



WEB COPY



C.M.A. No.1062 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2025

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A. No.1062 of 2022

and

C.M.P. No.10723 of 2022

1. R. Janakiraman

2. C. Rengaswamy

3. T. Velusamy

4. A. Selvaraj

5. V. Ramachandran

... Petitioners/ Plaintiffs/ Appellants

Vs.

1. C.B.M. Sakunthala Memorial Trust

2. Shasikala Ramraj

3. C.R. Sakethraman

4. C.R. Vamshreedar

5. C.B.M. College



C.M.A. No.1062 of 2022

6. The Association of University Teachers, (AUT)

Rep. by its Secretary,
C.B.M. College Unit,
Coimbatore - 640 042.

7. The Tamil Nadu Non-Teaching Staff Association,

Rep. by its Secretary,
C.B.M. College Unit,
Coimbatore - 640 042.

8. The Director of Collegiate Education,
College Road, Chennai - 600 006.

9. The Joint Director of Collegiate Education,
Coimbatore Region, Coimbatore - 18.

... Respondents/ Defendants/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of CPC praying to set aside the fair and decreetal order dated 04.02.2022 in I.A.No.1 of 2019 in O.S.C.F.R. No.12012 of 2019 on the file of the Principal District Judge, Coimbatore.

For Appellants : Mr. R. Subramanian

For Respondent No.1 : Mr. V. Raghavachari, (Senior Counsel)
for Mr. R. Bharath Kumar

For RR 2 to 7 : No Appearance

For RR 8 & 9 : Mr. D. Ravichander
(Special Government Pleader)



C.M.A. No.1062 of 2022

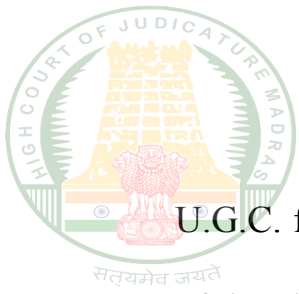
JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed challenging the dismissal of the leave petition to institute the suit against the respondent Trust under Section 92(1) of the Code of the Civil Procedure by an order dated 04.02.2022 in I.A.No.1 of 2019 in O.S.C.F.R. No.12012 of 2019 on the file of the Principal District Judge, Coimbatore.

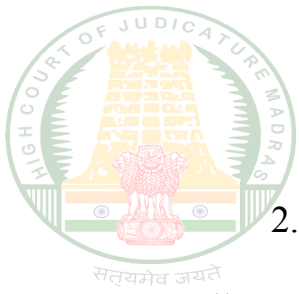
2. The brief facts leading to filing of this appeal are as follows:

2.1 The appellants herein have come forward to file a suit against the respondents alleging that the fifth respondent CBM College, which was managed by the first respondent Trust, namely, CBM Sakunthala Memorial Trust, which is a public charitable Trust, was involved in mismanagement, misappropriation of funds and violation of various provisions of law. The appellants herein are the old students, former Associate Professors and College Committee members of the fifth respondent College, which is an aided institution receiving funds from the Government of Tamil Nadu and had indulged in financial illegalities, mismanagement and misappropriation of



U.G.C. funds. In the plaint, various violations were also narrated and majority of the allegations relates to events taken place from the year 2008 - 2013 and in the cause of action column, it has been stated as follows:

" The cause of action for the suit arose in 1970, when the first defendant Trust was established with an object of establishing education institutions to all sections of the society irrespective of caste, creed and religion, in 1974 when the Trust started the fifth defendant college in the land given by the Government of Tamil Nadu, in 1975-1976, when the University of Madras granted permission for opening of some degree courses from the academic year 1975-1976, in 1980-1981, when the College became a post-graduate institution, from 1984-1985 onwards, when the Management is involved in series of financial illegalities, mismanagement, victimization of employees and students, in 2002-2008, when the Management was collecting huge money from the students during admission in violation of the instructions of the Government, in 1983, when Mr. C.M. Ramraj became the Secretary of the College and on and from 1983, when the College has been openly violating TNPC(R) Act and Rules and Statutes of Bharathiyar University regarding conditions of affiliations, in 2008-2009, when the Government issued notice for appointment of a special officer, in 2009, when the Management obtained linguistic minority status, on 18.07.2016, when the Hon'ble Division Bench of Madras High Court quashed the G.O granting minority status, in 2017, when the Director of Collegiate Education enforced direct payment and the College is being run by the Joint Director of Collegiate Education, Coimbatore along with the Principal, from 2017 onwards, when there is a vacuum in the College since there is no College Committee or educational agency, within the jurisdiction of this Hon'ble Court."



