

PUNJAB AND HARYANA HIGH COURT

Lachhman Dass Udasi

Vs

Ranjit Singh

Civil Revision No. 1297 of 1985

(D.S. Tewatia and J.V. Gupta, JJ.)

09.09.1986

JUDGMENT

J.V. Gupta, J.

1. This petition, which has been placed before us, on a reference by me for its decision by a larger Bench, is directed against the order of the learned Subordinate, Judge IIInd Class, whereby leave under section 92 of the Code of Civil Procedure (hereinafter called the Code) was granted without notice to the defendants. Thus the short question to be decided in this petition is whether the defendants are entitled to the notice before the leave is granted by the Court to the plaintiffs-respondents as contemplated under section 92 of the Code. The relevant portion of section 92 of the Code reads as under :-

"Section 92. Public Charities. - (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree xx xx xx."

2. For the decision of this question of law, it would be trite to say that the facts of the case need not be looked into. It is, therefore, unnecessary to notice the same. Coming straight to the point of law involved herein it would be pertinent to notice also the provisions of section 92 of the Code as it existed before the amendment of the Code in the year 1976. Section 92 then read as under :-

"(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of Court is deemed necessary for the administration of any such trust, the Advocate General, or two

or more persons having an interest in the trust and *having obtained the consent in writing of the Advocate General*, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree - xx xx xx."

Thus it would be clear that prior to the amendment of the Code in the year 1976 only permission of the advocate General was required for instituting a suit under Section 92 of the Code whereas this is now with the leave of the Court which is *sine quo non* for filing such a suit.

3. A Single Bench of this Court in *Prithipal Singh v. Megh Singh*¹, held that the Court does not have to write a reasoned order. It does not even have to give a notice to the defendant of the application seeking leave to file suit as the notice to the defendant of the application seeking leave to file suit as the order granting leave is of an administrative nature. However, contrary view was taken by the Delhi High Court in *Gurdwara Prabandhak Committee Delhi Cantonment v. Amarjit Singh Sabharwal*², and the Madras High Court in *T.M. Shanmugham v. The Periyar Self-respect Propaganda Institution*³, though none of the said High Court noticed judgment of this Court given earlier. It was under these circumstances that the case was referred to the larger Bench vide my order dated 12.8.1985.

4. The learned counsel for the petitioners has urged that since the leave under section 92 of the Code is to be granted by the Court, notice must be issued to the defendants before such a leave is granted or refused. According to the learned counsel such an order could not be said to be administrative in nature and is in the nature of the judicial order is in any case a quasi-judicial order. In support thereof he has mainly relied upon the judgments of the Madras and Delhi High Courts referred to above. According to the Delhi High Court in *Amarjit Singh Sabharwal's* case (supra) since such an order is subject to the revision of the High Court therefore, it is for this reason that the judicial orders of the Courts should be reasoned orders. Where the function is a judicial function as under section 92 of the Code it is inherent in the character of the function that an order must be a reasoned order.

5. As to whether the order should be reasoned one or not there may not be much dispute. Of course, when the leave is refused the Court must give reasons for not allowing the leave so that the aggrieved party may know the reasons for which the leave has been refused, but at the same time if the leave is granted then in that situation when the defendant is called upon to defend the suit all possible pleasure open to him and therefore, no prejudice whatsoever is caused in not issuing a notice prior to the granting of the leave. Moreover, the maintainability of the suit under section 92 of the Code depends upon the allegations in the plaint and does not call for decision with reference to the averments in the written statement as held by the Supreme Court in *Charan Singh and another v. Darshan Singh*⁴, That being so it is for the Court to satisfy as to whether a case is made out by the two or more persons seeking leave of the court under section 92 of the Code or not. Of course, the Court will not grant the leave or refuse the leave arbitrarily without applying its mind. It is after the application of the mind that the Court will either grant the leave or refuse the same.

6. Similarly the Madras High Court in *T.M. Shanmugham's* case (supra) took the view that the leave granted to the plaintiffs to institute the suit under section 92 of the Code without notice to

the defendants is void in law and the logical conclusion of that would be that the institution and numbering of the suit cannot be validly sustained in law and therefore, the suit was liable to be dismissed on this technical ground. However, the Madras High Court has referred to Order 14 Rule 8 of the original side rules of the High court in coming to that conclusion.

7. He also cited a Single Bench judgment of this Court reported as *Dr. Ram Parkash v. Dayal Chand*,⁵ wherein it was held that an order granting permission to institute a suit without fulfilling the essential requirements of section 92 of the Code is not rendered immune from challenge in revision merely on the ground that such an order is an administrative order which does not finally decide the rights of the parties. According to the said judgments, the order of this type would clearly be covered by clause (c) of sub-section 115 of the Code read with proviso (a) thereto. It follows, therefore that revision would lie against an order granting permission under section 92 of the Code to institute a suit which does not comply with the pre-conditions thereof. To our mind the said judgment is not relevant to decide the question as to whether the Court must issue notice to the defendants before granting the leave or not.

8. Section 92 of the Code nowhere provides that notice must be issued before such a leave is granted. No judgment has been cited on behalf of the petitioners that such a notice was necessary when the leave was to be granted by the Advocate General prior to the amendment of the Code. However, one of this Court to the contrary is there dealing with the amend provisions of the Code. In any case we are of the considered view that no notice is necessary to be issued to the defendants prior to the granting or refusing of the leave under section 92 of the Code as at that stage it is the subjective satisfaction of the Court only and thus the order is an order of administrative nature.

9. There is another reason also why no notice is necessary to the defendants prior to the granting of the leave under Section 92 of the Code because that will amount to trying the suit twice-first at the time of granting to leave and secondly after the leave is granted. As a matter of fact it is the satisfaction of the Court as to whether the leave should be granted or not keeping in view the provisions of section 92 of the Code. Suppose the leave is granted, in that situation the defendants can take all available pleas in the written statement and the matter would be decided at the trial of the suit without any prejudice to them if no notice is issued to them prior to the granting of the leave. Moreover as observed earlier the leave is to be granted on the allegations made in the plaint to be filed in the Court and not on seeking the averment made in the written statement. Obviously, thus the Court does not need presence of the defendants at the time of the granting of the leave and therefore, no notice to them at the stage is necessary.

10. In this view of the matter, this petition fails and is dismissed with no order as to costs. Parties are directed to appear in the trial Court on 16.19.1986.

D.S. Tewatia, J.

11. I agree.

Petition dismissed.

Cases Referred.

1AIR 1982 Pun & Har 137
2AIR 1984 Del 39
3AIR 1985 Mad 93
4AIR 1975 SC 371
5AIR 1986 Pun & Har 237