IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.07.2025	Pronounced on 20.08.2025

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

OSA Nos.115 & 123 of 2022
and
CMP No.25277 of 2024

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.

Appellants in both Appeals

Vs

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

2.The Board of Directors
YMCA : Madras,
Rep. by its President,
No.223, N.S.C.Bose Road,
Chennai 600 001.

3.The Board of Trustees
YMCA: Madras
Rep. by its 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

Also at 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

Also at 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 its 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 its Managing Director
1/357, Shri Karthikeyan Laxmi Nagar,
Thuvariman Madurai
Madurai 625 016.

15.M/s.Madras Estates and Company
Rep. by its Managing Director
No.24 and 25 West Cott road,
Royapettah, Chennai 14.

Respondent(s) in both Appeals

OSA No. 115 of 2022

PRAYER

Appeal filed under Order XXXVI Rule 1 of OS Rules and clause 15 of the Letters patent to set aside the order, dated 08.10.2021 passed in Application No.1844 of 2021 in C.S.Diary No.36935 of 2021 by allowing this appeal and consequentially allow the said application as prayed for by the Appellants.

OSA No. 123 of 2022

PRAYER

Appeal filed under Order XXXVI Rule 1 of OS Rules and clause 15 of the Letters patent to set aside the order, dated 03.08.2021, passed by the Learned Judge, in Application No.1844 of 2021 in C.S.Diary No.36935 of 2021 by allowing this appeal.

CMP No. 25277 of 2024

PRAYER

To implead the petitioner/3rd Party to the 1st respondent Association pending before this Court as proposed 16th respondent in the above OSA.No.115 of 2022.

For Appellant(s):	Mr.V.Vargees Amal Raja (in both appeals)
For Respondent(s):	M/s.A.K.Sriram, (for R1, R3 & R4) Senior counsel for Mr.S.Dharmakkan
	Mr.V.Thangavelu (for R5)
	Mr.T.Eveden Raisa (for R6, R10 & R12)
	Mr.R.Narain Kalicharan (for R7 & R11) for Mr.R.Mohammed Ashish
	Mr.B.Sivakumar (for R8 & R9)
	R2 & R13 (No appearance)
	R14 & R15 (Not ready in notice) (in both appeals)
For Petitioner(s):	Mr.A.R.Nixon (in CMP.No.25277 of 2024)

COMMON JUDGMENT

N.SENTHILKUMAR, J.

The appellants are the plaintiffs and the respondents are the defendants in the Suit. In both the appeals, the appellants and respondents are one and the same.

2.O.S.A.No.115 of 2022 is filed by the appellants against the order dated 08.10.2021 passed by the Learned Judge, in Application No.1844 of 2021 in C.S.Diary No.36935 of 2021. O.S.A.No.123 of 2022 is filed by the appellants against the order dated 03.08.2021 passed by the Learned Judge, in Application No.1844 of 2021 in C.S.Diary No.36935 of 2021.

3.An affidavit in application No.1844 of 2021 in C.S.Diary No.36935 of 2021 was filed with the following prayers:

> *(a).Permit the appellants/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.*
>
> *(b).Grant leave to the Applicants/Plaintiffs to file the suit under Section 92 of Civil Procedure Code.*

Judge's summons in Application No.1844 of 2021 was filed with the following prayer:

> *"2.Why this Hon'ble Court should not permit the Applicants/Plaintiffs to sue on behalf of and for the benefit of all persons interested in the suit as provided under Order I Rule 8 clause 1(a) of the Civil Procedure Code?"*

4.The appellants filed the Suit under Section 92 CPC, read with Order IV Rule 1 of the Original Side Rules in C.S.Diary No.36935 of 2021 along with the Application No.1844/2021 seeking leave of the Court. The Suit was filed against the respondents/defendants, alleging that substantial funds received by the first defendant, viz., Young Men Christian Association (YMCA) (hereinafter referred to as "YMCA"), a registered society, were diverted and misused by the office bearers/respondents. The appellants raised several allegations of malpractice and misappropriation, allegation of swindling the trust fund, mismanagement, maladministration, financial and functional misdeeds.

