018.

14. M/s.V.A.R.Construction and
Promoters Private Limited,
Rep.by its Managing Director,
1/357, Shri Karthikeyan Laxmi Nagar,
Thiruvariman Madurai, Madurai-625 016.

15. M/s.Madras Estates and Company,
Rep. by its Managing Director,
Nos.24 and 25, West Cott Road,
Royapettah, Chennai-600 014. .. Respondents/defendants

Judge's Summons issued under Order XIV Rule 8 of the Original Side Rules of this Court, read with Order 1 Rule 8(1a) of the Civil Procedure Code, and Application is filed praying to permit the applicants/plaintiffs to sue on behalf of and for the benefit of all persons interested in the suit as provided under Order 1 Rule 8 Clause 1(a) of the Civil Procedure Code.

For applicants : Mr.N.Rajan
For respondents: Mr.V.Ayyadurai, Senior Counsel for
Mr.S.Dharmakhan for RR-1, 3 and 4
No appearance for R-2
Mr.V.Anand and S.Babu for RR-6 & 12
Mr.AR.L.Sundaresan, Senior Counsel for
Mr.V.R.Thangavelu for R-5
Mr.B.Sivakumar for R-10
Mr.Shah and Shal for RR-7 to 9
Mr.L.Chandrakumar for R-11
No appearance for R-13 and R-15
Notice returned unserved for R-14

ORDER

This application has been filed seeking to grant leave to the applicants/plaintiffs to file suit under Section 92 of the Civil Procedure Code (for short, "the CPC").

2. The case of the applicants herein is that they are full members of the Young Men's Christian Association (YMCA), Madras, the first respondent/first defendant-Association. It is an unregistered body started in the year 1844 in London Town by 12 young men to help the youth who migrate to town by providing decent accommodation at affordable rates. It also in the process helped the youth to grow in moral and spiritual life so that they are not attracted to the vices of the city life. The movement became popular world-wide. It was started in India in the city of Calcutta and then in Chennai, almost hundred years ago.

3. Over the years, the first respondent-Association has started several charitable activities like rehabilitation of refugees, hostel facilities to the youth, running sports and cultural institutions, etc. The Association also has several properties in the city and in the suburbs.

4. According to the applicants, the first respondent-Association decided to develop one of its properties measuring 5 acres of land owned by YMCA in Kottivakkam and entered into an agreement with the 13th respondent/13th defendant Company for the purpose of leasing the property for 99 years. A Memorandum of Understanding (MoU) was also signed, but

however, dispute arose and finally the dispute had gone upto the

Honourable Supreme Court of India where a revised MoU, dated 14.11.2015 was filed.

5. As per the revised MoU, the price for the lease of 99 years was fixed at Rs.130 crores and the Company was permitted to construct building complex, but eventually only Rs.76.54 crores was paid by the Company and the funds received from the Company had been siphoned-off into purchasing some properties in Chennai.

6. Likewise, in respect of another property owned by the first respondent-Association, which has about 90 grounds in "C" schedule property, permission was obtained for developing 29.5 grounds from this Court in O.P.No.503 of 1993 and by misusing the order of permission from this Court, the first respondent-Association is attempting to award a contract to the fifteenth respondent-Company instead of the original Company which was stated to be a contracting company at the time when the permission was obtained from this Court on 03.09.2020 in the said O.P.No.503 of 1993.

7. Likewise, there are several financial misdeeds and irregularities relating to collection of money in reception desk, which was not properly

accounted for and there was delay in registration of the income in the Books of Accounts, discrepancy in the Minutes and no inventory of records of movable and immovable properties made available, which were owned by the first respondent-Association, etc.

8. It was also pleaded in the plaint that the Investigation Committee constituted to investigate, has recommended certain measures to be taken for looking into the irregularities and resolutions were passed, but no steps were taken ultimately. In the said circumstances, the suit has been filed for framing a scheme towards proper administration of the Association and its properties. As the first respondent being a public charitable Association, leave has been sought under Section 92 CPC.

9. According to the applicants, there was also allegation of misappropriation of funds, and therefore, direction is also sought in the plaint for rendering of accounts and removal of membership in the Board of Directors and the Board of Trustees of those defendants who have conspired and colluded in diverting the misappropriated funds received from 13th respondent-Company. In the backdrop of the above brief factual narrative, the counsels representing the parties have made their respective submissions.

10. Mr.N.Rajan, learned counsel for the applicants made the following submissions:

(a) At the outset, he referred to the order of the Honourable Supreme Court in I.A.Nos.40-42 of 2016 in Civil Appeal Nos.1798-1800 of 2013, dated 02.05.2016 and in that order, the Honourable Supreme Court has recorded the fact of MoU, dated 14.11.2015 between the parties concerned and held that the parties will be bound by the terms of the MoU. Accordingly, the said I.As. came to be disposed of.

