2025:DHC:11639-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment reserved on: 01.12.2025***
Judgment pronounced on: 20.12.2025
Judgment uploaded on: 20.12.2025

\+ FAO(OS) 150/2025, CAV 462/2025, CM APPL. 75079/2025 & CM APPL. 75080/2025

SATISH MOTIANI & ORS. .....Appellants

Through: Mr. Amit Sibal, Senior Advocate with Mr. Gaurav Khanna, Mr. Gautam Barnwal and Mr. Rudraksh Pandey, Advocates.

versus

T CHOITHRAM FOUNDATION & ORS. .....Respondents

Through: Mr. Abhimanyu Mahajan, Ms. Amritananda Chakravorty, Mr. Mihir Samson, Ms. Shreya Munoth, Ms. Asawari Sodhi, Ms. Anubha Goel and Mr. Khush Aalam Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE GIRISH KATHPALIA

<u>J U D G M E N T</u>

<u>ANIL KSHETARPAL, J</u>

1. The present Appeal, preferred under Section 10 of the Delhi High Court Act, 1966, challenges the order dated 13.10.2025 [hereinafter referred to as 'Impugned Order'] passed by the learned Single Judge in CS(OS) No. 609/2021. By the Impugned Order, the learned Single Judge dismissed the application filed by the Appellants [Defendants before the learned Single Judge] under Order VII Rule 11

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of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] thereby declining to reject the plaint at the threshold.

2. The controversy before this Court pivots on two substantive questions of law:

i. Whether a suit instituted on behalf of a Public Trust to protect its properties and administration from alleged usurpers warrants rejection of plaint for want of leave under Section 92 of the CPC; and

ii. Whether the plea of limitation, in the face of allegations regarding continuing wrong and successive breaches, can be adjudicated summarily under Order VII Rule 11(d) of the CPC without a trial.

FACTUAL MATRIX

3. The Respondent No. 1/T. Choithram Foundation, is a public charitable trust settled by Late Shri Thakurdas Choithram Pagarani vide a Trust Deed dated 24.05.1971. The dispute involves the management and control of this Trust.

4. The Respondents/Plaintiffs instituted the underlying suit in November 2021, seeking declarations that the Appellants/Defendants are not validly appointed trustees and are, in legal effect, trespassers or *trustees de son tort*. The Plaint alleges that the appointments of the Appellants-ranging from 1992 to 2021were made in flagrant violation of the Trust Deed and that their continued interference with the Trust's assets constitutes a continuing wrong.

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5. The Appellants moved an application for rejection of the plaint, contending that:

i. The suit seeks removal of trustees and rendition of accounts, reliefs specifically enumerated under Section 92 of the CPC. As no leave was obtained prior to institution, the suit is barred by law.

ii. The suit is barred by limitation as the Plaintiffs admittedly had knowledge of the initial appointments as far back as 1996, evident from correspondence dated 27.02.1996.

6. The learned Single Judge, in the Impugned Order, held that the suit was essentially one by the Trust to de-board persons who had allegedly usurped office, and thus did not strictly fall within the restrictive domain of Section 92 of the CPC. On limitation, the Single Judge held that the allegations of invalid appointments and mismanagement raised mixed questions of fact and law, particularly regarding the 'continuing' nature of the cause of action, which could not be decided without evidence.

ANALYSIS AND REASONING

7. This Court has heard the learned counsel for the parties and examined the Impugned Order in light of the settled principles governing the rejection of plaints. The power under Order VII Rule 11 of the CPC is drastic; it terminates a *lis* without trial. Consequently, the conditions for its exercise must be strictly construed. The Court is confined to the averments in the plaint, which must be treated as true (demurrer) at this stage.

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I. The Bar under Section 92 of the CPC and the Nature of the Suit

8. The Appellants vehemently argue that the suit is a "cleverly drafted" attempt to bypass Section 92 of the CPC. They contend that since the Trust is not a legal entity, the suit is practically by one set of trustees against another for removal- a classic Section 92 scenario.

9. This Court is unable to agree that this warrants rejection of the plaint. The jurisprudence surrounding Section 92 of the CPC distinguishes between suits brought by beneficiaries to vindicate "public rights" and suits brought by the Trust (or valid trustees representing it) to vindicate the "private rights" of the Trust against third parties or trespassers.

10. In the present case, the Plaint asserts that the Appellants are not valid trustees but usurpers. A suit to protect the Trust property from persons acting without authority does not necessarily seek the direction of the Court for the "administration of the trust" in the public sense but rather seeks to secure the Trust's integrity.

