(2012) 11 MAD CK 0237

In the Madras High Court

Case No : O.S.A. No. 404 of 2012

Nadigar Sangham Charitable Trust — APPELLANT

Vs

S. Murugan @ Poochi Murugan, P.A. Kaja Mohideen and M/s. SPI Cinemas (P) Ltd. — RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 4 Rule 1, Order 6 Rule 17, Order 7 Rule 1, 11, 92

Citation : (2012) 6 CTC 721 : (2013) 1 LW 122 : (2013) 1 MLJ 433

Hon'ble Judges : R. Banumathi, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : T.R. Rajagopalan, for Mr. P. Giridharan, for the Appellant; M. Dhandapani for RR. 1 and 2 and Mr. Rahul Balaji for R.3, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.

Introductory:-

1. Whether the lease deed executed by the South Indian Artists Association represented by its Chairman, granting long lease of its valuable property worth more than Rs. 150 Crores and situated in the commercial hub of T. Nagar in Chennai, in favour of a Public Charitable Trust managed by the close relative of the Chairman, and the subsequent decision of the Managing Trustee, allegedly, in collusion with the Chairman of the Artists Association, to enter into a lease in the nature of a Development Agreement with a private cinema company for a pittance and with a first option to the builder to purchase the entire property, without following a transparent tender process and in a collusive and secret manner, and more particularly without the association of any other members of the Artists Association or Trust treating the trust property as "Private Property", would constitute an act of breach of trust and mismanagement, thereby giving cause of action to the parties interested in the affairs of the trust to file a

Scheme Suit, is the sum and substance of the issue that arises for consideration in this intra-court appeal, filed against the order granting leave to institute the suit under sub section (1) of Section 92 of the Code of Civil Procedure.

Background facts:-

South Indian Artistes Association, (in short, SIAA) formed in the year 1952 was registered under the Societies Registration Act with Registration No. 50 of 1952. The Association has the objective of promoting harmonious and brotherly relations among the members of world of artists and to seek ways and means promoting art and culture. SIAA purchased a landed property measuring about 18 grounds and 2061 sq. ft. in T.S. No. 4820 at new No. 16, old No. 153, Habibulla Road, T. Nagar, Chennai by a sale deed dated 15.7.1957 and the same was registered in the name of the Association. At present, the market value of the property is stated to be more than Rs. 150 Crores. A building was constructed in the said land for the purpose of the Association and to fulfill the ideals laid down in the Bye-laws of the Association.

2. The Association by a deed of declaration of public charitable trust, on 30.5.1987 created a trust under the name and style of Nadigar Sangam Charitable Trust (hereinafter referred to as "Trust") and the same was registered under Indian Trust Act. The office of the Trust shall be located in the said property of SIAA at No. 153, Habibullah Road, Madras-17. The 3rd appellant is the only surviving founder trustee of the said Trust. Other trustees R.S. Manohar and N.S. Krishnan passed away. The Trust was established with the avowed object of helping the poor artists and dramatists and persons belonging to weaker sections by providing educational, medical and other relief measures and declared that the benefits of the Trust shall be open for all without distinction of caste, creed or religion.

3. SIAA represented by the third appellant has executed a General Power of Attorney dated 6.8.2010 in favour of the second appellant, who is the Managing Trustee of the Trust appointing and empowering him to identify a suitable developer for commercially developing the property in Habibullah Road. On the very same day i.e., on 6.8.2010, a lease deed was executed by the 3rd appellant in his capacity as General secretary of SIAA as lessor leasing out the property in T.S. No. 4820 for a period of 99 years to Nadigar Sangam represented by its Managing Trustee-second appellant as the lessee. For the valuable property of about Rs. 150 Crores, the 2nd appellant/lessee Nadigar Sangam Trust has paid only Rs. 5,00,000/- and the rent payable towards the said valuable property is Rs. 1,000/- per annum. The 2nd appellant, being the Managing Trustee of Nadigar Sangam, has been given the exclusive right to mortgage the property and to raise loans from any financial institutions/party at his sole discretion and choice. All the rental or any other income arising from the development shall be to the exclusive account of the lessee.

