

(2016) 01 P&H CK 0308
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 4439 of 2015 (O&M)

APJ Senior Secondary School

APPELLANT

Vs

Hazari Lal and Others

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Section 91, Section 92
General Clauses Act, 1897 — Section 3(48)
Penal Code, 1860 (IPC) — Section 268

Citation : (2016) 1 PLR 834

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : H.L. Tikku, Senior Advocate, Sumeet Goel and Manav Bajaj, for the Appellant;

Final Decision : Disposed off

Judgement

K. Kannan, J.—1. The school which was aggrieved by the order granting relief under Section 91 CPC at the ex parte stage is the revision petitioner before this Court. The suit has been filed by some members of the public claiming that the petitioner-school is collecting huge amount from students in the shape of admission fee, monthly fee, tuition fee etc. and seeks for a direction that the students shall not indulge in practices which according to the plaintiffs are against law. Although several grounds are urged that the Court cannot construe the so-called collection of huge amount from students as constituting public nuisance, I will find that there is not yet a need for addressing the said argument because the order suffers from a fundamental vice of grant of leave at ex parte stage without serving notice to the persons who would be affected by such a decision. Similarly even a consideration of whether a suit could be permitted to be instituted in a representative capacity under Order 1 Rule 8 must be examined from the point of view of whether the plaintiffs could treat themselves as representatives for the entire village and whether their own prayer in the suit will be supported by other villagers. Proper notice will have to be given also

before such a decision is taken. I will remind the Court of its duty under Order 1 Rule 8 CPC to give notice of suit to all persons who are interested either by personal service or by reason of number of persons who are purported to represent and if service of notice is not practicable, to issue public advertisements, as the Court may direct. The Court will then take a decision after such a publication or service is effected in the manner contemplated under Order 1 Rule 8 CPC. Even a decision to grant leave under Section 91 CPC, although not an elaborate procedure, the court must be satisfied that the notice is issued to the defendants who may be affected by the decision that the Court takes, before such a decision is taken, and call upon them to file their objections, if any, before the decision is taken. The Supreme Court had an occasion to consider the similar procedure prescribed for suits in relation to the public charities under Section 92 CPC in *R.M. Narayana Chettiar v. N. Lakshmanan Chettiar*, (1991) 1 SCC 48 that the Court will not simply grant sanction under Section 92 CPC without serving notice of application to the respondents but take a decision after hearing the objections. This was cited and followed in *Vidyodaya Trust v. Mohan Prasad*, (2008) 4 SCC 115. The same procedure would have to be applied also for similar exercise of grant of leave contemplated under Section 91 CPC. The Delhi High Court had also an occasion to consider the procedure to be followed in a suit filed under Order 1 Rule 8 CPC for relief under Section 91 CPC. In *Anang Pal v. Union of India* 2010 (8) RCR (Civil) 830. It directed a similar consideration as I have done in the instant case.

2. The impugned order is set aside and the matter is remitted to the Court below for consideration of the application under Section 91 CPC under Order 1 Rule 8 CPC in the manner referred to above and take the appropriate decision. While considering leave, the Court shall also examine the meaning of "public nuisance" in the jurisdictional context and whether it can fit into the scheme of suit. Section 3(48) of General Clauses Act defines "public nuisance" as defined under IPC. The Code defines it under Section 268. The revision petition is disposed of with the above directions.