5.The following submissions were made by the appellants:

5.1.The first respondent-Association decided to develop one of its properties ad-measuring 19.5 acres of land in Kottivakkam which is the 'A' schedule property in the plaint. Out of the total extent of 19.5 acres, 10 acres are earmarked for development. The 1st respondent entered into an agreement with the 13th respondent/13th defendant for the purpose of development. A

Memorandum of Understanding (MoU) was signed on 30.04.2009. Subsequently, the revised MoU, dated 14.11.2015 was filed before the Hon'ble Supreme Court, with the following terms:

> *"2.Project Development*
> *2.1.That in pursuance of the foregoing and subject to the obligations undertaken by each party hereto and in consideration of the benefits accruing to each party as provided herein, the Developer has agreed to develop the Schedule Property on a 50:50 share basis on the terms and conditions contained herein below and/or such terms and conditions as may be agreed from time to time.*
> *2.2.The parties shall from and out of the total extent of ten (10) acres of the Schedule of Property described in the Annexure B, earmark an extent of Five (5) acres as the Land Owners Share of Schedule Property which is more fully described in the Annexure "C" set out below (herein after 'LSP') and the Developer's portion of the Schedule Property is more fully described in the Annexure "D" set out below (herein after 'DSP') and the same shall be compounded by the Developer.*
> *2.3.The Developer at their own cost, risk and from their own fund shall develop, construct, carry on and execute the Developer's project over the DSP Land.*
> *2.4.With respect to the developing of the 'LSP', the Developer shall pay Rs.130,00,00,000/- (Rupees one hundred and thirty crores only) to the Land Owner in the phased manner as detailed in Clause 3.3 of this MoU. The Land Owner shall engage their own architects for preparation of the plans and the Developer shall render assistance (without further financial obligation), to obtain the sanctioned plan from the statutory authorities.*

2.5.In lieu of and in consideration of the above development being carried out by the Developer as mentioned in clause 2.4 above, the Land Owner shall grant an irrevocable long terms lease of the DSP with all rights to develop and construct thereon for a period of 99 years to the Developer, upon payment of Rs.130 crores and fulfilling clause 3.2 hereunder.

2.6.The annual lease rent to be paid to Land Owner shall be Rs.5,00,000/- (Rupees Five lakhs only). Escalation of lease rent at the rate of ten percent (@10%) shall be on the prevailing rent and applicable after the expiry of each ten (10) year term period. The Developer shall pay all other statutory charges that are applicable on the Annual Lease Rent.

2.7.The Land Owner acknowledge that the Developer has already paid to the Land Owner a total amount of Rs.2,00,00,000/- (Rupees two crores only). Of the said amount, Rs.101,00,000/- (Rupees one crore one lakh only) would be retained as interest free security deposit, which shall be repaid at the end of the tenure of lease of 99 years, subject to handover vacant possession of the then existing buildings and from the remaining Rs.99,00,000/- (Rupees ninety nine lakhs only), the Developer shall adjust Rs.1,00,000/- (Rupees one lakh only) for and towards the lease rental to be paid every year, for 99 years.

2.8.The Developer shall retain the right to determine the most feasible construction to undertake the development and construction of the buildings and superstructures over the DSP (the "Developer Project") which can be carried out either directly or through a subsidiary, nominee and of the Developer. The Developer is also hereby authorised and permitted to undertake all decisions relating to planning, selection and procurement of contractors, labour, materials and adopt any development or construction methods, conceive design and facade *of the building, its layout and aesthetics etc., with respect to the DSP and the Developer Project without any interference from the Land Owner and the Developer shall be exclusively responsible for any seen/unforeseen incidents in the DSP in connection with the construction activities or any other activities."*

5.2.As per the revised MoU, the developer/13th respondent shall pay Rs.130 crores towards construction of commercial buildings. Only Rs.76.54 crores was paid by the developer and the funds received from the developer had been siphoned-off into purchasing some properties in Chennai by the office bearers/respondents 4 to 12.

5.3.With respect to 'B' schedule property at Kodambakkam admeasuring 10 grounds 63 sq. ft., respondents 4 to 12 are awarding repair and maintenance contracts only to their friends, relatives and family members. Likewise, in respect of another property owned by the first respondent-Association, in Royapettah ad-measuring 90 grounds mentioned as "C" schedule property, permission was obtained for developing 29.5 grounds from this Court in O.P.No.503 of 1993. By misusing the order of permission from this Court, the first respondent-Association is attempting to enter into a fresh contract with the fifteenth respondent-Company for which the Court permission was not obtained.