(b) According to the MoU, the price fixed for leasing out the Kottivakkam property was for Rs.130 crores. The learned counsel referred to the MoU, dated 14.11.2015 between the first respondent-Association and the 13th respondent, which was filed before the Supreme Court on 25.01.2016. In the said MoU, it was specifically agreed that the parties undertake to abide by the terms of the MoU, as approved by the Honourable Court. It was also agreed for timely payment of balance amount payable, but ultimately, only Rs.76.54 crores was paid and nothing is known as to what happened to the remaining balance amount payable by the 13th respondent-Company and the members in the Management had not chosen to follow the terms and conditions prescribed in the MoU as approved by the Honourable

Supreme Court.

(c) According to the learned counsel for the applicants, whatever the amounts that were received, had been spent in purchase of three immovable properties at Kilpauk, Royapuram (Washermanpet) and Kodaikanal. Although it was stated that the purchase of immovable properties was to avoid tax towards capital gains, but it was contrary to the opinion given by the Auditor. As a matter of fact, advise was given by the Auditors to deposit the amount in small lots of Fixed Deposits in the scheduled Banks for a period more than six months. No efforts were made by the members for collection of the remaining amount payable on the total amount of Rs.130 crores. The learned counsel also referred to certain photographs enclosed in the typed set of papers filed along with the application, showing that there was absolutely no development in the property as on date.

(d) The learned counsel also referred to certain statement in regard to the amounts received from the 13th respondent under MoU, dated 14.11.2015 and the investment of the same in immovable properties at Kilpauk, Royapuram (Washermanpet) and Kodaikanal and the amounts invested in the purchase of the properties was only to the tune of little over Rs.31 crores and what happened to the rest, is not known to the members. The learned counsel also referred to a suit filed before this Court in

C.S.No.107 of 2019, which is a collusive suit between the Association and the 13th defendant. The suit has been filed seeking permission to enter into agreement with the 13th defendant herein, the sole defendant in that suit, as the Association appeared to have taken a decision to provide them additional extent of 2.5 acres of land with some additional conditions. The learned counsel also referred to the additional MoU entered into between the parties in this regard on 29.01.2019. Nothing is however shown as to what happened to the earlier commitment of payments of Rs.130 crores for the original leasing of the lands.

(e) According to the learned counsel, there is no transparency in the award of contract, as there was no advertisement calling for tenders in order to obtain the best price. He also referred to the internal audit report, wherein it was concluded that there was clear evidence to show financial loss to the YMCA more than Rs.9 lakhs (approximately), besides finding serious irregularities and misappropriation of funds in terms of the membership agreement and money collected and the same needs to be probed further.

(f) According to the learned counsel, the above facts prima-facie disclose that all is not well with the administration of the first respondent-Association, and therefore, leave is necessarily to be granted for protecting the interest of the Association from the wrong doers.

(g) The learned counsel cited the following decisions in support of his contentions:

(i) 2012 (6) CTC 721 (Division Bench of Madras High Court) (Nadigar Sangam Charitable Trusty Vs. S.Murugan), in which he relied on paragraphs 15 and 20 to 22, which are extracted hereunder:

> "**15.** The constitution of Board of Trustees, the Place of functioning of the Trust and the Objects of Nadigar Sangam Trust would clearly show that Nadigar Sangam Charitable Trust is nothing but another limb of SIAA with the avowed object of helping poor artists and to get Income-tax exemption. Plaintiffs are members of SIAA and thus, having interest in Nadigar Sangam Charitable Trust, which is nothing but an extended arm of SIAA. We do not find any merit in the objection raised in respect of the *locus standi* of the Plaintiffs. Since the Trust is only an extended arm of SIAA, non-impleading of SIAA in the Suit would not affect the maintainability of the Suit. SIAA represented by its General Secretary - 3rd Appellant had executed the Lease Deed dated 6.8.2010 for a period of 99 years. The 2nd Appellant as the Managing Trustee had executed the Lease Deed (dated 25.11.2010) to the 3rd Respondent for commercially developing the property. Possession of the property was handed over by the 3rd Appellant to the 2nd Appellant. When Nadigar Sangam Charitable Trust is a Public Trust to whom possession of the property was handed over, Scheme Suit can be filed against the 2nd Appellant and 3rd Respondent in respect of the Trust properties. On this score also, the contention raised as to the non-impleading of SIAA does not merit acceptance."

> "**20.** In order to apply Section 92, C.P.C, the

following conditions must be satisfied:

(a) There is a Trust created for public purpose of a charitable or generous nature;

(b) there is a breach alleged of such trust, or the direction of the Court is necessary for the administration of such Trust;

(c) The Suit must be a representative one on behalf of the public and is not by individuals for their own interest; and

(d) The relief claimed in the Suit is one or other reliefs mentioned in sub-section (1)(a) to (h) of Section 92.

The real test for the applicability of Section 92 of the Code is to see whether the Suit is fundamentally on behalf of the public for vindication of a public right.