2.2 Further, the learned counsel for the appellants submitted that the college management had committed various violations of Tamil Nadu Private College Regulation Act and Rules, hence filed the suit to grant leave to institute the suit against the first respondent Trust.

2.3 The respondents 1 to 4 filed their counter and stated that the majority of the allegations are only against the Management of the College, which has a separate governing body and the Trust is not directly involved in the management of the College. They have also denied various allegations levelled against the College Management and stated that some group of individuals have vengeance against the management and to pursue their hidden agenda, filed the suit by invoking Section 92 of the Code of Civil Procedure. They also stated that all the allegations levelled against the College Management were properly enquired by the competent authorities and only due to personal animosity, the appellants have filed the suit against the respondents and there is no public interest involved in the litigation.

2.4 The Trial Court, after considering the pleadings and hearing the parties, has held that the appellants herein have not made out any case and have



C.M.A. No.1062 of 2022

no *locus standi* to file the suit and further, they have no interest or welfare over the first respondent's Trust, thereby dismissed the leave petition.

3. Aggrieved over the same, the appellants have come forward with this appeal.

Submissions on behalf of the appellants:

4. The learned counsel appearing for the petitioners/appellants submits that the petition has been filed only on the public interest and to protect the beneficiaries of the public Trust. He also submitted that the colleges managed by the Trust are being governed by the Tamil Nadu Private Colleges Regulation Act, 1976 (hereinafter referred to as 'TNPCR Act') and the College Management had committed various violations and only to protect the interest of the teaching and non-teaching staff, they have come forward with the suit. He submitted that already a Writ Petition was filed against the College and the present suit was not filed for vindicating their rights and the petitioners have already involved themselves in promoting the interest of the students, teaching and non-teaching staff, hence, their action cannot be termed that they have come forward with personal animosity against the respondents, hence prays to allow this appeal.



WEB COPY

Submissions on behalf of the respondents:

5. Per contra, the learned counsel for the respondent submits that it is a clear case of misusing the provisions of Section 92 of Code of Civil Procedure and the appellants have approached Civil Court for vindicating their personal rights and there is no public interest and the violations alleged against the college management is relating to the year between 2008 to 2013. He also submitted that already the college administration is being guided and controlled by the Tamil Nadu Private College Regulation Act and if any violation has been made due to mismanagement of the college, there are provisions already laid down in the Act itself. He further submitted that the appellants had already approached various authorities to pursue their hidden agenda, but all ended in vain, and after they failed in their attempt, only to harass the college management and the Trust, they come forward with the suit seeking leave. He also submitted that the Trial Court after considering the issues raised by the petitioners has rightly held that the petitioners have approached the Court only for vindicating their personal rights and no interest or welfare over the first respondent's Trust, hence prays to confirm the judgment of the Trial Court.



Discussions and conclusion:

WEB COPY

6. I have considered the submissions made on both sides and perused the materials available on record.

7. The Trial Court, in its order dated 04.02.2022, has considered various points raised by the petitioners/appellants herein, more particularly, the Trial Court has considered the background of the constitution of the Trust and its objectives and how the fifth respondent College is being managed by the Trust. It has also culled out the allegation levelled in the plaint against the fifth respondent College Management in the order, which reads as follows:

"1. The C.B.M. College management started collecting huge money compulsorily from the student during the admission in different ways from 2002-2008 amounting to Rs.7,02,200/-. the Government after enquiry directed the authorities to remit the unauthorized collection amount into the Government account. Till date the management has not remitted the said amount and thereby violating Section 28 of Tamil Nadu Private College Regulation Act and Rule 19 of the Tamil Nadu Private College Regulation Rules.