4. Another lease deed dated 25.11.2010 was executed between the Trust

represented by its Managing Trustee-2nd appellant and 3rd respondent M/s. SPI Cinemas Private Limited, who has been identified as the developer of the property and SIAA represented by its President (2nd appellant) and General Secretary (3rd appellant) are the confirming party. The said lease deed in favour of 3rd respondent is for a period of 29 years and 11 months. As per the terms of the lease deed, 3rd respondent/developer has to pay interest free rental security deposit of Rs. 1,44,00,000/- as per the schedule indicated in paragraph No. 7 of the lease deed. The lessee/developer has to develop the property and the lessee shall pay the rent as indicated in paragraph No. 6 of the lease deed.

5. According to Plaintiffs/Respondents 1 and 2, the power of attorney dated 6.8.2010 is illegal, 2nd and 3rd appellants have completely ignored the basic principles of collective responsibility in the affairs of the Trust and they have taken unilateral decisions and thereafter approached the Executive Committee for expost facto approval. The plaintiffs'' allege that valuable property of Rs. 150 Crores has been leased out for a period of 29 years and 11 months and the amount to be collected as rental security deposit is a paltry sum of Rs. 1,44,00,000/-. The terms and conditions in the lease deed are more favourable to the 3rd respondent and the rental income is far less when compared to the value of the property. All these issues have not been discussed before the General Body of SIAA or the Board of Trustees. The Charitable Trust was created only for the welfare of poor artists of SIAA and anything to be done in the interest of the Charitable Trust must be done only through the Board of Trustees as contemplated in the Trust deed. In the suit filed u/s 92(1) (d) (g) and (h), the plaintiffs initially sought for declaration:-

(i) to declare the General Power of Attorney dated 6.8.2010 and the lease deed dated 6.8.2010 executed by the 3rd appellant in favour of the 2nd appellant as null and void; and

(ii) to declare that the lease deed dated 25.11.2010 executed by the 2nd appellant in favour of the 3rd respondent as null and void.

Amendment application:-

6. In the suit filed in CSD No. 15568 of 2012, respondents 1 and 2/plaintiffs filed application A. No. 2757 of 2012 seeking leave to file the suit u/s 92 C.P.C. In the said application, notice was ordered and the same was served on the appellants. The appellants entered appearance and filed their counter statement inter alia stating that the suit in CSD. No. 15568 of 2012 is not maintainable as the same does not fulfil the requirements of Section 92(1) of C.P.C. and that none of the prayers sought for in the plaint would come within the ambit of Section 92 of C.P.C. On such objection being raised by the appellants, Respondents 1 and 2/ plaintiffs filed amendment application A. No. 3519 of 2012 in CSD. No. 15568 of 2012 under Order XIV Rule 8 of O.S. Rules read with Order VI Rule 17 of C.P.C. seeking amendment of the plaint and to include the following prayers:

i. To direct the first defendant to produce accounts and inquiries pertaining to affairs of the first defendant trust.

ii. Settling a scheme of administration of the first defendant trust.

iii. Removing the defendants 2 and 3 from the trusteeships.

By Order dated 11.9.2012, the amendment application A. No. 3519 of 2012 was allowed and consequently the plaint was amended.

7. The appellants resisted the grant of leave to file the scheme suit contending that the plaintiffs do not satisfy the requirements of "persons interested" in order to enable them to file the suit. The mandatory requirements of Section 92 C.P.C. have not been complied with and no allegations of mismanagement and breach of trust have been made and when there is no evidence to support the allegations and when no public interest is involved, Court has to refuse leave to institute a suit and dismiss the same.

Impugned Order Findings of the learned single Judge:-

8. Learned single Judge held that out of the two trustees, who are managing the Trust, one trustee had executed long term lease in favour of another trustee itself shows that it is a gross mismanagement of the Trust property and held that ingredients of Section 92 are clearly attracted to institute the suit. The learned single Judge further held that it cannot be stated that the plaintiffs have no locus standi as they are members of the Association, which constituted the Trust and their interest is to maintain the Trust Property. Pointing out that the property of a charitable institution has to be jealously protected, the learned single judge placed reliance upon the decisions of Supreme Court in R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others, ; Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, and Chairman Madappa Vs. M.N. Mahanthadevaru and Others, Being aggrieved by the grant of leave to file the scheme suit u/s 92 C.P.C., the appellants have preferred the appeal.