21. The Supreme Court in *R. Venugopala Naidu* v. *Venkatarayulu Naidu Charities*, 1989 Supp (2) SCC 356, explained the scope of a Suit under Section 92 of C.P.C. as under:

> "*9*. The legal position which emerges is that a Suit under Section 92 of the Code is a Suit of a special nature for the protection of public rights in the Public Trusts and Charities. The Suit is fundamentally on behalf of the entire body of persons, who are interested in the Trust. It is for the vindication of public rights. The beneficiaries of the Trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a Suit under Section 92 of the Code and the suit-title in that event would show only their names as Plaintiffs. Can we say that the persons whose names are on the suit-title are the only parties to the Suit ? The answer would be in the negative.

The named Plaintiffs being the representatives of the public at large which is interested in the Trust all such interested persons would be considered in the eye of law to be parties to the Suit. A Suit under Section 92 of the Code is, thus, a representative Suit and as such binds not only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that Explanation VI to Section 11 of the Code constructively bars by res judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier Suit under Section 92 of the Code."

22. A Suit under Section 92, C.P.C. is of special nature, which pre-supposes the existence of a Public Trust or Charitable Trust and can proceed only on the allegation that there is a breach of Trust and that directions from the Court are necessary for the administration of the Trust. In the Suit filed under Section 92, C.P.C., while drawing the attention of the Court to the alleged illegality committed by the Trustees, the Plaintiff must pray for one or more reliefs mentioned in the Section. Suit in CSD No. 15568 of 2012 was initially filed for declaration that the General Power of Attorney dated 6.8.2010 and Lease Deeds executed on 6.8.2010 & 25.11.2010 are null and void. In a Suit filed under Section 92 of C.P.C., the Plaint must contain the averments as to the above ingredients. Unless the requirements of Section 92, are strictly followed, the Suit cannot proceed. In the Plaint initially filed, the Plaintiff has not prayed for one or more of the reliefs mentioned in the Section for removal of Trustees and to settle a scheme for administration of the Trust."

The Division Bench, in the above decision, after adverting to various case laws on the subject in issue before this Court, has outlined the conditions to be satisfied while considering the application under Section 92 CPC in paragraph 20 extracted above. The Division Bench also held that the suit under Section 92 CPC is of special nature which pre-supposes existence of public trust or charitable trust and can proceed only on the allegation that there is breach of trust and the directions from the Court are necessary for the administration of the Trust.

(ii) 1991 (1) SCC 48 (R.M.Narayanan Chettiar Vs. N.Lakshmanan Chettiar): This Court's attention has been drawn to paragraph 17 extracted hereunder:

> "**17.** A plain reading of Section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under Section 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a

> given case, point out that the persons who are applying for leave under Section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave under Section 92 can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law."

In the above decision, the Honourable Supreme Court has succinctly observed inter-alia that grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants, because, it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.

(iii) 2019 SCC Online Madras 2294 = 2019 (5) CTC 212 (Thatha Sampath Kumar and another Vs. Sri Vupputur Alwar Chetty's Charities, represented by its Hereditary Trustee Mr.Vupputur Ramesh and others): The learned counsel referred to paragraphs 33 to 39, extracted hereunder:

> "**33.** The object of Section 92(1) of CPC is to give protection to public trust from being subjected to harassment by suits being filed against them.
>
> **34.** In the instant case, as observed earlier, there are serious differences amongst the trustees, for which, suits have been filed. Section 92 of CPC is a complete code by itself in respect of the suits based upon an alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature. In order to attract the application of the Section, the following four conditions are necessary, viz.,
>
> (a) there must be a trust, express or constructive, for public purposes of a charitable or religious nature;
>
> (b) the plaint must allege a breach of trust or necessity for direction as to administration of that trust;
>
> (c) the suit must be in the interests of the public, i.e., it must be brought in a representative capacity for the benefit of the public and not to enforce individual rights; and
>
> (d) the relief claimed should be one of the reliefs set out in the section.
>
> **35.** It is settled law as held in the decision of the Hon'ble Supreme Court cited by the learned Senior Counsel for the respondents 1 to 4 reported in (1991) 1 SCC 48 : AIR 1991 SC 221 that notice to the defendants before grant of leave to institute the suit under Section 92 of CPC is not mandatory, but only desirable. The Court will have to decide the leave application only based on the plaint averments.
>
> **36.** It is also settled law as held in the decision of the Hon'ble Supreme Court cited by the learned counsel for the Appellants reported in (1975) 1 SCC 298 that the maintainability of the suit under Section 92 of CPC depends upon the averments made in the plaint. In the case on hand, the respondents 1 to 4 in the plaint have categorically stated that the first Appellant/first defendant appears to have fraudulently with an intention to take control of the first respondent/first plaintiff trust has misappropriated the properties and funds of the said trust. They have also pleaded in the plaint that the first Appellant/first defendant has misappropriated the properties and funds of another trust

viz., T.V.R. Subbi Chetty Family Charities and he has been restrained from continuing to act as a president of that trust by an order of the Commissioner, Hindu Religious & Charitable Endowments.

37. This Court has also noticed various suits between the parties which will clearly indicate that there is mismanagement of the first respondent/first plaintiff trust which will certainly lead to the conclusion that the noble objects of the first respondent/first plaintiff trust have not been fulfilled by the present Trust.

