

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**CR No. 1/2024
CM No. 68/2024**

Rakesh Kumar MahajanAppellant(s)/Petitioner(s)

Through: Mr. P. K. Puri, Advocate
Mr. Rajiv K Sharma, Advocate.

vs

Sidharth Wazir and others Respondent(s)

Through: Mr. Himanshu Beotra, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

**ORDER
16.12.2024**

ORAL

1. The instant revision petition has been filed by the petitioner herein against the order dated 11.12.2023 (for short "Impugned Order) passed by the court of 2nd Additional Munsiff, Jammu (for short "the Trial Court) in case titled as "***Siddharth Wazir and others vs. Hanuman Mandir Charitable Trust and others***".
2. Facts emerging from the record would reveal that the respondents 1 to 5 herein filed a suit under and in terms of Section 92 of the Code of Civil Procedure and besides impleading the present petitioner as defendant 2 therein the said suit, impleaded respondents 6 to 12 herein also as defendants and prayed for following reliefs therein the said suit:

a) Suit for declaration thereby declaring the Trust Deed dated 01.05.2006 settled by Lakhdatta Bazar Businessmen

Welfare Association through its President Vijay Kumar S/O Satya Paul R/O Lakhdatta Bazar, Jammu and further relief of declaration thereby declaring the Trust Deed dated 09.05.2018 settled by Lakhdatta Bazar Businessmen Welfare Association through its President Kartar Nath Gupta S/O Prabh Dayal Gupta R/O Lakhdatta Bazar, Jammu duly registered before Sub-Registrar, 3rd Additional Munsiff, Jammu on 15.05.2018 by and between defendant no. 1 to 7 with respect to Hanuman Ji Mandir, Lakhdatta Bazar, Jammu under the name and style "Hanuman Mandir Charitable Trust", Lakhdatta Bazar, Jammu as inoperative, defunct, dissolved, nonest and void and not binding on devotees of Hanuman Ji Mandir, Lakhdatta Bazaar, Jammu including the plaintiffs and general public;

- b) With further relief for a decree of Permanent Prohibitory Injunction restraining the defendants from claiming themselves as office bearers of Hanuman Ji Mandir, Lakhdatta Bazaar, Jammu and management of the Hanuman Ji Mandir, Lakhdatta Bazaar, Jammu as a consequential relief;
- c) With the further relief for a decree of declaration declaring the defendant no. 8 as incompetent, ineligible to be appointed as Priest/Pujair/Pandit of the Hanuman Ji Mandir, Lakhdatta Bazaar, Jammu.
- d) With further relief for a decree of Permanent Prohibitory Injunction restraining the defendant no. 8 from entering, using, managing of affairs of Hanuman Ji Mandir, Lakhdatta Bazaar, Jammu as a consequential relief;
- e) With further relief for a decree of Permanent Prohibitory Injunction thereby restraining the defendants from raising further construction, opening new accounts, transferring money from A/c No. 0102040100010605 maintained at J&K Bank, Branch Lakhdatta Bazaar, Jammu to other account, utilizing the offerings/donations of devotees of Hanuman Ji Mandir, Lakhdatta Bazaar, Jammu and from managing the day to day affairs of hanuman Ji Mandir, Lakhdatta Bazar, Jammu, with a prayer for framing scheme for the management and administration of assets and properties of Hanuman Ji Mandir, Lakhdatta Bazaar, Jammu to any statutory/Govt. Agency/Authority.