5.4.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, owned by the first respondent-Association, etc., are available.

5.5.The Investigation Committee has recommended certain measures to be taken for looking into the irregularities and resolutions. However, no steps were taken ultimately. In the said circumstances, the present suit has been filed for framing a scheme towards completion of projects, submission of accounts, removal of Membership in the Board of Directors and Board of Trustees. The appellants further contended that there were improprieties in management, nepotism and jobbery. On these grounds, the appellants sought the following reliefs in C.S.Diary No.36935 of 2021:

> *"a.Settling a scheme, comprising a Court appointed administrator with power to control, check, supervise, monitor, audit, execute and complete the proper development of (i) The Owner's Land or LSP and construction of the proposed Convention Centre, Guest Rooms and Commercial Centre by receiving the payment from 13th defendant M/s. Crystal Creations (P) Ltd., as per the Supreme Court approved MoU dated 14.11.2015, pertaining to the part in "A" Schedule property, (ii) all*

pending and new projects for repairing, developing, promoting, constructing and leasing out any or full part of "B" Schedule property; (iii) all pending and new projects for repairing, developing, promoting, constructing and leasing out any or full part of "C" Schedule property;

b. Directing the defendants 4 to 12, to submit the account for the entire amount received till date from 13th defendant, M/s. Crystal Creations (P) Ltd., for the implementation of the Supreme Court approved MoU dated 14.11.2015 and the utilisation of the same;

c. Directing the 13th defendant, M/s. Crystal creations Private Limited to submit the accounts of payments made to 1st defendant YMCA through defendants 4 to 12 for the Supreme Court approved 10 Acre project and the Madras High Court approved 2.5 acre land in "A" schedule property;

d. Directing the removal of Membership in the Board of Directors and the Board of Trustees, of those defendants who have conspired, taken part and colluded in misusing; diverting and misappropriating the funds received from 13th defendant M/s. Crystal Creations Pvt. Ltd., without using the same for the stipulated purpose of construction mentioned in the Supreme Court approved MoU, dated 14.11.2015;

e. Of mandatory injunction directing defendants 4 to 12 to restore to the first defendant, YMCA: Madras, the sum of Rs.63 crores which is misappropriated by them from the payments received from the 13th defendant M/s. Crystal Creations Pvt. Ltd., on account of the Supreme Court approved revised MoU;

f. Awarding Costs;

g. For such other relief or reliefs that this Hon'ble Court may be pleased to grant under the facts and circumstances of the case that *this Hon'ble Court may deem fit and proper in the case and thus render justice."*

As the first respondent is a public charitable association, leave has been sought under section 92 of CPC. As per paragraph 12 of the plaint in the present suit, one Mr.S.D.Joseph, had instructed the counsels to file a scheme suit which was filed as C.S.Diary No.19974 of 2020 on 14.02.2020. For the reasons best known to him, the said Mr.S.D.Joseph did not pursue the earlier suit, and as a result, the appellants have approached this Court by way of the present suit.

6.Per contra, the first respondent made the following submissions with regard to the main grounds raised by the appellants herein:

6.1.C.S.Diary No.19974 of 2020 is still pending as of date. In this context, the appellants have no *locus standi* to maintain the present suit and the application under Sec. 92, as their remedy, if any, lies elsewhere. It was specifically averred that one Mr.S.D.Joseph had already filed a suit in C.S.Diary No.19974 of 2020 with an application under Order I Rule 8 CPC on the very same grounds, wherein, the 2nd appellant herein was also added as a party. The earlier Suit was filed for the reliefs sought in the present Suit in C.S. Diary No. 36935 of 2021.

6.2.The present suit has been initiated at the instance of the second appellant, who was allegedly aggrieved by the non-award of a construction contract in favour of his wife in respect of the 'B' schedule property at Royapettah. In fact, her tender was rejected due to failure to enclose a demand draft towards the Earnest Money Deposit (EMD). Following the rejection and further attempts by the second appellant in this regard, he is said to have instigated the other plaintiffs and filed the present suit. All the aforesaid facts, *prima facie*, establish that the present suit and the accompanying application are contrary to the laudable object of Section 92 of CPC, obligating to obtain leave to protect the trustees of a charitable and religious institution from being subjected to harassment.