38. The Hon'ble Supreme Court in the decision reported in (1994) 1 SCC 475 in the case of *Committee of Management of Pachaiyappa's Trust* v. *Official Trustee of Madras* extracted in the said Judgment the role of a Trustee as explained by Cardozo, J which is reproduced hereunder:

> "*A Trustee is held to something stricter than the morals of the market place. Not honesty alone but the punctilio of an honour the most sensitive, is then the standard of behaviour…. only thus has a level of conduct for fiduciaries being kept at a higher level than that trodden by the crowd.*"

39. The Division Bench of this Court in which one of us was a member in the case of *P. Elumalai* v. *Pachaiyappa's Trust Board* reported in (2017) 8 MLJ 529 while passing of the order exercised the "Parens Patriae" jurisdiction over the trust and held that as Parens Patriae, the Courts are empowered to protect the sanctity of public trust in case of breach of trust on account of irregularities committed in trust. In the said Division Bench Judgement, this Court had held that the Court cannot remain a mute spectator when illegality has been committed against a public Trust in front of its own eyes. In the instant case, the plaint averment discloses that there are serious differences amongst the trustees in the management of the trust and it is also an allegation that the first Appellant/first defendant fraudulently decided to take control of the first respondent/first plaintiff trust and excluded the respondents 2 to 4 from the management of the same as life trustees. As Parens Patriae, this court will have to necessarily protect the interest of a public trust when it is found that there is mismanagement and irregularities in the said public trust."

The Division Bench of this Court, in the above decision, held that the leave

application ought to be decided only on the basis of the plaint averments and the Division Bench also referred to various judgments of the Honourable Supreme Court. In the said decision, the Division Bench has confirmed the order of the learned Single Judge granting leave in the matter under Section 92 CPC.

(h) The learned counsel therefore summed up contending that applicants herein have made out a clear case for grant of leave under Section 92 CPC. The first respondent-Association which was established 100 years ago with avowed objects of rendering multi-various services to public, needs to be safeguarded from the hands of the wrong doers.

11. Per contra, Mr.V.Ayyadurai, learned Senior Counsel for the respondents 1, 3 and 4 submitted that the present application seeking leave under Section 92 CPC is clearly motivated, intended to serve personal interest and liable to be dismissed. He would also submit that the application is also not maintainable for yet another reason that the first respondent/first defendant-Association being an unregistered body, permission is required to file a suit in terms of Order 1 Rule 8 CPC. In addition to the legal submission as to the maintainability to the leave application on merits, the learned Senior Counsel would place his

arguments as follows.

12. He referred to communication dated 10.11.2020 of Kingsley Consultants, Architects and Engineers, addressed to the General Secretary and CEO of YMCA, Madras, in which it is shown response from 7 tenderers to the proposed construction of commercial building at their Royapuram property. One of the 7 tenderers named in the communication was one M/s.Amazee Infra Structures, a proprietary concern owned by none other than the second plaintiff's wife. In the said communication, the decision of the consultants not to accept the tenders of the above concern, as it was found to be invalid, was conveyed. As the tender bid by the second plaintiff's wife, was rejected, he joined hands with two others to file the present suit, and therefore, the suit is clearly intended to advance vested and personal interests of the individuals. The second plaintiff who has an axe to grind against the first respondent/first defendant, cannot claim to represent any public interest at all.

13. The learned Senior Counsel referred to another suit filed by one S.D.Joseph, another member with a similar prayer for framing of a scheme on the basis of the allegations of misappropriation etc. In fact, in that suit, the second plaintiff herein is shown as 11th defendant therein. Almost with the identical averments, the said suit has been filed and in that case, Order 1 Rule 8 CPC has been complied with and the suit is also pending as on date

on the file of this Court. In fact, the learned Senior Counsel compared the prayer in that suit with the present suit, which is almost similar and identical in substance.

14. The learned Senior Counsel also said that all the projects were undertaken by the first respondent/first defendant only after obtaining due permission from this Court, the contracts were entered into with third parties. In fact, the second plaintiff being a member of the Board, at the relevant point of time, had approved all the measures initiated by the first respondent-Association as signatory. The learned Senior Counsel also contended that pre-suit notice was not given in the present case and no objections were raised at all before the General Body at any point of time.

15. The learned Senior Counsel has taken this Court through the Minutes of the meeting of the Project Management Committee, held on 17.10.2017, demonstrating that the second plaintiff was present when the resolution was passed for certain developments of the first respondent-Association's property. The Project Management Committee appeared to have been satisfied with the commercial proposal, as the same was found to be a good fund raiser for the Association. According to the learned Senior

Counsel, the suit having been laid by the second plaintiff along with the other members, in the circumstances of the case, can be nothing but a motivated litigation, which has no public interest at all.