- f) With a further relief for a decree of Mandatory Injunction thereby directing the defendant no. 1 to 8 for rendition of the accounts alongwith account books, ledgers, bank statement, daily register maintained in the Hanuman Mandir Charitable Trust w.e.f 2018 i.e. date of execution of Trust till date;*
- g) With a further relief for a decree of Permanent Prohibitory Injunction restraining the defendant no. 1 to 7 from managing the affairs of Hanuman Ji Mandir, Lakhdara Bazaar, Jammu, utilizing the offerings/donations offered by devotees to the deity of Hanuman Ji Mandir, Lakhdara Bazaar, Jammu;*
- h) Pass any other order which this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the plaintiffs.*

3. Before the trial court, after entering appearance, the defendant 2 in the suit being petitioner herein filed an application under Order 7 Rule 11 CPC for rejection of plaint on the ground that the suit having been filed under Section 92 of the Code of Civil Procedure is liable to be rejected on the ground of being barred by law, having been instituted without seeking leave of the court.
4. The trial court upon considering the said application and after inviting objections thereto from the plaintiffs/contesting respondents herein, in terms of the impugned order dated 11.12.2023 rejected the application by holding that the defect of non seeking leave to file suit under Section 92 CPC is procedural and a curable defect on account of which the plaint cannot be rejected.
5. The defendant 2/petitioner herein has challenged the impugned order in the instant petition on multiple grounds urged in the petition.

Heard learned counsel for the parties and perused the record.

6. Before proceeding to advert to the legality or otherwise of the impugned order, a brief reference to the provisions of Section 92 of CPC and law laid down in this regard becomes imperative.

A suit under Section 92 of the Code is a suit of special nature and Section 92 CPC has been enacted for the protection of public rights in a public trust and charity and such a suit if instituted is fundamentally on behalf of the entire body or persons who are interested in the trust and is essentially maintained for vindication of public rights.

a) The Apex Court in case titled as **Chairman Madappa vs. M. N. Mahanthadevaru and others** reported in **AIR 1966 SC 878** has held as under:-

“The primary object of Section 92 is to offer protection to public trust of a charitable or religious nature from being subjected to harassment by suits being filed against them, therefore, provides that no such suit can be instituted except by the Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the court and before such a suit is brought before the court and a leave thereof is granted, there must be prima facie case either of breach of trust or of necessity for obtaining direction from the court for the proper administration of the trust.”

b) The Apex Court in case titled as **Bishwanath and another vs. Sri Thakur Radha Ballabhji and others** reported in **AIR 1967 SC 1044** ruled as under:-

“In a suit under Section 92 CPC even by an idol for declaration of title and possession of property from a person in illegal possession would be maintainable under Section 92. So also can a worshiper can bring such a suit as an idol is in the possession of a minor

when the person presenting it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power to protect its interest.”

- c) The Apex Court further in case titled as **Swami Parmatmanand Saraswati and another vs. Ramji Tripahti and another** reported in (1974) 2 SCC 695 has laid down as under:-

“The provisions of Section 92 of the Code cannot be invoked for vindication of private rights and that whenever a suit has been brought by two or more persons under Section 92 of the Code, the suit is to vindicate the rights of the public, but it is the object or the purpose of the suit and not the relief that should decide whether the suit is one for vindication of the right of the public or the individual right of the plaintiffs or third persons.”

- d) The Apex Court also in case titled as **R. Venugopal Naidu and others vs. Venkatarayulu Naidu Charities and others** reported in 1989 Supp (2) SCC 356 held as follows:-

“The property of religious and charitable endowments or institutions must be jealously protected because large segments of the community have beneficial interest therein.”

7. Thus the real test for the applicability of the provisions of Section 92 CPC is to see whether a suit is fundamentally on behalf of the public for the vindication of public rights and in order to ascertain the same, the Court has to look into the substance of the suit instead of its form.
8. Keeping in mind the aforesaid scheme, nature, scope and object of provisions of Section 92 of CPC, inasmuch as the law laid down by the Apex Court and reverting back to the case in hand, a bare perusal

of the substance of the suit filed by the plaintiffs/contesting respondents herein, would manifestly reveal that the suit fundamentally and essentially is one under Section 92 CPC.

9. Having held the suit filed by the plaintiffs/contesting respondents herein a suit under Section 92 CPC, the next question for consideration of this Court would be as to whether such a suit could have been filed without seeking prior leave of the Court required under said Section 92 CPC.

