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

+ **FAO(OS) 72/2025, CM APPL. 38340/2025**

BAPTIST CHURCH TRUST ASSOCIATIONAppellant

Through: Mr. Deeptakirti Verma, Ms.
Neha Sharma, Advs.

versus

ANIL KUMAR MASIH & ORS.Respondents

Through: Mr. Sanjiv Bahl, Mr. Pankaj
Mehta, Ms. Sweta Soni, Ms.
Vanshika Puri, Advs. for -1 & 2
Mr. Abhishek Kaushik, Adv.
for R-6 & 7

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

10.10.2025

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1. Through the present Appeal, the Appellant assails the correctness of an order dated 24.04.2025 [hereinafter referred to as 'Impugned Order'] passed by the learned Single Judge, whereby the Applicants/Respondent Nos.1 and 2 has sought permission of the Court to be impleaded as Plaintiffs in substitution of the Respondent Nos.3 to 5 [Plaintiffs before the learned Single Judge], who had sought permission to withdraw the suit.

2. Originally, the Respondent Nos.3 to 5/Plaintiffs filed a suit under Section 92 of the Code of the Civil Procedure, 1908 [hereinafter referred to as 'CPC'] along with an application for leave to institute the suit. The application for leave to institute the suit is still pending adjudication before the learned Single Judge. The reply to the said



application was also filed by the Appellant. At that stage, the Respondent Nos.3 to 5/Plaintiffs sought permission of the Court to withdraw the suit. Thereafter, the Applicants/Respondent Nos.1 and 2 filed two applications under Order I Rule 10(2) read with Section 151 of the CPC seeking impleadment as Plaintiffs in the suit, which has been allowed by the learned Single Judge. In fact, an identical issue has been examined by this Bench at length in FAO(OS) 21/2023 captioned **Nirmal Lugani & Ors. v. Late Sh Ram Sarup Lugani & Ors.** vide judgment dated 25.09.2025. The relevant paragraphs of the said judgment is extracted below:

“16. Upon a careful scrutiny and deliberation of the Impugned Order, we find ourselves in agreement with the conclusion reached by the learned Single Judge, inasmuch as no error can be discerned therein. The learned Single Judge has rightly held that the suit had merely been filed and the application seeking leave to institute the same was still pending. At such a stage, it could not be said that the mandatory requirements of Section 92 of the CPC stood violated.

17. Section 92 of the CPC, in explicit terms, mandates that two or more persons having an interest in the trust must seek leave of the Court to institute a suit. Admittedly, on the date when the application in question came to be filed and decided, the application for leave to institute the Suit was still pending consideration.

*18. While allowing the impleadment, the learned Single Judge correctly distinguished the reliance placed on **Rahul Jain** (supra) by the Respondent, noting that the factual matrix therein was entirely different from the present case. In **Rahul Jain** (supra), the Court was concerned with a situation where leave to institute a suit had been granted solely on the basis of one person. It was for this reason that the Court held that the requirements of Section 92 of the CPC were not satisfied.*

19. In contrast, in the present case, the question of compliance with Section 92 of the CPC, specifically as to whether leave can be granted to Respondent Nos. 2 to 4 herein, is yet to be adjudicated on its merits.

*20. The learned Single Judge, placing reliance on the Full Bench judgment of the Allahabad High Court in **Raj Nairain Saxena v. Bhim Sen & Ors.**; 1965 SCC OnLine All 109, observed that unless a particular procedure is expressly prohibited by law, its absence of prohibition must be construed as permitting its adoption.*



21. In **Raj Nairain Saxena** (*supra*), it was emphasized that procedure is the handmaiden of justice and not its mistress, and that the provisions of the CPC are not exhaustive so as to account for every conceivable situation. The Court reiterated that the foundational purpose of procedural law is to advance the cause of justice, and therefore, in the absence of a specific prohibition, a restrictive interpretation ought not to be inferred. On the contrary, procedural rules must be interpreted in a manner that facilitates, rather than obstructs, the course of justice.

22. In this backdrop, the learned Single Judge has merely permitted the addition of two more persons in the application seeking leave to institute the suit. The question as to whether these newly impleaded persons do, in fact, possess the requisite interest in the trust, as contemplated under Section 92 of the CPC, is an issue that remains to be determined at a later stage and is not germane to the present proceedings.

23. In fact, a meaningful reading of **Rahul Jain** (*supra*) would indicate that a suit under Section 92 of the CPC comes into existence only upon the Court granting leave. Since the stage of granting leave has not yet arrived in the present case, there is no bar to the exercise of the Court's inherent powers under Section 151 of the CPC in order to secure the ends of justice.”

3. Learned counsel representing the Appellant admits that the Applicants/Respondent Nos.1 and 2 can file a fresh suit, however, learned counsel submits that substitution could not be allowed in view of the fact that the entire suit is based upon the original pleadings *qua* the Respondent Nos.3 to 5/Plaintiffs.

4. This Court has heard the submission made by the learned counsel representing the Appellant.

5. The dispute in the present case is with regard to public charities. There is a peculiar provision under Section 92 of the CPC for filing the suit with leave of the Court. Such litigation is somewhat akin to Public Interest Litigation. The Applicants/Respondent Nos.1 and 2 can be called upon to file their supplementary pleadings or file a fresh application for leave to institute the suit. However, this would not be sufficient to dismiss the suit, particularly when the such procedural



aspects can be examined and defects, if any, could be cured.

6. Hence, this Court finds no reason to interfere with the Impugned Order.

7. The present Appeal, along with pending application, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 10, 2025

jai/db