16. The learned Senior Counsel also referred to the Minutes of the Annual General Body Meeting of the first respondent-Association, held on 30.09.2020, which recorded the purchase of property at Kilpauk, Old Washermanpet and Kodaikanal. He further referred to the Auditor's report, wherein, receipts of payments ending 31.03.2017 has been clearly mentioned and it contained all the financial transactions and there is nothing the Association could conceal from the knowledge of its members or public. The learned Senior Counsel further submitted that this Court was earlier approached in O.P.No.503 of 1995 and a learned Judge, vide order dated 03.09.2020, has granted permission to put up construction in the land owned by the Association at Royapettah based on the Joint Memo of Compromise, dated 04.03.2019 entered into between the parties.

17. The learned Senior Counsel reiterated that the present application is not maintainable, as Order 1 Rule 8 CPC has not been complied with and it is filed by disgruntled members, particularly, the second plaintiff, who had a direct stake in the award of contract for the construction proposed in one of its properties. Involvement of personal element in the litigation is

very open and glaring. Further, when a similar/identical suit is pending before this Court, the second suit/litigation raising the same issue, amounted to multiplicity of proceedings, amounted to harassment, and therefore, on this ground also, the application is liable to be rejected.

18. The learned Senior Counsel further stated that all the financial activities are accounted for and as regards the implementation of the MoU, dated 14.11.2015 the Association is taking efforts to realise the amounts with further negotiations with the 13th respondent.

19. After concluding the arguments on facts, the learned Senior Counsel relied on a decision of the Honourable Supreme Court reported in 2008 (4) SCC 115 (Vidyodaya Trust Vs. Mohan Prasad.R) and particularly, he referred to paragraphs 18, 19 and 26, which are extracted hereunder:

> "**18.** Prior to legislative change made by the Code of Civil Procedure (Amendment) Act (104 of 1976) the expression used was "consent in writing of the Advocate General". This expression has been substituted by the words "leave of the Court". Sub-section (3) has also been inserted by the Amendment Act. The object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of pubic trusts. Thus, there is need for

scrutiny.

19. 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 Paramatmanand case* [*R.M. Narayana Chettiar* v. *N. Lakshmanan Chettiar*, (1991) 1 SCC 48] 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.

26. 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."

In the above decision, the Honourable Supreme Court has observed that if the persons in Management of the Trust are subjected to multiplicity of proceedings, the funds which are to be used for charitable or religious purpose, would be wasted on litigation It was also observed that repeated harassment might dissuade respectable and honest people from becoming Trustees of public Trusts and thus, there is need for scrutiny. The Honourable Supreme Court further observed that the Courts have to be careful to eliminate the possibility of a suit being laid against public Trusts under Section 92 CPC by persons whose activities were not for protection of the interest of the public Trusts.

20. The learned Senior Counsel also relied on a decision of the Supreme Court reported in 1974 (2) SCC 695 (S.P.Saraswati Vs. Ramji Tripathi), in which, he referred to paragraph 10, which is extracted hereunder:

> "10. A suit under Section 92 is a suit of a special nature which presupposes the existence of a public Trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 (see *N.Shanmukham Chetty* v. *V.M.Govinda Chetty* [AIR 1938 Mad 92 : 176 IC 26 : 1937 MWN 849] , *Tirumalai Devasthanams* v. *Udiavar Krishnayya Shanbhaga* [AIR 1943 Mad 466 : (1943) 56 LW 260] , *Sugra Bibi* v. *Hazi Kummu Mia* [AIR 1969 SC 884 : (1969) 3 SCR 83 : (1969) 2 SCJ 365] and *Mulla: Civil Procedure Code* (13th edn.) Vol. 1, p. 400). A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section 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, and in deciding whether a suit falls within Section 92 the court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the *purpose* for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92."

In the above case, the Honourable Supreme Court held that if the Court finds that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or persons rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 CPC.

21. The learned Senior Counsel therefore submitted that looking at from various perspectives, the present application seeking leave is not maintainable.

22. Mr.AR.L.Sundaresn, learned Senior Counsel appearing for the fifth respondent, at the outset, referred to paragraph 14 of the counter affidavit filed on behalf of the fifth respondent, which is extracted hereunder:

> "14. It is relevant to place on record that the same Counsel had earlier filed a Suit and did not proceed with the same since one of the plaintiff therein had given letter dated 4th June 2020 not to proceed and in that letter he wanted to have clarification about filing of documents, in the plaint. The suit is ill-motivated and vindictive can be assessed from the following:-
>
> a. the Judge's summons states that "affidavit of S.D.Joseph, the 1st Applicant will be used in support thereof." In this suit S.D.Joseph is not a party.
>
> b. the suit is dated 30th March 2021 but the plaint document 17 is dated 14th January 02020. This document is photographs filed in the earlier suit and in the first suit filed by the same Advocate in C.S.D.No.19986/2020, the said document was exhibited as Plaint Document No.11.
>
> c. all the plaint documents filed in the earlier suit in C.S.D.No.19986 of 2020 are filed in this plaint also except membership documents of the plaintiffs therein and the audited accounts for the year 2018-19."