Contentions:-

9. On behalf of the appellants, the learned Senior counsel Mr. T.R. Rajagopalan inter alia raised the following contentions:-

Plaintiffs are members of SIAA and that they are not members of Nadigar Sangham Charitable Trust and SIAA is not a party to the suit and therefore they cannot be said to be "persons interested in the management of Charitable Trust" and learned single Judge ought to have gone into bonafide of plaintiffs.

Only on objection raised by the appellants that the suit in CSD No. 15568 of 2012 is not maintainable as the same does not meet the requirements of Section 92(1) of C.P.C., the amendment application came to be filed. The application under Order VI Rule 17 C.P.C. was not capable of being numbered since Order VI Rule 17 contemplates only amendment of pleadings in a suit instituted and in the present case plaint was not numbered as no leave to file the suit has been obtained and the learned single judge ought not to have allowed the amendment application and then to grant leave. The single judge proceeded on the footing that the transaction is between two individuals and did not keep in view that the lease deed dated 6.8.2010 was executed by the 3rd appellant in his capacity as the General Secretary of SIAA in favour of the 2nd appellant in his capacity as the Managing Trustee of Nadigar Sangham Charitable Trust. Likewise, the lease deed dated 25.11.2010 was executed by the 2nd appellant in his capacity as Managing Trustee of the Trust and SIAA as the confirming party represented by its President (2nd appellant) and General Secretary (3rd appellant).

There were wide consultations and negotiations before identifying the 3rd respondent/lessee/developer and before entering into the lease deed on 25.11.2010 and in a period of 29 years, the Trust would be getting huge rent of Rs. 140 Crores and therefore there is no basis for the alleged mismanagement. The decision taken was on the basis of the general body meeting and the general body meeting approved the transactions by its resolution dated 17.2.2011.

10. Mr. M. Dhandapani, learned counsel for respondents 1 and 2 contended that various clauses in the lease deed would clearly show that unilateral decision was taken by the 2nd and 3rd appellants ignoring the clauses of the Trust Deed and amounting to clear acts of mismanagement. The learned counsel further submitted that suit u/s 92 C.P.C. is of special nature and whenever mismanagement of the Trust is brought to the notice of the Court, it is for the Court to decide the matter and any initial defect in framing the suit cannot non-suit the plaintiff and hence learned single judge rightly ordered amendment of the plaint and granted leave to sue and the impugned order warrants no interference.

Discussion:-

11. In so far as the first contention that respondents 1 and 2/plaintiffs are only members of SIAA, which is not a party to the suit and the plaintiffs cannot seek for framing of scheme suit in respect of the Nadigar Sangham Charitable Trust, we have examined the objects of the Association and the clauses of the Trust Deed. South Indian Artistes Association, a registered society was established with the purpose of achieving great heights of glory and promotion of harmonious and brotherly relations amongst the members of the world of Artists and to seek ways and means to improve their livelihood apart from promoting art and culture. Cine Artistes, dramatistes and all other persons, who have taken acting as profession, are entitled to be the members of SIAA. The 1st plaintiff is the member of SIAA having membership bearing No. 6728. The 2nd plaintiff is also stated to be an active member of the Association.

12. One of the objects of SIAA is to help poor artistes and dramatistes and persons belonging to weaker sections by providing educational, medical and other relief measures. The income of the Association is taxable. In order to help the poor artistes, SIAA was desirous of forming a public charitable trust and claimed income tax exemption. Relevant clause 5(a) reads as under:

VERNACULAR (TAMIL) PORTION DELETED

13. In pursuance of its objective of helping poor artistes and dramatistes by providing educational, medical and other relief measures, SIAA formed the Trust Nadigar Sangam Charitable Trust, having its office in the same premises of SIAA 153, Habibullah Road, Madras 17. The constitution of the Trust are:-

(i) The Trust shall have nine members as Trustees, who shall constitute the Board of Trustees;

(ii) The President, Secretary and Treasurer of South Indian Artistes Association shall be ex-officio the first three permanent trustees;

(iii) The President of South Indian Artistes Association shall be the Managing Trustee and six other trustees shall be nominated by the Executive Committee of the Association, out of which three shall be nominated from the elected Committee members and other three shall be from General Council.

(iv) The above nine Trustees shall constitute Board of Trustees.

