

CM-7708-CII-2021 in
CR-1350-2021
Date of decision: 09.09.2021

Rishi Modi and others

.....Petitioners

versus

Rai Bahadur Multanimal Modi
Charitable Trust and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Jimmy Singla, Advocate
for the applicant/petitioners.

Mr. M.L. Sarin, Senior Advocate with
Mr. Vijay Sharma, Advocate
for respondent No.1.

None for respondents No.2, 4 to 6, 13 &14.

FATEH DEEP SINGH, J. (ORAL)

Due to outbreak of pandemic COVID-19, the instant case
is being taken up for hearing through video conferencing.

Service of respondents No.3, 7 to 12, being *proforma*
respondents, is hereby dispensed with.

Necessary note be given on the records to this effect.

CM-7708-CII-2021

For the reasons mentioned in the application, the prayer
for preponement of the hearing of the main revision petition is

allowed and the main case is taken up on board today itself.

CM stands disposed off.

CR-1350-2021

The then plaintiffs, now present applicant/petitioners (in all numbering 03) had earlier instituted a civil suit under Section 92 of the CPC for removing the present trustees from the trusteeship and settling a scheme for the administration of the trust i.e. defendant No.1-Rai Bahadur Multanimal Modi Charitable Trust.

Upon initiation of the suit, when, as has been stated before this Court, the Court had issued notice of the suit, the present petitioners have come up challenging the conduct of the Trial Court in not passing any order of stay on their application filed along with the suit. Being a suit of the nature and scope under Section 92 of CPC, any action under assail, in such a suit, though, could be subject matter of challenge, which is fundamentally at the behest of persons interested in the Trust but a simplicitor issuing of notice of motion does not *ipso facto* bear out that an adverse order has been passed against the present petitioners. Being a suit in the nature of representative capacity, it was incumbent upon the learned Trial Court to have apprised itself of the nature of the suit and, therefore, keeping in view the very sensitivity nature of the matter involved, should not have taken a casual approach as has been done by the Trial Court before issuing notice to the defendants, the Court should have been cautious enough to have pondered over the matter and

passed a preliminary order, why it feels necessary to entertain the suit as a representative suit and to issue notice upon the suit and, therefore, mandates that a formal order granting leave to file it needs to be passed before issuing notice to the respondents. As has been pointed out and is fairly conceded by the two sides, there is no such order having been passed by the Court below necessitates that before issuing of notice, there ought to be an application of mind by the Court, so as to *prima facie* ensure that the suit is in conformity with the mandate of Section 92 CPC. Furthermore, the suit ought to have been instituted before the Principal Civil Court of original jurisdiction.

There is nothing illustrative, at this juncture, whether the parameters prescribed under Section 92 of CPC, have been followed or not and it is not that a notice could be issued merely at the whims and fancies of a person who is invoking the jurisdiction of this Court.

In light of the same, without feeling necessity to advert further into the controversy between the parties, it will meet the ends of justice, if directions are issued to the learned Court, where the suit comes up to pass preliminary order thereon and, thereafter, proceed ahead into the matter as per law.

The present revision petition stands disposed off accordingly.

In the meanwhile, any act during the pendency of these proceedings before the learned Court, as to alienation made, would be subject to principle of *lis pendens*.

Parties through their respective counsels are directed to appear before the learned Trial Court on 27.09.2021.

09.09.2021

Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No