23. According to the learned Senior Counsel, the very same counsel who is representing the plaintiffs herein, had filed the said suit earlier with identical prayers. According to the learned Senior Counsel, the above fact could unequivocally demonstrate that the suit is ill-motivated. The plaint document No.17 filed herein dated 14.01.2020 are photographs filed in the earlier suit by the very same Advocate in C.S.Diary No.19974 of 2020 and the said document was filed as plaint document No.11 in that suit.

24. The learned Senior Counsel referred to a decision of a Divison Bench of this Court reported in 2004 (1) CTC 321 (L.M.Menezes and others Vs. Ret.Rev.Dr.Lawrence Pius and others), in which, particularly he relied on paragraph 30, which is extracted hereunder:

> "**30.** Leave must precede the institution of suit. Prior to granting leave, there can be no suit. Leave is essentially a matter of discretion. When trustees are able to satisfy the Court that there is no evidence to support the allegations or that evidence is not sufficient or the intention of the parties are not *bona fide* or that action is being initiated for selfish personal ends and not with the object of any public good, it is open to the Court to revoke the leave. The Court has to take an objective decision on consideration of facts of each case. The Court should go into the questions of *bona fide* of plaintiffs and their capacity to represent the public and also see whether they are really interested in the Trust and are not those whose motives are impure. After appearance, the defendants may ask for revocation of leave and where the plaintiffs have failed to prove that they have any interest in the Trust, *ex parte* leave is liable to be revoked. The learned single Judge taking into consideration of the facts and circumstance of the case found that though the respondents are respectable persons in the locality, they are not persons interested in the trust as contemplated under Section 92, CPC and revoked the leave."

According to the learned Senior Counsel, in the above decision, it has been held that the intention of the parties is to be seen as to whether the litigation is intended to benefit the public or to serve selfish ends, sans the object of public good. The learned Senior Counsel therefore submitted that the present suit is apparently motivated and therefore liable to be rejected.

25. Mr.L.Chandrakumar, learned counsel appearing for respondent No.11 adopted the arguments of Mr.V.Ayyadurai, learned Senior Counsel appearing for the respondents 1, 3 and 4 and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the fifth respondent.

26. Mr.V.Anand and Mr.S.Babu, learned counsel appearing for the respondents 6 and 12 also adopted the arguments of the above mentioned Senior Counsels appearing for the respective respondents.

27. This Court considered the submissions of the learned Senior Counsel/learned counsel appearing for the respective parties, perused the materials, pleadings and the case laws referred to supra.

28. The consideration for grant of leave under Section 92 CPC falls on a narrow compass with reference to the scope of the said Section itself. The Courts have also consistently and repeatedly held that the suit under Section 92 CPC is of a special nature which pre-supposes the existence of public trust of religious and charitable character. Further, the allegation of breach of trust needs to be substantiated to the satisfaction of the Court and more importantly, the plaintiffs suing the defendant must demonstrate that

they are vindicating public interest without any personal interest in the litigation. From these perspectives in place, this Court has to examine the facts of the case as presented before this Court by the learned counsels appearing for the parties.

29. On behalf of the first respondent-Association, Mr.V.Ayyadurai, learned Senior Counsel has, at the commencement of his arguments, submitted that the suit is not maintainable, as permission under Order 1 Rule 8 CPC has not been obtained to sue in a representative capacity. As a corollary to his submission, he also pointed out that in the earlier un-numbered suit which has been referred to in the earlier part of this order, such application has been filed and when that suit is pending with almost with identical prayer, the present suit is an abuse of process of the Court. According to the learned Senior Counsel, it amounted to multiplicity of proceedings and also amounted to harassing the charitable organisation and preventing the same from carrying on the multi-various activities relating to its objects.

30. On the above aspect of the submissions, this Court finds that the prayer in that un-numbered suit referred to in C.S.D.No.19974 of 2020 is also for framing of scheme for administration of the first respondent-

Association. In the plaint, it is averred that an application would be taken out under Section 92 CPC seeking leave to file the suit. For some reason as stated by the learned Senior Counsel Mr.AR.L.Sundaresan, the suit has not yet been numbered. However, the fact of the matter is that similar suit is pending before the Court, filed on the premise of almost with the very same allegations of mal-administration and mis-management of the affairs of the first respondent-Association. In such circumstances, whether the present suit is maintainable or not, is to be discussed herein.

31. Mr.V.Ayyadurai, learned Senior Counsel has also drawn the attention of this Court to the very crucial document, dated 10.11.2020, wherein the first respondent-Association had taken a decision not to process the tender application of one of the named contractors therein, namely M/s.Amazee Infra Structures, which is a proprietary concern owned by the wife of the second plaintiff herein. This fact has not been disputed at all on behalf of the plaintiffs herein. As rightly contended by the learned Senior Counsel Mr.V.Ayyadurai, as far as the second plaintiff is concerned, there appears to be personal element involved without any pale of doubt. In such event, whether by being one of the plaintiffs in the suit, can he advance the professed public interest as stated in the plaint, merely because he joined hands with two more persons ?