11. When the trust itself suffers from such conduct, a civil suit remains maintainable and unaffected by the bar of Section 92 of the CPC. This provision operates only in the additional circumstances outlined within it. The Supreme Court decision in ***Ghat Talab Kaulan Wala v. Baba Gopal Dass***[1] supports this view. The relevant extract is reproduced below:

> *"2. We have heard the teamed counsel for the parties. We find that the order passed by the High Court in respect of first substantial question of law is not sustainable. Section 9 2 of the Code contemplates suit*

[1] (2020) 13 SCC 50

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against a trust either for removing any trustee; appointing new trustee,· or vesting any property in a trustee, etc. but the present suit itself is by a Trust against a Sevadar, therefore. the procedure prescribed under Section 92 of the Code would not be applicable in a suit by a trust. Section 9 2 of the Code confers right on a person in case of any alleged breach of any express or constructive trust created for a public purpose of a charitable or religious nature. Since the Trust itself was the plaintiff, the finding of the High Court is clearly erroneous and not sustainable. The fact is that Gopal Dass has been found to be Sevadar as per statement (Ext. P-1) given in the previous suit for permanent injunction. Therefore, Ram Niwas as legal representative of Gopal Dass will not have a larger interest than what was vested in the original defendant. Ram Niwas has been found to be doing service to the Temple as member of public. The High Court has affirmed the finding that Ram Niwas could offer his services but he has not proved that he was appointed as Chela of Gopal Dass. Still further, the decree for rendition of accounts could be executed only against the deceased Gopal Dass, therefore, after his demise, such decree cannot be executed."

12. The primary contention of the Appellants is that any suit concerning a public charitable trust must necessarily traverse the route of Section 92 of the CPC. This Court finds this argument legally unsustainable. Section 92 does not lay down that with respect to a public charitable trust, *only* a suit under Section 92 can be filed. Section 92 is not the sole repository of suits filed by or against a Public Charitable Trust.

13. The language used in Section 92 of the CPC does not suggest the exclusion of a civil suit filed by a Public Charitable Trust under the provisions of the Specific Relief Act, 1963 or any other provision. The object of filing a suit under Section 92 of the CPC is specific: to protect, prevent, and remedy the alleged breach of any express or constructive trust, and to ensure proper management of the trust while ordering the removal or appointment of trustees and preparation of a scheme. Such a suit is exclusively maintainable before the Principal

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Civil Court (District Judge) and not before the Civil Judge or any other Court, depending upon the pecuniary jurisdiction.

14. In contrast, a suit under the Specific Relief Act, 1963, subject to pecuniary jurisdiction, is required to be filed in the court of first instance, which may be a Civil Judge or Sub-Judge. The Plaintiff cannot be compelled to file a suit *only* under Section 92 of the CPC and not under any other provision.

15. Even if some of the reliefs amongst various others fall within the scope of Section 92 of the CPC, such as rendition of accounts – it would not be appropriate for the Court, at the stage of Order VII Rule 11 of the CPC, to reject a plaint filed essentially under the Specific Relief Act for declaratory and injunctive relief against alleged trespassers. The attention of the Court has not been drawn to any statutory prohibition for filing a suit for one or more reliefs as enlisted under Section 92 of the CPC by filing a simpliciter suit, particularly when the nature of some of the reliefs falls out of the scope of a suit filed under Section 92.

16. At the initial stage of considering an application under Order VII Rule 11 of the CPC, the Court is not expected to hold a mini trial. The Court must confine itself to the averments in the plaint. In the present case, the Plaintiffs have categorically claimed that they have not filed the suit under Section 92 of the CPC. It is the Defendants who pray for rejection of the plaint on the ground that the leave of the Court has not been sought.

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17. The learned senior counsel for the Appellants has placed heavy reliance on various judgments, which, upon closer scrutiny, are distinguishable. Reliance is placed upon:

17.1 ***Ashok Kumar Gupta v. Sitalaxmi Sahuwala Medical Trust***[2] is misplaced. In that case, the suit was filed along with an application under Section 92 of the CPC. The leave was granted by the District Court but set aside by the High Court. The Supreme Court restored the order of the District Court while examining the scope of Section 92. In the present case, the Plaintiffs have consciously not invoked Section 92, asserting a right under general civil law to protect the Trust property. Hence, the aforesaid judgment is distinguishable.

17.2 ***Hamid Ahmed v. Asad Mueened and Ors.***[3] is equally unhelpful to the Appellants. In that case, one of the Mutawallis of the Waqf filed a suit against the Chief Mutawalli seeking removal. The Court held that the suit should have been filed under Section 92 of the CPC. However, these observations were made after the Court concluded that the suit was filed by only one Plaintiff, not two as envisaged under Section 92. This factual disparity renders the judgment inapplicable to the present facts where the Trust itself is a Plaintiff along with others.

17.3 Similarly, the judgment in ***Shishir Bajaj v. India Youth Centres Trust***[4] is not applicable. In that case, the Plaintiffs sought a declaration challenging the appointment of some trustees, and the Court decreed the suit after examining the scope of Section 92 of the

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[2] (2020) 4 SCC 321
[3] 2009 SCC OnLine Delhi 2759
[4] 2010 SCC OnLine Delhi 2465

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CPC. The context of that adjudication was different and does not support the proposition that a plaint must be rejected at the threshold.

