

(1995) 12 P&H CK 0075
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 161 of 1994

Mahana-Amar Nath Chela Mahant Chattar Dass, Chairman
Baba Bhuman Sham Charitable Trust

APPELLANT

Vs

Millakh Raj and Others

RESPONDENT

Date of Decision : 19-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92, 92

Citation : (1996) 1 CivCC 578 : (1996) 112 PLR 714

Hon'ble Judges : V.K. Jhanji, J

Bench : Division Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant; S.C. Mohunta and
&nbps; Naveen Mahajan, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This civil revision is directed against order dated 16.12.1993 whereby respondent's application u/s 92 of the CPC (for short the Code) has been allowed and they have been permitted to institute a suit. Leave has been allowed only by saying that leave to file a suit u/s 92 of the Code is of administrative nature. For this, reliance has been placed on a Division Bench judgment of this Court in Lachman Dass Udasi (deceased by LRs) v. Ranjit Singh 1986 2 P.L.R. 522.

2. There is no dispute with the proposition that the order passed on application u/s 92 of the Code is of administrative nature but it does not mean that leave has to be granted as a matter of course and that too without application of mind. It is also not necessary to give notice but where notice is given, then it is open to the defendants to bring it to the notice of the Court that the allegations made in the plaint are frivolous or reckless or the trust is not a public trust of religious and charitable nature. The Apex Court in R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others, has noticed the Division Bench judgment of this Court in Lachhman Dass Udasi's case (supra) and held as under:-

"Although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law. The defendants could bring to the notice of the court: for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under S.92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons."

3. The observations reproduced above were given in a case where leave had been granted without notice. These observations would apply with a greater force in a case where before granting leave, notice is issued to the defendants and the defendants contest the prayer of the applicant seeking leave to file suit u/s 92 of the Code.

4. In the present case, notice was ordered to be issued to the defendants, who in response to the notice, have filed a detailed reply contesting the claim of the applicants. In these circumstances, it became obligatory on the part of the Court before granting sanction to look into the allegations in the plaint for ascertaining if prima facie the applicants have interest in the trust, whether it is a public trust of religious and charitable nature and if the allegations spell out a breach of trust. Reading of the impugned order shows that while granting leave, none of these things have been considered by the trial Court.

5. Accordingly, the order under revision cannot be sustained. The same shall stand quashed. This civil revision is allowed and the trial Court is directed to decide the application afresh on merits.

6. Parties through counsel are directed to appear before the trial Court on 2.1.1996.

7. Copy of this order be given Dasti on payment.