The objects of the Trust are (a) To provide educational assistance to the children of poor artistes; (b) to provide medical relief to the poor artistes and others; (c) To provide relief to aged and incapacitated artistes and others; (d) To carry out relief measures during flood, famine drought and such other natural calamities; (e) to provide financial assistance for the cremation and such other connected expenses of the poor and needy; (f) to provide education in the area of art, culture and such other vocational training order to promote employment.

14. The constitution of Board of Trustees, the Place of functioning of the Trust and the Objects of Nadigar Sangam Trust would clearly show that Nadigar Sangam Charitable Trust is nothing but another limb of SIAA with the avowed object of helping poor artists and to get income tax exemption. Plaintiffs are members of SIAA and thus having interest in Nadigar Sangam Charitable Trust, which is nothing but an extended arm of SIAA. We do not find any merit in the objection raised in respect of the locus standi of the plaintiffs. Since the Trust is only an extended arm of SIAA, non-impleading of SIAA in the suit would not affect the maintainability of the suit. SIAA represented by its General Secretary-3rd appellant had executed the lease deed dated 6.8.2010 for a period of 99 years. The 2nd appellant as the Managing Trustee had executed the lease deed (dated 25.11.2010) to the 3rd respondent for commercially developing the property. Possession of the property was handed over by the 3rd appellant to the 2nd appellant. When Nadigar Sangam Charitable Trust is a public Trust to whom possession of the property was handed over, Scheme Suit can be filed against the 2nd appellant and 3rd respondent in respect of the Trust properties. On this score also, the contention raised as to the non-impleading of SIAA does not merit acceptance.

15. The learned Senior Counsel for appellants mainly argued that before leave was granted, Suit was not numbered and while so learned single judge ought not

to have passed the order in A. No. 3519 of 2012 and raised a question with regard to the legality of the order.

16. In CSD No. 15568 of 2012, on notice, the appellants entered appearance and filed their counter in A. No. 2757 of 2012 raising objection as to the maintainability of the Suit as the same does not meet the requirements of Section 92(1) of C.P.C. On such objection raised, respondents 1 and 2/plaintiffs filed Application A. No. 3519 of 2012 by including the prayer as mentioned in Section 92 C.P.C. The amendment application was allowed on 11.9.2012.

17. The appellant is not entitled to challenge the legality and correctness of the order permitting the respondents 1 and 2 to amend the plaint in the present appeal filed against the order in Application No. 3519 of 2012 granting leave to file suit. Admittedly, the appellant has not challenged the order granting permission to amend the plaint. It is not the case of the appellants that leave was granted without notice. The appellants were before the Court and they were in the know of things with respect to the amendment even before leave was granted by the learned judge. Even then the appellants have not chosen to assail the correctness of the order granting permission to amend the plaint. The said order has therefore become final. In the absence of a challenge to the said order, the appellants are not justified in attacking the correctness of the said order in this appeal which arises out of order granting leave.

18. Even on merits, there is no basis for the contention raised by the learned Senior Counsel for appellants with regard to the permission granted to amend the plaint even before numbering the Civil Suit. While considering the contention regarding the legality and correctness of the amendment before granting leave, the nature of the proceedings and the nature of amendment also assumes significance.

19. In order to apply Section 92 C.P.C., the following conditions must be satisfied:-

(a) There is a Trust created for public purpose of a charitable or generous nature;

(b) there is a breach alleged of such trust, or the direction of the Court is necessary for the administration of such Trust;

(c) The suit must be a representative one on behalf of the public and is not by individuals for their own interest; and

(d) The relief claimed in the suit is one or other reliefs mentioned in Section (a) to (h) of Sec. 92. The real test for the applicability of Section 92 of the Code is to see whether the suit is fundamentally on behalf of the public for vindication of a public right.

20. The Supreme Court in R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others, explained the scope of a suit u/s 92 of C.P.C. as under:

9. The legal position which emerges is that a suit u/s 92 of the Code is a suit of a special nature for the protection of public rights in the public trusts and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit u/s 92 of the Code and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are on the suit-title are the only parties to the suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust all such interested persons would be considered in the eye of law to be parties to the suit. A suit u/s 92 of the Code is thus a representative suit and as such binds not only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that Explanation VI to Section 11 of the Code constructively bars by res judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier suit u/s 92 of the Code.