7.Subsequent to the filing of counter affidavits, by the Respondents, the 2nd appellant herein had filed an affidavit dated 02.08.2021 in the above application which reads as follows:

> *"(i)My wife owns a construction firm by name "M/s.Amazee infrastructure". I take care of the field works, on behalf of this firm. I purchased the tender form and submitted it, quoting reasonable estimate. The said Mr.Asir Pandian and Mr.Vincent George demanded Rs.One Crore for themselves in the tender transaction. Finding it impossible I told them that my wife's firm is not interested. So, it stayed away. Five others participated."*
>
> *"(iii). But Mr.Asir Pandian and Mr.Vincent George selected*

M/s.Stephen Constructions who quoted Rs.6.77 cores and awarded the contract to that firm and many manipulations were done subsequently to make the deal look proper, as stated hereunder."

"5.After this scheme suit filed, Mr.Asir Pandian and Mr.Vincent George personally approached me and urged me to withdraw, the suit.

*(a)In the middle of April, both of them called me to YMCA Veppery office and offered "*என்ன வேணும்னாலும் செய்து கொடுக்கிறோம் சூட்டை வாபஸ் வாங்குங்க*" (We will do anything for you. Please withdraw the suit) ...*

(c)They once again requested me to withdraw the suit. They offered me a contract of Rs.20 crores, in the Kottivakkam project (which is the main subject matter in this suit)"

8.The learned single Judge after considering the averments in the draft plaint, the averments in the aforesaid affidavit of the 2nd appellant and the counter affidavits filed by the respondents/defendants had passed the following order on 03.08.2021:

"Without seeking any permission from this Court, the second applicant/second plaintiff appears to have furtively filed the supporting affidavit dated 02.08.2021, along with certain documents in the plaint/suit typed set of papers. Unfortunately, the Registry, without raising any protest, had accepted this affidavit and the typed set of papers and put up the same with the Court bundle. The learned counsel Mr.N.Rajan, appearing for the

applicants/plaintiffs, seeks to rely on several averments in the said affidavit, dated 02.08.2021 in order to establish the case of grant of leave under Section 92 of the CPC, in addition to the averments as contained in the plaint.

2. This Court finds that such practice of filing stealthily the affidavit of the above nature, after coming to know of the various arguments being advanced in the Court in the previous hearings, is only to fill up certain gap/defects pointed out in the case of the plaintiff during the course of oral submissions by the learned Advocate. The said affidavit has been filed coming up with more and more details of the so-called mis-management by the first respondent-Association, almost after the entire arguments have been advanced by the learned counsel in the previous hearings. No specific permission has been sought or granted. Therefore, the said affidavit, dated 02.08.2021 is hereby rejected by this Court. While rejecting the affidavit, this Court deprecates such practice of filing affidavit without specific oral permission in the context of filling up the holes in their original case (plaint) that emerged during the course of previous hearing(s). "

It is relevant to point out that, though the appellant had sought for two prayers (under Order I Rule 8 and Section 92 of CPC) as per the affidavit filed in Application No.1844 of 2021, the Judges' summons filed in the above application which is placed before us reflects only one prayer sought under Order I Rule 8 clause 1(a) of CPC. However, on 08.10.2021, the learned single Judge passed an order dismissing the Application No.1844 of 2021 filed by the appellants, wherein para 37 of the order reads as follows:

"...
In the absence of leaving being sought under Order I Rule 8 CPC, the maintainability of the present application itself is in serious doubt."

The operative portion of the order is extracted hereunder:

> "*... 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.* "

9.Aggrieved by the said orders, the present OSAs have been filed.