32. Further, this Court also finds that the second plaintiff being a member of the Board, has been a part of all the decision making processes in initiating various measures towards several projects and has also been signatory to the same. When the second plaintiff himself being a party to the decisions taken in regard to all the so-called irregular transactions and challenging the very same transactions in the suit, this Court can certainly come to a palpable inference that the litigation lacks in bona-fides. Moreover, when the second plaintiff is arrayed as the 11th defendant in the above mentioned un-numbered suit, it is always open to him to agitate his right in that suit itself advancing public cause for proper management of the first respondent-Association. Filing of the present suit substantially on the very same allegations by the plaintiffs herein, in the face of the pending suit, in the opinion of this Court, amounted to gross abuse of process of Court.

33. In the plaint, there are several allegations of irregularities mentioned. Of all the irregularities, the implementation of the MoU, dated 14.11.2015 appears to be the centre of controversy. According to the plaintiffs, the same had not been implemented properly and thus, the action amounted to flouting of the undertaking given before the Honourable Supreme Court in the afore-mentioned appeals. However, what is to be seen

is that in the earlier un-numbered suit that is pending before this Court in

C.S.D.No.19974 of 2020, the same issue has been extensively highlighted in regard to the Kottivakkam property owned by the first respondent-Association. Moreover, in regard to the objections as to the additional MoU entered into between the parties in 2019, ,it could be seen that the first respondent has approached this Court in C.S.No.107 of 2019, and a learned Judge of this Court decreed the suit on 13.02.2019 granting permission to the plaintiff therein, the first respondent herein to enter into the MoU with the defendant therein, who is the 13th defendant herein for jointly developing item No.1 of the suit schedule property therein, measuring 13.5 acres and permitting the plaintiff to lease out 2.5 acres of land described as item No.2 therein, in terms of the MoU therein.

34. Apart from the above transaction, when irregularities were pointed out regarding the leasing out of the Royapettah property, the plaintiffs themselves have averred in the plaint that the first respondent-Association obtained permission from this Court on 01.08.1995 for developing 29.5 grounds in the Royapettah property in O.P.No.503 of 1993. Thereafter, there was change of circumstances. Further orders were obtained from this Court by the first respondent-Association in the same O.P. on 03.09.2020. These statements made in the plaint thus would prove that the

grievances regarding the so-called irregularities in respect of the above transaction, may not stand the test of proper judicial scrutiny, as the Association has obtained permission from this Court while dealing with its properties.

35. In regard to the financial functional mis-deeds mentioned in the affidavit filed in support of the application, like front desk collection of over Rs.9 lakhs, not being accounted for, etc., was also part of the complaints in the un-numbered suit filed earlier before this Court mentioned above, which is pending. In fact, the averments contained in the plaint are verbatim copied from the averments contained in the plaint in the un-numbered pending suit. The plaintiffs herein simply replicated it.

36. Further, there were also general complaints against the functioning of Vice President of the Association contravening the Articles of Association and employment of a person as Correspondent and Secretary of the YMCA, etc. and the complaints against employment of Correspondent, Administrator of persons, and their inclusion in the Board of Directors etc., are all not to be considered as relevant for the purpose of grant of leave under Section 92 CPC. These are all matters which could be agitated separately without invoking important provision, namely Section

92 CPC. The invocation of Section 92 CPC cannot be appreciated for all

sundry reasons. If this Court were to grant permission to any person who come up with such allegations, no public trust would be able to effectively function and discharge its duties freely.

37. Mr.V.Ayyadurai, learned Senior Counsel appearing for the first respondent-Association also raised a very pertinent legal issue as to the maintainability of this application on the ground that permission under Order 1 Rule 8 CPC has not been sought, as the first respondent-Association is an unregistered body. In the earlier un-numbered suit in C.S.D.No.19974 of 2020, in A.No.1180 of 2020 therein, leave has been sought under Order 1 Rule 8 CPC and the same had been granted by this Court, vide order dated 18.03.2020 in the said application. The un-numbered suit is pending. In that suit, the plaintiffs therein had averred in the plaint that they would be taking out an application seeking permission under Section 92 CPC. Applying the same analogy herein, the objection of the learned Senior Counsel Mr.V.Ayyadurai appear to be having considerable force. In the absence of leaving being sought under Order 1 Rule 8 CPC, the maintainability of the present application itself is in serious doubt.

38. Moreover, the Courts have also held that this being a suit of special nature, casual interest of connection with the Trust activity, is not enough for this Court to appreciate whether the activities of the Trust can be brought under scrutiny of this Court by granting permission under Section 92 CPC or not. In this case, apart from the second plaintiff, the other two plaintiffs have not demonstrated as to how they are having genuine interest in advancing the cause of public interest. This Court is unable to countenance the case of the plaintiffs on two legal aspects. One, this Court does not find that the plaintiffs have any self-less interest in advancing public interest in seeking permission of this Court under Section 92 CPC. On the other hand, this Court also does not see any substance or merits on a prima-facie consideration in the allegations put-forth on behalf of the plaintiffs against the functioning of the first respondent-Association. In any event, this Court, when once finds that there is personal interest in the present litigation by the plaintiffs, there ends the matter, as this Court would certainly not grant permission under Section 92 CPC. As stated earlier, notice is given to the parties under Section 92 CPC, though not a legal imperative, such notice is intended to serve the larger purpose of protecting the charitable Trust from being subjected to needless and repeated litigations at the instance of certain vested interests masquerading as

advancing public interest. In any event, when the earlier un-numbered suit is pending before this Court, nothing is lost for the plaintiffs to pursue their so-called grievance in that un-numbered suit.

