



2025:DHC:815



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 04th February, 2025*

+ **C.R.P. 39/2023, CM APPL. 6293/2023 & CM APPL. 11825/2023**

BHARAT YATRA TRUST AND ORSPetitioners

Through: Mr. Adab Singh Kapoor &
Ms. Kavita Bhardwaj,
Advts.

versus

H.N SHARMARespondent

Through: Mr. Alok Kumar, Sr. Adv.
with Ms. Manish A.
Narain, Mr. R.K. Tanwar,
Mr. Ujjwal Kumar, Mr.
Amit Kr. Singh, MR.
Varun Maheshwari, Mr.
Mann Soni & Mr. Sandeep
Singh Somaria, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The petitioner challenges the order dated 03.12.2022 (hereafter '**the impugned order**'), passed by the learned Additional District Judge, South West District, Dwarka Courts, in CS DJ ADJ No. 15273/16, wherein it was held that the leave to sue had been implicitly granted in the suit filed by the plaintiff / respondent under Section 92 of the Code of Civil Procedure, 1908 ('CPC').

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2. The subject suit was filed by the respondent, along with two other plaintiffs, namely, Indubhai (Plaintiff No.1) and Ayub Khan (Plaintiff No.2), under Section 92 of the CPC essentially for a decree of permanent injunction against Petitioner No.2 from acting as the Secretary of Defendant No. 1 Trust (Petitioner No.1). Plaintiff No. 1 had claimed to be one of the founder trustees of the Petitioner No.1 Trust. Plaintiff No.2 and Plaintiff No. 3 (respondent herein) were stated to be life members and trustees of Petitioner No.1 Trust. Petitioner No.1 Trust was stated to have been created for charitable purposes. Plaintiff Nos. 1 and 2 were deleted as parties owing to their demise.

3. In the impugned order, the learned Trial Court noted that the suit was filed way back in the year 2011 before the High Court and the High Court, at the very inception, passed an interim order granting interim injunction in favour of the plaintiffs. It was noted that the matter has continued for more than a decade and the leave to sue was implicitly granted at the time of passing of the injunction order when the three plaintiffs had joined hands and filed the suit having interest in the suit property.

4. The learned counsel for the petitioners relies upon the judgment passed by the Hon'ble Supreme Court in the case of ***Bhupinder Singh v. Joginder Singh : (2020) 18 SCC 243*** to contend that the leave has to be specifically granted and the same cannot be presumed.

5. The learned Senior Counsel appearing for the respondent /



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Plaintiff No. 3 does not dispute that a formal order is required to be passed by the learned Trial Court and the leave to institute a suit could not have been presumed.

6. A bare perusal of Section 92 of the CPC indicates that the suit can be filed by an Advocate General or by two or more persons having interest in a Trust after having obtained the leave of the Court, to obtain a decree in the nature as specified under Section 92(1) of the CPC.

7. The Hon'ble Apex Court in the case of **Bhupinder Singh v. Joginder Singh** (*supra*) categorically held that the grant of leave is pre-requisite before a suit under Section 92 of the CPC can be entertained. It was held that there can be no presumption that the leave has been granted.

8. The petitioners had filed a reply to the application under Section 92 of the CPC. It is undisputed that the petitioner has challenged the maintainability of the suit on several other grounds as well.

9. It is contended on behalf of the petitioners that the suit was even otherwise not maintainable at the time of passing of the impugned order. It is submitted that concededly, two of the plaintiffs at that time had already expired and a suit under Section 92 of the CPC can be only maintained by two or more persons.

10. The learned Senior Counsel for the respondent submits that the application has already been filed by one of the defendants seeking transposition as a plaintiff, and if such



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application is allowed by the learned Trial Court, the suit would be presumed to have been filed by two plaintiffs and the same would therefore be maintainable under Section 92 of the CPC.

11. The learned counsel for the petitioner, however, submits that the said application was filed belatedly on 05.09.2024 and cannot be considered for the purpose of deciding maintainability of the suit which was filed way back in the year 2011. He submits that concededly at the time of passing of the impugned order, only one plaintiff survived.

12. The said issue was also not considered by the learned Trial Court.

13. In view of the above, the present petition is allowed and the impugned order is set aside to the extent that the leave to sue was deemed to have implicitly been granted.

14. The matter is remanded back to the learned Trial Court for consideration afresh.

15. The pending applications also stand disposed of.

16. All rights and contentions of the parties are kept open, including the issue of maintainability of the suit.

17. It is stated that the matter is listed before the learned Trial Court on 19.02.2025.

18. Copy of the present order be sent to the concerned Court for compliance.

AMIT MAHAJAN, J

FEBRUARY 4, 2025

“SK”

Signature Not Verified

Signed By: HARMINDER C.R.P. 39/2023

KAUR

Signing Date: 11.02.2025

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