A plain reading of the provisions of Section 92 CPC would manifestly tend to show that the provisions contained therein are mandatory in nature, required to be mandatorily complied with, specifically demonstrating that the leave of the Court is condition precedent for the institution of the suit and unless such a leave is granted, there could not be a valid suit, thus suggesting that **leave must proceed the suit and should not follow it** and a suit instituted without the leave of the Court is nonest and the said defect being basic and material cannot be cured by grant of leave at a subsequent stage.

The Apex Court in case titled as **R. M. Narayana Chettiar and another vs. N. Lakshmanan Chettiar and others** reported in (1991) 1 SCC 48 after considering the relevant case law on the point has held as follows:-

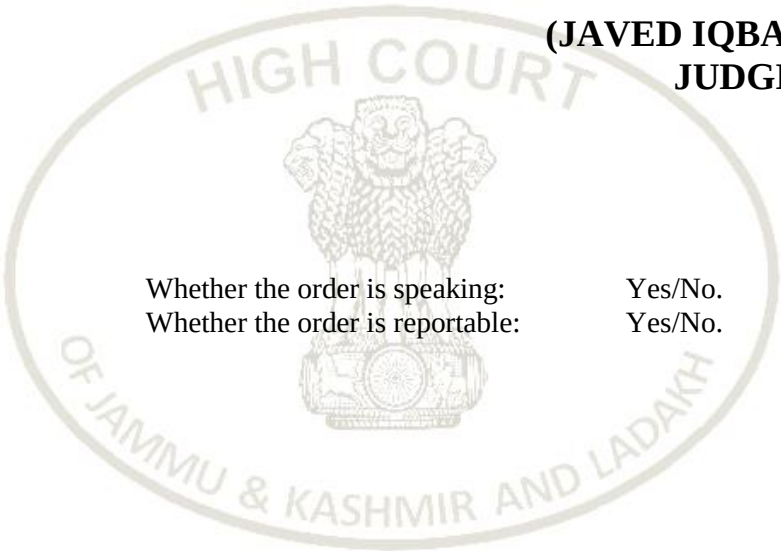
“The legislative history of Section 92 of the Coe indicates that one of the objects which led to the enactment of the said section was to enable two or more persons interested in any trust created for public purpose of a charitable or religious nature should be enables to file a suit for the reliefs set out in the said section without having to join all

the beneficiaries since it would highly inconvenient and impracticable for all the beneficiaries to join in the suit, hence any two or more of them were given the right to institute a suit for the reliefs mentioned in Section 92 of the Code. However, it was considered desirable to prevent a public trust from being harassed or put to legal expenses by reckless or frivolous suits being brought against the trustees and, hence, a provision was made for leave of the Court having to be obtained before the suit is instituted.”

10. Having regard to the aforesaid position of law inasmuch as the record available on the file, as also the record summoned from the court below, it is manifest that the suit in question though having been filed under Section 92 of the Code of Civil Procedure, admittedly has been instituted and entertained by the court below without there being a motion filed by the plaintiffs/contesting respondents herein for seeking leave of the Court for institution of the said suit and in absence of such a motion laid by the plaintiffs/contesting respondents herein, the trial court ought not to have either entertained the suit or proceeded to deal with the same, and even overlooked the provisions and position of law occupying the field in this regard and ruled that the filing of the suit in question without seeking leave is a procedural curable defect.
11. The trial court in these circumstances seemingly has grossly erred and has exercised jurisdiction in the matter not vested in it by law, besides having acted in exercise of jurisdiction illegally and with material irregularity, thus warranting exercise of revisional jurisdiction vested in this Court.

12. Viewed thus, for what has been observed, considered and analysed hereinabove, the impugned order is not legally sustainable and the same is accordingly set aside, as a consequence whereof, the application filed by the defendant 2/petitioner herein is allowed and plaint off the plaintiffs/contesting respondents herein is rejected.
13. Disposed of along with the connected application.
14. Registry to send back the record and a copy of this order to the trial court.

Jammu
16.12.2024
Sahil Padha



(JAVED IQBAL WANI)
JUDGE