21. A suit u/s 92 C.P.C. is of special nature, which pre-supposes the existence of a public trust or charitable Trust and can proceed only on the allegation that there is a breach of Trust and that directions from the Court are necessary for the administration of the Trust. In the suit filed u/s 92 C.P.C., while drawing the attention of the Court to the alleged illegality committed by the Trustees, the plaintiff must pray for one or more reliefs mentioned in the section. Suit in CSD No. 15568 of 2012 was initially filed for declaration that the General Power of Attorney dated 6.8.2010 and Lease deeds executed on 6.8.2010 and 25.11.2010 are null and void. In a suit filed u/s 92 of C.P.C., the plaint must contain the averments as to the above ingredients. Unless the requirements of Section 92 are strictly followed, the suit cannot proceed. In the plaint initially filed, the plaintiff has not prayed for one or more of the reliefs mentioned in the Section for removal of Trustees and to settle a scheme for administration of the Trust.

22. When objections were raised that the declaratory prayer sought for would not fall within the ambit of Section 92, the plaint was amended by including the prayers in Section 92. Contending that when the plaint was not numbered, single judge was not justified in allowing the amendment application, appellants placed reliance upon the decisions of AIR 1983 Ker. 6-P.V. Mathew and others Vs. K.V. Thomas and others and Kintali China Jaganadham and Others Vs. K. Laxmi Naidu and Others, in support of the contention that any order passed without granting leave to institute the suit must be deemed to be non est.

23. In AIR 1983 Ker. 6-P.V. Mathew and others Vs. K.V. Thomas and others, Division Bench of Kerala High Court has laid down the procedure to be followed by Court in granting leave u/s 92(1) C.P.C. The said judgment was referred and relied upon by the First Bench of this Court in M. Anandan Vs. Ayyanna Gounder Memorial Trust and Others,

24. In M. Anandan Vs. Ayyanna Gounder Memorial Trust and Others, , the Division Bench of this Court has observed that for safeguarding of the interest of the Trust, passing of such interim orders are necessary and held as under:

11. We may also point out here that one of the grounds on which the learned Single Judge has affirmed the order appointing the Receiver is that Receiver can even be appointed in any proceeding, not necessarily in a suit, and therefore, the fact that the leave has not been granted under S.92, CPC and the suit cannot be held to have been validly instituted, does not come in the way of appointing a Receiver....

25. The Supreme Court in R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others, observed that the issuance of the notice is not a statutory requirement to be complied with before granting leave u/s 92 of C.P.C. The Supreme Court further observed that any construction of the provisions of Section 92 of C.P.C. in favour of giving notice before granting leave would render it difficult for the beneficiaries of a Public Trust to obtain urgent interim orders of the Court even though the circumstances might warrant such a relief being granted. This Judgment throws light on the scope of opposition before granting leave. Once the Court finds that it is a public trust, Court is to consider what is in the best interest of the Trust.

26. The plaint originally filed by the appellants was u/s 92(1)(d), (g), and (h) read with Order 4 Rule 1 of Original Side Rules and under Order VII Rule 1 of C.P.C. Even though suit was filed for declaring that the general power of attorney (dated 6.8.2010) and lease deeds (dated 6.8.2010 and 25.11.2010) are null and void, by perusal of plaint, it is seen that it contains averments as to execution of lease deeds and that 2nd and 3rd appellants have completely ignored the basic principles of collective responsibility in the affairs of the Trust and that they have taken upon themselves the task of administering the Trust property as if it is their own property apparently with the malafide intentions. It is also averred that there is no transparency in the dealings of the Trust and that valuable property has been leased out for a period of 29 years and 11 months and competitive bidding has not been resorted to ensure maximum income for the Trust. Though the plaint contains the essential averments regarding the breach of trust committed by the trustees, the fact remains that there was no prayer originally for accounting, removal of appellants from the trusteeships and to settle a scheme for administration of the Trust. By way of the amendment, the respondents 1 and 2 incorporated those three prayers. Except this, no other changes were made in the plaint.

27. As pointed out above, the plaint originally filed by the respondents 1 and 2 contains the details of the allegations levelled against the appellants. In the plaint, respondents 1 and 2/plaintiffs alleged that the 1st appellant and the 2nd appellant being close relatives acted in a collusive manner to show undue benefit on a third party by giving the valuable property of the Trust for a pittance. They have also produced the sale deed, General Power of attorney dated 6.8.2010 and

the subsequent lease deeds dated 6.8.2010 and 25.11.2010 along with the plaint to prove that the appellants committed a serious breach of trust by giving the property on lease in a collusive manner and with an option given to the builder even without calling for public participation. The plaint originally filed and the documents enclosed along with the plaint were sufficient to grant leave. Since the provision of law was correctly quoted, the amendment was only a formal one without changing the nature of suit.