*2. **Violation of Rule 9(5) of TNPC(R) Rules:** In the year 1983, the Secretary of C.B.M. College violated the Government norms in admission for both undergraduate and post graduate courses. Hence, Federation of College employees association, unit of C.B.M. College, demanded admission as per Government norms. As a consequences, during the years 1994-1995 to 1997-1998 admission were done under the supervision of the Advocate-Commissioner appointed by the Court.*



WEB COPY

3. **Violation of TNPC(R) Act and Rules:** *There is no playground for students since the inception of the college in 1984. There is no specific amenities such as toilet facilities, drinking water facilities, auditorium, seminar hall etc., there are no proper infrastructural facilities, though the Bharathiyar University took several steps to impress upon the C.B.M. College management to honour the mandatory condition of affiliation with regard to the providing of basic infrastructure of the college.*

4. **Violation of Section 14 of TNPCR Act, in appointment of teaching and non-teaching staffs:** *The C.B.M. College Management is delaying the appointment. The management is violating roster rules on the appointment of teaching and non-teaching staffs.*

5. *Violation of Section 29 of TNPCR Act, 1976 and Rule 20 of TNPC (R) Rules.*

6. *Violation of Section 14 of TNPCR Act, 1976 and Rule 11 of TNPC (R) Rules.*

7. *Violation of Government order and proceedings.*

8. *Agreement and breach of trust by C.B.M. College authorities over the years.*

9. *Violation of Section 11 of TNPCR Act, 1976 and Rule 8(3)(c) and Rule 10 of TNPC (R) Rules.*

10. *Violation of change of secretaryship and change in the constitution of educational agency."*

8. On careful perusal of the violations listed, it shows that the majority of the violations are relating to the Management of the fifth respondent College



C.M.A. No.1062 of 2022

i.e., C.B.M. College. Admittedly, the College is functioning as per the regulations formulated by the State Government i.e., TNPCR Act and Rules, which provides various remedies to the alleged violations. The petitioners/appellants herein are in one way or other closely associated with the fifth respondent College and they have already lodged police complaint against the College and some of the petitioners have also filed various writ proceedings, challenging the formulation and functioning of the College Committee between the years 2011 and 2014, which clearly shows that they are having some personal interest into the affairs of the college administration and awaiting for opportunities to wreck their vengeance.

9. The Hon'ble Apex Court in ***B.S. Adityan and others vs. B.Ramachandran Adityan and others [(2004) 9 SCC 720]*** has considered the scope of interference by the Appellate Court for rejecting the orders or granting permission to file a leave to institute a suit under Section 92 CPC and held as follows:

"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 leave granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. Grant



WEB COPY

of leave cannot be regarded as defeating or even serious prejudicing any right of the proposed defendatns 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 or even in the course of suit which may be established that the suit does not fall within the scope of Section 92 CPC. The provision under Section 104(1)(ffa) for appeal against refusal of grant of leave does not lead to a different conclusion."

10. The Hon'ble Apex Court in ***Madappa vs. Mahanbadevaru [AIR 1966 SC 878]*** has observed as follows:

"The main purpose of Section 92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General or two or more persons having an interest in the trust with the consent in writing of the Advocate-General. The object is that before the Advocate General files a suit or gives his consent for filing a suit, he would satisfy himself that there is a prima facie case either of breach of trust or of the necessity for obtaining directions of the Court."

11. In ***R.M. Narayana Chettiar and another vs. N. Lakshmanan Chettiar and others [(1991) 1 SCC 48]***, paragraph no.17 reads as follows:

"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



WEB COPY

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."

12. The learned counsel appearing for the respondents also relied on the judgment of the Hon'ble Apex Court in ***Vidyodaya Trust vs. Mohan Prasad R and others [(2008) 4 SCC 115]***, wherein the Hon'ble Apex Court observed in paragraph nos.19 to 22 as follows:



WEB COPY

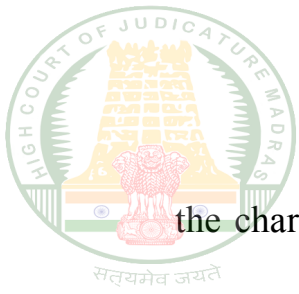
"19. In the suit against public trusts, if an analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in *Swami Paramatmanand* case [(1974) 2 SCC 695] 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.

20. In *Swami Paramatmanand* case, it was held that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92. But if after evidence is taken it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in fact or reason but is made only with a view to bringing the suit under the section then suit purporting to be brought under Section 92 must be dismissed.