10.The primary contention of the learned counsel appearing for the appellants is that there are instances of malpractice, maladministration and misappropriation of funds by the respondents 4 to 12. Although several allegations have been raised against the respondents, particular emphasis has been placed on the property situated at Kottivakkam, which is detailed in

Schedule A as follows:

"All that piece and parcel of land bearing Door No.4/341, Rajiv Gandhi Salai, Chennai 600041, situated in S.No.316 and 317/24 of Kottivakkam Village; Sholinganallur Taluk; earlier Kanchipuram District, now Chengalpattu District admeasuring now 19.5 acres, bounded on the

North by : MGR Main Road,
South by : Land in S.No.317/25
East by : Rajiv Gandhi Salai (OMR)
West by : Land in S.No.315

Within the Registration District of Chennai South and Registration Sub-District of Adyar."

11.The learned counsel appearing for the appellants further contended that towards development of the property at Kottivakkam, a sum of Rs. 130 crores was payable by the 13th Respondent as per the revised Memorandum of Understanding (MoU) dated 14.11.2015, executed between the first respondent/first defendant association and the 13th respondent. This MoU was subsequently approved by the Hon'ble Supreme Court by observing that the parties are bound by its terms. The payment schedule for a sum of Rs.130 crores as per clause 3.2 of the MoU is as under:

Date of payment	***Amount (Rs.)***
Within 60 days from the date of obtaining orders in the C.A.s Nos.1798 to 1800 of 2013, at the time of	40,00,00,000/- (Forty crores)

Date of payment	Amount (Rs.)
registration of lease deed for 99 years	
Before the end of the 12th month from the date of registration of lease deed	10,00,00,000/- (Ten crores)
Before the end of 17th month from the date of registration of lease deed	40,00,00,000/- (Forty crores)
Before the end of 29th month from the date of registration of lease deed	40,00,00,000/- (Forty crores)
Total	130,00,00,000/- (One hundred and thirty crores)

Pursuant to the revised MoU, only a sum of Rs.76.54 crores was paid by the 13th respondent. The appellants specifically contended that there was misappropriation and embezzlement of a substantial sum of Rs.63 crores by the respondents 4 to 12. While the appellants maintained that no construction activity has commenced till date and the remaining amount was not paid to the 1st Respondent, the appellants contended that the Respondents 4 to 12 had misappropriated the remaining amount payable to YMCA/the 1st respondent. Therefore, the appellants had filed the said suit and the application seeking leave under Section 92 of CPC.

12.Mr.V.Thangavelu, learned counsel appearing for the 5th respondent contended that with respect to the B Schedule property, a letter dated

10.11.2020 from Kingsley Consultants, Architects and Engineers, addressed to the General Secretary and CEO of YMCA, Madras, reflects responses from seven tenderers for the proposed construction of a commercial building in Royapettah property. Among the seven tenderers named in the communication, M/s. Amazee Infra Structures is a proprietary concern owned by the second appellant's wife. It was further contended that since the tender submitted by the second appellant's wife was rejected, the second appellant, driven by personal interest, joined hands with two others to file the present suit against the Respondents.

13.The learned counsel further contended that this suit was not motivated by public interest but by personal vengeance. The second appellant holds grudge against the Respondents herein, therefore, he filed the suit, projecting it as a suit filed in public interest. The main ground raised by the respondent is that A.No.1844 of 2021 is not maintainable, as there is an earlier suit filed in C.S.Diary No.19974 of 2020 with same prayer and as the suit has been instituted for personal reasons and lacks any element of public interest, the suit is not maintainable under Section 92 of Civil Procedure Code.

14.The learned counsel further conteded that in the unnumbered suit in C.S.Diary No.19974 of 2020, the very same prayer, as made in the present suit had been sought. Though several serious allegations such as mismanagement and embezzlement have been raised against the respondents 4 to 12, the plaint contains no supporting averments or materials, except the bald and vague allegations.

15.Mr.Sriram, learned senior counsel appearing for respondents 1, 3 & 4 contended that an application filed under Section 92 of the Civil Procedure Code (CPC) must clearly establish that the suit is of a public nature. If the application does not reflect an intention to file a suit in public interest, the Court must carefully examine the averments made in the plaint. He further contended that the appellants have merely narrated certain factual aspects, which are not in dispute. However, allegations such as embezzlement and maladministration have been made in relation to properties of the 1st respondent without any materials to substantiate the same. With regard to the ‘A’ Schedule property, the appellants have alleged that a sum of Rs.63 crores was misappropriated. The learned senior counsel denied these allegations by stating that apart from a vague claim of misappropriation, the details such as, how the funds were misappropriated, who were all involved, or what constituted the alleged maladministration, were not explained by the appellants. In this context, he vehemently opposed the appellants' plea.