28. In the plaint filed, there seems to be an omission to ask for the one or more of the reliefs mentioned in Section 92 C.P.C., which made the plaintiffs to amend the plaint. As pointed out earlier, in the plaint, necessary averments are made as to the alleged breach of Trust and mismanagement, but declaratory relief has been sought for to set aside the general power of attorney (dated 6.10.2010) and two lease deeds (dated 6.8.2010 and 25.11.2010). When some of the reliefs claimed are outside the scope of the Section, the Court is not justified in returning the plaint or refusing to grant leave. It should require the plaintiff to amend his plaint by confining himself to the reliefs within the Section. Considering the averments made in the plaint, the learned single Judge rightly allowed the amendment application to include the reliefs for accounting, removal of Trustees and settlement of scheme. We do not find any merit in the objection raised by the appellants that the order passed in the amendment application A. No. 3519 of 2012 is non est.

29. On behalf of the appellants, it was then contended that the single Judge erred in making observations as to the affairs of the Trust while passing orders in the application u/s 92(1) of C.P.C. Placing reliance upon decision of Supreme Court in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, it was contended that while hearing the application u/s 92 C.P.C., only the allegations in the plaint should be looked into in the first instance to see whether the suit falls within the ambit of Section 92 and the plaint does not contain any allegation as to the breach of trust and while so single Judge was not right in observing that there was gross mismanagement of property. Reliance was also placed upon decision of Supreme Court in R.M. Narayana Chettiar and another Vs. N. Lakshmanan Chettiar and others,

30. In response to the above submission, the learned counsel for respondents 1 and 2/plaintiffs drew our attention to the Trust deed and other documents filed along with the plaint and submitted that as per Clause 8 of the Trust deed, the Board of Trustees are authorised to sell, lease, mortgage or otherwise deal with the property only subject to the approval of the General Body and for creating long lease in favour of 3rd respondent, no such approval was taken. The learned counsel contended that the 3rd appellant is none other than the brother-in-law of the 2nd appellant and both the appellants joined together in creating the lease deed in favour of the 3rd respondent without making any publication and for a long period of 29 years and 11 months. Drawing our attention to the clauses in the lease deed, the learned counsel for respondents 1 and 2 submitted that in

the lease deed dated 25.11.2010 the 2nd and 3rd appellants joined together as a confirming party representing South Indian Artists Association, which according to the plaintiffs, are nothing but collusive act of the appellants to transfer the property without the approval of the Board of Trustees and also the Executive Committee of SIAA.

31. The learned counsel for respondents 1 and 2 has drawn our attention to Clause 13 of the Lease deed dated 25.11.2010, as per which the 3rd respondent have the option of preemptive purchase of the property, which, according to the counsel, is in the nature of a sale. Learned counsel had also submitted that lease deed is not terminable for the long period of 29 years and 11 months and in case of any earlier termination of the lease deed on any ground before the lock up period of 29 years and 11 months, the 3rd respondent/developer shall be entitled to compensation by payment of the then current value and till the matters are determined by the Arbitrator, the 3rd respondent/developer will be entitled to use and occupation of the schedule property and clauses in the lease deed dated 25.11.2010 are heavily loaded in favour of the 3rd respondent.

32. The respondents 1 and 2 produced bunch of materials before the trial Court to demonstrate that all was not well with the Trust. The learned counsel contended that in case the proposal to give the property on lease is advertised, the Trust would get better offers taking into account the strategic location and the prevailing rent in the locality.

33. The grant of leave is a mandatory requirement for institution of a suit u/s 92 of C.P.C. The grant of leave does not essentially involve an adjudicatory process. The Court should look into the averments and allegations in the plaint to arrive at a prima facie satisfaction that the suit would fall within the ambit of Section 92 of C.P.C. The plaintiffs, who had produced prima facie materials, in the form of plaint averments, has to demonstrate that the direction of the Court is necessary for the administration of the Trust. It is essentially for the Court to decide by taking a prima facie view of the matter as to whether the plaintiff has made out a case for grant of leave. The plaint averments regarding breach of trust would be a primary material in arriving at a conclusion regarding prima facie case to grant leave.