39. In fact, in the decision of the Division Bench reported in 2019 SCC Online Madras 2294 (cited supra), relied on by the learned counsel for the plaintiffs, a clear observation is made to highlight the object of Section 92 CPC, which is to give protection to public Trust from being subjected to harassment by repeatedly filing suits against the Trust.

40. In another decision relied on by the learned counsel for the plaintiffs, reported in 2012 (3) LW 905 (The Senguthar Charitable Trust and others Vs. R.Manickam and others), a learned Judge of this Court has again drawn reference to a Division Bench decision of this Court reported in 1996 (2) LW 364 (Kannan Adityan and 4 others VS. Adityan and 6 others), holding that the main purpose of the provisions under Section 92 CPC is to give protection to public Trust of charitable or religious nature from being subjected to harassment.

41. So also with reference to another decision relied on by the learned counsel for the applicants/plaintiffs reported in 1991 (1) SCC 48 (cited supra), wherein the Honourable Supreme Court has held that leave under

Section 92 CPC is a condition precedent and the defendants could bring it to the notice of the Court that allegations made in the plaint are frivolous and reckless. They would also point out that the persons applying for leave are doing so with a view to harass the Trust.

42. Therefore, the legal necessity to order notice though not mandatory under Section 92 CPC, is only to protect the interest of the Trust from being subjected to needless harassment and also to ward off any attempts by persons who have no public interest whatsoever in mind, but, on the other hand, having axe to grind against the Management and seeking permission behind the garb of vindicating public interest.

43. As regards the allegations of various irregularities are concerned, though elaborate arguments have been advanced on behalf of the applicants/plaintiffs by Mr.Rajan, learned counsel, yet, this Court is unable to countenance the arguments for the reason that on behalf of the Association, it has been well demonstrated that the so-called financial irregularities or misappropriation, prima-facie appear to be not well-founded. It appears that the first respondent-Association has initiated action against the 13th respondent/13th defendant and also it is to be seen that the accounts have been properly audited and made known to everyone. In any

case, this Court is not inclined to get into the nitty-gritty of the allegations in regard to every activity of the first respondent-Association. At this stage, if this Court were to go into such investigation, it would amount to conducting pre-trial in the suit.

44. In any event, this Court finds on the whole that there are plausible answers from the side of the first respondent-Association to the allegations and this Court however is not inclined to give any conclusive findings on such matters, in view of the pending un-numbered suit before this Courts. At the same time, this Court finds lack of bona-fides in the litigation in the first place. Although it was argued that there are other two plaintiffs apart from the second plaintiff, this Court is unable to be persuaded by such specious plea. When it is demonstrated that the second plaintiff has personal interest in the matter and also he being a signatory to all the decisions taken on the subject matters, merely there are two other applicants/plaintiffs joining hands with the second plaintiff, it does not erase the personal interest lurking beneath the public cause projected in the suit.

45. Moreover, several arguments have been made touching upon not complying with certain commitments towards the MoU, dated 14.11.2015,

by the third party. So also, buying properties and investing amounts received from leasehold rights conferred on the third party. These are all part of the day-to-day administration of the internal management, which cannot be the basis for grant of leave under Section 92 CPC. In response to every allegations against every activity of the charitable organisation, if the Courts were to grant leave under Section 92 CPC, no charitable Trust would ever be able to discharge its activities in furtherance of its avowed objects.

46. The paramount consideration of this Court in such matters is to protect the Trust from being dragged to a litigation unnecessarily at the instance of some persons who claim to represent public interest, but in effect, they are seeking to serve their own malicious interests. Such attempts need to be identified and discarded in order to protect the functioning of the charitable Trust in peace.

47. In the framework of consideration with reference to the settled legal principles on the subject matter, and also the nature of allegations made in the plaint, this Court cannot have any hesitation to come to a conclusion that this leave application is not intended to vindicate any public interest, but intend to furtively advance personal interests, particularly, of the second plaintiff. Even otherwise, when the other suit (un-numbered) is pending, the plaintiffs herein can always join hands and prosecute the said

un-numbered suit. In such circumstances, this Court does not find any acceptable legal reason for laying the second suit by the members of the first respondent-Association.

48. In the said circumstances, this Court does not find any merit in the application seeking leave under Section 92 CPC.

49. Accordingly, the leave application stands dismissed. No costs.

50. The Registry is directed to return the plaint and records to the learned counsel for the plaintiffs, after replacing the same with a xerox copy for record purpose.

Sd./- V.P.N.J
08.10.2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)