16.The learned senior counsel further contended that, while declining the reliefs sought by the appellants, the court had rightly observed that the present plaint is essentially a replica of another plaint filed in C.S.Diary No.19974 of 2020. He further contended that the present appeal has not been filed with a bonafide intention. The appellants have failed to point out even a single specific violation justifying the institution of the suit under Section 92 CPC. Therefore, the learned Single Judge had rightly dismissed the application, holding that it was devoid of essential details and lacks bonafides necessary to sustain a suit under Section 92 CPC.

17.It is relevant to note the submissions made by the learned counsel appearing for respondents 1, 3 & 4. Firstly, it was submitted that the second appellant had previously lodged a criminal complaint, which was closed. The second appellant obtained an order to register FIR against the respondents 4 and 5 in Crl.M.P.No.14455 of 2021, which was set aside vide order dated 18.04.2023 by this Court in Crl.OP.No.1889 of 2022. The order of this Court reads as follows:

> *"Therefore, the closure of the report without conducting a proper preliminary enquiry on the allegations made in the complaint given to the police is not correct and legal. Therefore, this Court now modifies the order of the learned Metropolitan Magistrate, CCB & CBCID, Egmore, Chennai, in the sense that instead of*

directly registering the first information report, second respondent is directed to conduct preliminary enquiry on the allegations made in the complaint filed under section 156 (3) Cr.P.C. giving opportunity to both third respondent and petitioners to produce relevant documents in support of their case. On the basis of the evidence produced by them, it is open to second respondent either to register the first information report against petitioners, if the commission of cognizable offence is made out or close the complaint in the manner known to law. In either case, parties must be intimated about the result of the enquiry."

Pursuant to the order, investigation was conducted. As the complainant/second appellant did not submit the relevant supporting documents, the complaint was closed and the same was intimated to the second appellant on 07.06.2023. The second appellant challenged the order of this Court before the Hon'ble Supreme Court in SLP No.12543 of 2023 and the same was dismissed. Secondly, the Memorandum of Understanding entered into between the parties dated 14.11.2015, based on which the Hon'ble Supreme Court disposed of the civil appeals were fully acted upon. Thirdly, it was brought to the Court's attention that an earlier suit filed in C.S.Sr.No.19974 of 2020 is pending, and the present suit is a verbatim reproduction of that earlier plaint. This indicates that the present suit is an abuse of process of court. The appellant's failure to disclose material facts, specifically, the filing and closure of the criminal complaint, and the order of the Hon'ble Supreme Court amounts to suppression of facts. Such conduct is unfair to the Court.

18.The appeal in O.S.A.No.115 of 2022 is filed challenging the rejection of Application in A.No.1844 of 2021 vide order dated 08.10.2021. The learned single Judge had examined the requirements under Order I Rule 8(a) of CPC for seeking permission to file a representative suit. It is pertinent to refer to Order I Rule 8 of CPC which is extracted hereunder:

"8. One person may sue or defend on behalf of all in same interest

(1) Where there are numerous persons having the same interest in one suit,

> *(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;*
> *(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.*

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under

sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any
such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).
(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.
(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be."

Before we deal with Order 1 Rule 8 CPC, it will be appropriate to refer to the judgments rendered by this Court, which are extracted hereunder:

i. Judgment of this Court in the case of *V.Krishna Aiyar Vs. Pachiappa Chetty* reported in *AIR 1924 Madras 883,* wherein it was held as follows:

> *"Mr. G. Krishnaswami Aiyar, the learned Vakil for the petitioner, has contended that the suit having been instituted under Order 1, Rule 8, Civil Procedure Code, was a representative suit filed in the interests of the creditors of the insolvent, that therefore Krishnier was throughout constructively a party to the proceedings, that the application in effect was to place Krishnier on the record co-nominee as a party and that in making the application he was merely taking advantage of the provision contained in Clause 2 of Rule 8. If this argument is correct, in my opinion there will be very little difficulty in acceding to the request. But the question is, is Krishnier a party to the proceeding at all ? Is he a party*

although on the record his name does not appear ? The answer to this question will depend upon the construction of Order 1, Rule 8. The object of this provision is that in certain cases one person or a few persons should be allowed to represent all persons interested in a suit. The rule is in fact an exception to the general rule that all persons interested should be made parties to a suit. It pre-supposes the existence of a right in the plaintiff. It assumes that under the substantive law, the plaintiff has a right of suit and the rule enables him to represent the whole body of persons whom he seeks to represent. The rule says : " Where there are numerous persons having the same interest in one suit, one person may sue on behalf of all persons so interested. " The " one person" indicated in the rule is the person who has an interest common to himself and the body whom he professes to represent. The community of interest between him and the others of the class is the pre-requisite necessary to the end proposed. It is not any person that may sue on behalf of a class, but it is that person who has an interest which is the same as that possessed by the whole body of persons. "Given a common interest and a common grievance, a representative suit is in order if the relief sought is in its nature beneficial to all whom the plaintiff proposes to represent." Judgment of Lord Macnaghten in Bedford, Duke of v. Ellis (1901) AC 1. If this condition is found wanting, if the plaintiff turns out not to be a member of the class on whose behalf he professed to institute the suit, I am of the opinion that the suit is wrongly constituted. The permission to sue is given by the Court on the assumption that the plaintiff is a member of the class and if the assumption is shown to be wrong the suit is not a representative suit and no member of the class is constructively a party to it. On the assumption, therefore, that *the plaintiff in the present suit is not a creditor of the insolvent, Order I, Rule 8 has no application."*

ii. Judgment of the Division Bench of this Court in the case of *The Corporation of Madras Vs. S.A.Khan & Ors.* reported in *1947 AIR (Madras) 447.*

> *"**25.** Plaintiff 10 is an association which is registered under the Societies Registration Act, 1860. That registration substantially creates it into a legal entity. The members of this association are all stall-holders. The interests of each stall-holder can well be said to be the same, save of course their interests are in respect of different stalls. The association has in no way the same interests in the Moore Market and the stalls there as its members. The association may, have as its object the furtherance of the interests of the stall-holders, but that does not give the association any interest in the stalls themselves. It seems to me that, at the most, the association, if it conducted any business on behalf of its members or for one or other or them, would do so only as an agent for the stall-holder or stall-holders. The association is a party to the suit, purporting to represent the interest of all stall-holders, the object being that a judgment in its favour would in effect be a judgment in favour of all the stall-holders. Order 1, R. 8 of the Code provides that where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. A person or entity can only sue or be sued in a representative capacity provided that the person or entity has the same interest as those on whose behalf he or it seeks to make the representation.*

> ***26.*** *That is not so in the present instance. An association of persons who are all interested in the same matter does not make the association similarly interested. When a representative suit is sought to be prosecuted, firstly the circumstances must fall under the requirements of O. 1, R. 8 of the Code. Secondly under O. 3, R. 2 of the Original Side Rules of this Court an application must be made by a Master's summons to obtain an order in that respect. No such procedure was followed in the present instance. In my view plaintiff 10 does not represent all the stall-holders so as to enable a decree to be passed in favour of all of them. It must follow that the suit is only on as between plaintiffs 1 to 9 and the Corporation. It is not one as between the Corporation and all other stall-holders."*

The above judgments will give a roadmap to understand the scope and applicability of Order 1 Rule 8 of CPC. The fundamental principles and the mandatory guidelines to be taken into consideration by the Courts before granting leave under Order 1 Rule 8 of CPC are stipulated in the above judgments. Keeping in mind the principles laid down in the above judgments, we shall delve into the applicability of Order 1 Rule 8 CPC in the facts and circumstances of the present case.

19.The primary condition for invoking Order I Rule 8 of the Civil Procedure Code is that there must be numerous persons having the same interest in one suit. In the present case, the appellants have failed to establish that there exists a group of persons with a common interest in the subject matter of the suit. To maintain a suit under Order I Rule 8 CPC, the appellants should *prima facie* demonstrate the existence of such a group by furnishing the number of persons involved, their names and details, and evidence showing how their interests arise. However, the appellants have not provided the complete list of members belonging to the first respondent association and the appellants have not pointed out the common interests among the appellants and the persons who are sought to be represented by the appellants in the representative suit.