34. The Court has necessarily a duty to protect the interest of the Public Trust. A Public Trust should be administered in a transparent manner. While dealing with an application for leave u/s 92 C.P.C., the Court should not adopt a hyper-technical approach. In case the allegations in the plaint are baseless and calculated to defame the trustees and there are no materials at all to form a prima facie view of the matter, the Court would be justified in refusing to grant leave. There cannot be a hard and fast rule in a case of this nature involving a public charity. In fact the reason for obtaining leave itself is to protect the Trustees from being subjected to unnecessary harassment and to avoid an unwanted litigation involving the Trust. The plaintiffs in a suit u/s 92 of C.P.C. is only bringing it to the attention of the Court about the alleged illegality

committed by the Trustees in the office and the need for removal of such trustees or to frame a comprehensive scheme for the Trust. In case the Court is convinced that the suit was filed for vindication of public rights technicality would not stand in the way of entertaining the suit. While granting leave, the Court is only considering certain fundamentals, which are required to be satisfied to entertain a suit u/s 92 of C.P.C.

35. The respondents 1 and 2, who are the members of SIAA, have levelled serious allegations with reference to the purpose of the Trust and various clauses of the lease deed The merits of those allegations are to be necessarily looked into at the time of deciding the suit. The General Power of Attorney (dated 6.8.2010) and lease deeds (dated 6.8.2010 and 25.11.2010) were filed as plaint documents and arguments were advanced before the single Judge on the basis of those documents and the circumstances under which the lease was executed without calling for public tenders and this resulted in expressing the views as to prima facie case of mismanagement by the learned judge for the purpose of granting leave u/s 92(1) of C.P.C. Therefore, it cannot be said that the learned single judge has traversed beyond the plaint averments by expressing his opinion on the merits of the matter.

36. While granting leave, the Court is only considering certain fundamentals, which are required to be satisfied to entertain a suit. Merely because leave was granted it cannot be said that the Court was convinced about the breach of trust alleged against the trustees and the collusive manner in which the activities of the Trust were undertaken by the trustees. The finding with regard to a prima facie case is only a tentative one. It is only for the limited purpose of arriving at a satisfaction with regard to prima facie case that the Court would look into the plaint and supporting documents. In case available materials are not sufficient to arrive at such a preliminary finding with regard to the prima facie case, it is open to the Court to call upon the plaintiff to produce additional materials.

37. It is the case of appellants that subsequent to the lease deed dated 25.11.2010, the General Body has approved the transaction in the meeting held on 17.2.2012 and therefore there could be no valid objection for the said transaction dated 25.11.2010. The learned Senior counsel for appellants produced the minutes of the meeting held on 17.2.2012 and submitted that the act of the 2nd appellant in endeavouring to earn income to the Trust in the interest of artistes was being appreciated by one and all and in view of subsequent approval the allegation that there was a breach of trust is unfounded.

38. We do not find any merit in the said contention. Respondents 1 and 2 challenged the alleged action taken by the appellants to grant lease of the trust property for a paltry sum to a private party in a collusive and secret manner. The Court is concerned only about the said action. The fact that the General Body subsequently met and approved the action taken by the appellants would not deprive the Court from considering the bonafides of the action originally taken by the appellants as trustees. In fact, the learned counsel for respondents 1 and 2

contended that the minutes in respect of the General Body itself was fabricated and genuineness of the records could be tested only during the time of trial. We are not expressing any opinion on this aspect.

39. In so far as the objection raised, that the learned single judge has expressed opinion on the merits of the matter, we only observe and given the nature of allegations and clauses in the lease deed, the learned single Judge only expressed the satisfaction as to the prima facie case to grant leave to institute the suit. In any event, the order of the learned single Judge as well as the judgment in this appeal would not in any way preclude the appellants from adducing evidence to substantiate their defence in the suit. Therefore, We do not find any reason warranting interference with the order of the learned single Judge.

Conclusion:-

For the foregoing reasons, the Original Side Appeal is dismissed. However, we make it clear that the order of the learned single Judge in A. No. 2757 of 2012 and the judgment made in this appeal may not be construed as expression of opinion on the merits of the matter. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.