17.4 The Appellants further relied on the judgment in ***Sankar Padam Thapa v. Vijaykumar Dineshchandra Agarwal***, but it did not deal with the applicability of Section 92 of the CPC to a suit for recovery of trust property from *trustees de son tort*. The question which came up for decision in that case was distinct from the issue at hand. As noted in Paragraph 2 of that judgment, the Court was examining with a specific legal question regarding the entity status of a Trust in the context of a suit for specific performance or third-party contractual obligations. The Supreme Court clarified that a Trust is not a juristic person capable of suing in its own name *simpliciter* without trustees. However, in the present matter, the suit is instituted by the Trust *through* its trustees against persons alleged to be trespassers/usurpers. Thus, that judgment does not come to the rescue of the Appellant.

17.5 Similarly, in ***A.R. Ram Charitable Trust***[5], the Division Bench was examining a petition under Section 34 of the Indian Trusts Act to permit the sale of property, finding Section 92 of the CPC maintainable in that context. These judgments do not establish a universal bar against suits filed under the Specific Relief Act by a Trust against usurpers.

18. Therefore, this Court holds that the failure to obtain leave under Section 92 of the CPC does not become a ground for rejection of the

[5] 2023 SCC Online Madras 8366

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plaint in the present case, especially when the Plaintiffs contend that Section 92 is not attracted. Moreover, not seeking leave is, at best, a curable defect, and procedural impropriety must not defeat a party's right to fairness and justiciability on merits.

19. **Procedural Impropriety vs. Substantive Justice:** Even assuming, *arguendo*, that the reliefs claimed fall within the ambit of Section 92 of the CPC, the absence of leave is not a fatal, incurable defect warranting immediate rejection of the plaint. The requirement of leave under Section 92 is a mechanism to prevent vexatious litigation against public charities; it is a shield for the Trust, not a weapon for alleged wrongdoers to evade scrutiny.

20. It is a settled proposition of law that procedural requirements should be handmaids of justice, not mistresses. To reject a plaint solely on this procedural ground, especially when substantive allegations of mismanagement of public funds are made, would be to prioritize technicality over the interests of the charity. Therefore, the lack of leave does not constitute a "bar by law" in the absolute sense contemplated by Order VII Rule 11(d) of the CPC.

II. Limitation: A Mixed Question of Fact and Law

21. The second limb of the Appellants' challenge is limitation. They rely heavily on the admission in Paragraph 34 of the Plaint regarding knowledge of the dispute in 1996.

22. The law of limitation is founded on public policy to quieten stale demands. However, the application of this law depends heavily

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on the nature of the wrong alleged. The distinction between a "one-time wrong" and a "continuing wrong" (Section 22 of the Limitation Act) is critical.

23. The Plaint specifically avers that the Defendants are in illegal occupation of the office of trustees and are interfering with the Trust properties *de die in diem* (day by day). If the initial appointment is void *ab initio*, as alleged, every day of the Appellants' continuance in office may give rise to a fresh cause of action. Whether the wrong is continuing or complete is a mixed question of fact and law that requires examination of the Trust Deed, the nature of the appointments, and the specific acts of interference.

24. As held by the Supreme Court in ***Popat and Kotecha Property v. State Bank of India Staff Association***[6], disputed questions of limitation cannot be decided under Order VII Rule 11 of the CPC. The Court cannot look into the defence or infer facts contrary to the plaint's assertions at this stage. Since the Plaintiffs have pleaded a continuing cause of action extending into 2021, the suit cannot be declared barred by limitation on a plain reading of the plaint. The learned Single Judge was legally correct in relegating this issue to trial.

CONCLUSION

25. This Court finds the reasoning of the learned Single Judge to be sound and in consonance with the judicial precedents governing the rejection of plaints. (i) The failure to obtain leave under Section 92 of

[6] (2005) 7 SCC 510

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the CPC, in the specific facts of this case, does not constitute a ground for rejection of the plaint under Order VII Rule 11 of the CPC. The defect, if any, is curable and does not defeat the Plaintiffs' right to have the merits of the alleged usurpation adjudicated. (ii) The plea of limitation involves triable issues regarding the continuing nature of the wrong and cannot be determined summarily.

26. The Courts must be circumspect in shutting the doors of justice at the threshold, particularly in matters involving public charitable trusts where the preservation of trust property is paramount. The Appellants have failed to make out a case for interference.

27. The present Appeal is accordingly dismissed. The Impugned Order dated 13.10.2025 stands affirmed. The suit shall proceed to trial *albeit* in accordance with law.

28. All the pending applications shall stand closed.

ANIL KSHETARPAL, J.

GIRISH KATHPALIA, J.

DECEMBER 20, 2025/*sp/kb*

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