20.It is the case of the respondents that the appellants have deliberately withheld the full list of members. Another essential requirement under Order I Rule 8 is that the outcome of the suit must benefit all the interested persons. While the appellants seek leave under this provision, they have not furnished the list of members who are sought to be represented by the appellants and their common intention or that the suit is intended to benefit all the similarly placed members. Failure to disclose the entire list of members and failure to establish a common interest shows that the conditions necessary to invoke Order I Rule 8 have not been met.

21.With respect to the allegations pertaining to other properties and contracts, the learned single Judge has given sufficient reasons for rejection of leave by taking note of the fact that the 2nd appellant was a party to the decision making process in the award of contracts which are in dispute and permission of the Court was duly obtained by the respondents.

22.It is to be noted that the learned Single Judge, by order dated 03.08.2021, which is under challenge in O.S.A.No.123 of 2022, observed that the appellants, while filing the suit, was required to set out the entire factual sequence in the plaint itself. The Court held that deficiencies or omissions in the plaint cannot be rectified subsequently by filing additional affidavits. The 2nd appellant has made an attempt to fill up the lacunae by filing the additional affidavits dated 02.08.2021. Such a practice is impermissible under the Civil Procedure Code. The learned Single Judge specifically took note of the same and deprecated this practice. The appellants, having failed to establish their case for obtaining the necessary leave of the Court to institute the suit under Section 92 CPC r/w. Order I Rule 8 of CPC, has now sought to engineer a second attempt through the present appeals. This Court has taken note of the lack of bonafides in the appellant's approach.

23.The learned Single Judge rightly rejected the claim made by the appellants. It is well established that an affidavit cannot serve as a substitute for raising additional grounds in a plaint. To introduce such grounds, the proper procedure would have been to file an application before the Court seeking leave to amend the plaint. Only upon the Court granting such permission, the plaint could have been amended. Mere filing of an affidavit does not confer any right upon the appellants to raise additional grounds. In the absence of an application seeking leave to amend and without any permission granted by the learned Single Judge, any grounds raised by way of an affidavit cannot be countenanced.

24.As rightly pointed out by the Learned Single Judge, the registry ought not to have received the affidavit dated 02.08.2021. We do not wish to interfere with the view of the learned Single Judge as it is an appropriate judicial finding. It is needless to state that the appellants have a right to pursue the earlier suit in C.S.Diary No.19974 of 2020.

25.From the averments made in the appeals, it is evident that the appellants are primarily aggrieved by the award of the contract in favour of the 13th respondent, instead of the wife of the second appellant who was unsuccessful in the tender process. The institution of the present suit and appeals are only out of personal interest of the appellants. Therefore, it cannot be construed as a suit filed under a representative capacity under Section 92 CPC and Order I Rule 8 CPC. The appellants have failed to establish their case for invoking Section 92 of CPC against the respondents.

26.We do not see any reasons to interfere with the orders passed by the learned single Judge on 03.08.2021 and 08.10.2021 in Application No.1844 of 2021 in C.S.Diary No.36935 of 2021. Accordingly, both the Original Side Appeals are dismissed. No costs. Consequently, this Court cannot entertain CMP.No.25277 of 2024 and the same is also dismissed.

(A.S.M.,J) **(N.S.,J)**

20.08.2025

Index:Yes
Speaking order
Internet:Yes
Neutral Citation:Yes/No
sai

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

2.The Board of Directors
YMCA : Madras, Rep. by its President,
No.223, N.S.C.Bose Road, Chennai 600 001.

3.The Board of Trustees
YMCA: Madras, Rep. by its Managing Trustee,
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6.Mr.J.Benjamin Franklin
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7.Mr.D.Alex Madhavan
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10.Mr.M.M.Selvakumar
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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,
Thuvariman Madurai, Madurai 625 016.

15.M/s.Madras Estates and Company,
Rep. by its Managing Director
No.24 and 25 West Cott road, Royapettah, Chennai 14.

ANITA SUMANTH J.
and
N.SENTHILKUMAR J.
sai

Pre-delivery common Judgment made in
OSA Nos.115 & 123 of 2022
and CMP No.25277 of 2024

20.08.2025