21. In *Chettiar* case [(2004) 9 SCC 720], it was held that normally notice should be given before deciding the question as to whether leave is to be granted.

22. If in a given case notice has not been given and leave has been granted, it is open to the Court to deal with an application for revocation and pass necessary orders."

13. This Court in ***Bright Joseph and Others vs. Young Men Christian Association (YMCA), Rep. by its General Secretary and others*** [(2022) 2 CTC 533] has observed that in response to every allegations against every activity of



the charitable organization, 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 and held in paragraph no.54 as follows:

"54. 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."

14. Admittedly, in this case, the allegations are levelled against the fifth respondent College Management and its Committee for violation of certain provisions of TNPCR Act. The respondents have rightly stated that the TNPCR Act and Rules itself contains every provisions for better management of the Trust. Further, the petitioners claim themselves to be associated with the fifth respondent College and the majority of the allegation is only against the management of the C.B.M. College including filling up of vacancy of teaching and non-teaching staff and violation of TNPCR Act and rules. If really the petitioners are interested in the welfare of the Trust, the petitioners ought to have approached the authorities constituted under the Act only. Further, the institutions, more particularly, the educational institutions are facing several litigations while running the College and it is common that the people coming



with the grievance more particularly against the private institution.

WEB COPY

15. In this case, several former teaching and non-teaching staff and former students of the fifth respondent College have raised grievances against the College Management dates back from a decade. They filed a petition seeking leave to institute a suit against the Trust. They alleged that the fifth respondent college functioning under the first respondent Trust, is under mismanagement. The Trust is not acting for fulfilling its objectives and acting against the public interest and welfare. Whereas, the alleged violations are only against the fifth respondent College and not relating to the management of Trust, which can be redressed through the provisions established under the relevant Act, Rules and by appointing authorities for the purpose of regulating the private college under the TNPCR Act and Rules, thereby, the petitioners/ appellants herein have no *locus standi* to file the suit under Section 92 of CPC.

16. On perusal of the evidences marked before the Trial Court, it is also established that the appellants herein are having personal animosity against the management of the fifth respondent College and most of the petitioners are parties to the legal proceedings initiated by the College Management.



C.M.A. No.1062 of 2022

Therefore, the Trial Court, after considering the evidences placed on record, has rightly taken a view that the petitioners have not come forward with the suit with public interest or protecting the interest of the first respondent Trust and they have approached the Court only to vindicate their personal gain and rights, thereby, dismissed the leave petition to institute the suit against the respondents. This Court finds no reason for interference in the said finding of the Trial Court and finds that the dismissal of the leave petition by the Trial Court is proper.

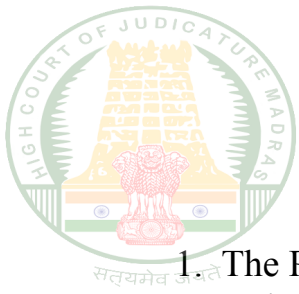
17. Accordingly, this Civil Miscellaneous Appeal is dismissed and the order dated 04.02.2022 in I.A.No.1 of 2019 in O.S.C.F.R. No.12012 of 2019 is hereby confirmed. There shall be no order as to costs. Consequently, connected civil miscellaneous petition stands closed.

03.07.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
stn

To

Page 16 of 18



C.M.A. No.1062 of 2022

WEB COPY

1. The Principal District Judge,
Coimbatore.
2. The Association of University Teachers, (AUT)
Rep. by its Secretary, C.B.M. College Unit,
Coimbatore - 640 042.
3. The Tamil Nadu Non-Teaching Staff Association,
Rep. by its Secretary, C.B.M. College Unit,
Coimbatore - 640 042.
4. The Director of Collegiate Education,
College Road, Chennai - 600 006.
5. The Joint Director of Collegiate Education,
Coimbatore Region, Coimbatore - 18.
6. The Section Officer,
V.R. Section, High Court of Madras, Chennai.



WEB COPY



C.M.A. No.1062 of 2022

K. RAJASEKAR, J.
stn

**C.M.A. No.1062 of 2022
and
C.M.P. No.10723 of 2022**

03.07.2025