(2008) 02 SC CK 0132

Supreme Court of India

Case No: Civil Appeal No. 1633 of 2008 (Arising out of SLP (C) No. 3473 of 2007)

Vidyodaya Trust		APPELLANT
	Vs	
Mohan Prasad R. and Others		RESPONDENT

Date of Decision: Feb. 27, 2008

Acts Referred:

- Civil Procedure Code Amendment Act, 1976 - Section 92(3)
- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8, Order 11 Rule 21, Order 23 Rule 1, 104(1), 115
- Constitution of India, 1950 - Article 227
- Trusts Act,

Citation: AIR 2008 SC 1633 : (2008) AIRSCW 1817 : (2008) 2 AWC 1591 Supp : (2008) 2 CALLT 44 : (2008) 3 CHN 154 Supp : (2008) 2 CLT 315 : (2008) 2 CLT 44 : (2008) 3 CTC 868 : (2008) 3 JT 119 : (2008) 2 KLT 68 : (2008) 2 LW 724 : (2008) 4 MhLj 18 : (2008) 3 MLJ 967

Hon'ble Judges: P. Sathasivam, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: Harish N. Salve and J.L. Gupta, S. Udaya Kumar Sagar, Bina Madhavan, Meenakshi Grover and Hemal K. Sheth, for Lawyer''s Knit and Co, for the Appellant; Krishnan Venugopal, A. Raghunath and A. Venayagam Balan, for the Respondent

Final Decision: Disposed Of

Judgement

Arijit Pasayat, J.
Leave granted.

This is the second round of litigation before this Court. Challenge in this appeal is to the order passed by a learned Single Judge of the Kerala High Court holding that leave had been rightly granted in terms of Section 92 of the Code of Civil Procedure, 1908 (in short the ''CPC'').

2. Defendants 1 to 3, 6, 8 and 10 had moved the High Court in Civil Revision Petition questioning order of learned District Judge who had taken the view that the suit was maintainable and justified u/s 92 of CPC.

3. Earlier the matter was before this Court in Civil Appeal No. 3679 of 2006. The factual position as was noticed in the earlier appeal was as follows:

Respondents as plaintiffs filed OP No. 238 of 2000 before the District Judge, Ernakulam u/s 34 of the Indian Trust Act, 1882 (in short the ''Trust Act'') in respect of Vidyodaya Trust and administration of the said trust and the school run by the trust. But the said Court by order dated 31.1.2000 held that the OP was not maintainable and dismissed the petition. Thereafter, the suit No. 20 of 2000 was filed by the respondents as plaintiffs claiming several reliefs. The respondents filed an application (IA 349 of 2000) seeking leave of the Court to institute the suit u/s 92 of CPC. According to the appellant without notice to him the concerned Court granted leave to the respondents to institute the suit. The suit was numbered as OS 20 of 2000. Plaintiffs filed written statement inter-alia taking the stand that suit was actuated by personal motives. The suit u/s 92 CPC is of a special nature which pre-supposes existence of a Public Trust of religious or charitable character. From the averments in the plaint and the reliefs sought for it is clear that the plaintiffs were not suing to vindicate rights of the public, and it has not been filed in the representative capacity. The plaintiffs four in number are trustees who instituted both the suits against other trustees for personal reliefs and as individuals and seeking vindication of alleged individual rights and not as representatives of the public. Therefore, the suit as framed is not maintainable u/s 92 CPC. The defendants filed an application before the District Judge, Ernakulam for hearing as preliminary issue, the question of maintainability of the suit. On the basis of contentions raised by the plaintiffs as well as defendants, the Court framed preliminary issue as to whether the suit as framed is maintainable u/s 92 CPC. By order dated 11.4.2003 the Court held that the suit was maintainable. Questioning correctness of the order, a petition for revision in terms of Section 115 CPC was filed. The High Court dismissed the Civil Revision petition on the ground that the same was not maintainable. Though the High Court made reference to some factual aspects, it ultimately came to hold that the revision petition was not maintainable as order dated 4.11.2003 was an interlocutory one. Thereafter the appellant filed writ petition before the High Court praying, inter-alia, for writ, direction or order, questioning the order dated 2003. By order dated 20.8.2004 the High Court dismissed the Writ petition holding that the view taken in the Civil Revision apparently was not correct, as by no stretch of imagination it can be held that the High Court had no jurisdiction. It accepted the stand of the respondents herein that since there was discussion on merits, though the petition was not held to be maintainable subsequent proceedings initiated under Article 227 of the Constitution of India, 1950 (in short the ''Constitution'') cannot be maintained.

4. Both the orders i.e. one in the Revision Petition and the other in the Writ Petition were challenged before this Court. Taking note of the facts, the appeal was disposed of with the following conclusions:

Judged in the aforesaid background the view of the learned Single Judge that the Civil Revision was not maintainable is clearly indefensible. Learned Counsel for the respondent has fairly conceded to this position. If it is held that the suit in terms of Section 92 CPC is not maintainable, that would have the result of final disposal of the suit. However, the learned Counsel made an attempt to justify the order by stating that the matter was also dealt with on merits. That would not improve the situation. The Civil Revision was clearly maintainable. Therefore, we allow the appeal so far as it relates to Civil Revision Petition No. 1260/2003 disposed of by judgment dated 5.2.2004 by the High Court. The said order is set aside.

The High Court shall now hear the Civil Revision on merits and dispose of the same as expeditiously as practicable preferably within four months from the date of receipt of our order. The time period is being fixed considering the pendency of the matter for a considerable length of time.

In view of the order passed in the appeal relating to Section 115 CPC no order is necessary to be passed in respect of the judgment in the writ petition. It may be noted that the learned Single Judge observed that the Civil Revision was maintainable and, therefore, declined to entertain the writ petition. This order was passed on the face of the order passed by learned Single Judge holding that it was not maintainable. The same, therefore, is not justifiable. But it is not necessary to deal with that matter as the Civil Revision shall be heard on merit.

5. The High Court in the impugned judgment focused the adjudication to the issue as to whether the plaintiffs in the case at hand can be said to be laying the suit on behalf of the beneficiaries and members of the public to protect the interests of the public trust or whether they were airing only private and personal grievances. The High Court took the view that though there were certain personal reliefs claimed as evident from the prayer portion, but that was not sufficient to hold that the suit was not for protection of interests of public trust but to claim and enforce private or personal rights. It was held that the insistence of law was only that the discretionary reliefs u/s 92 CPC shall not be granted when the plaintiffs have no genuine interest or intention to protect the public right of the beneficiaries but are only using the forum provided by Section 92 to air private and personal grievances. It was further held that there was prayer to supplement the plaintiffs 1 to 3 and also 4th defendant in the School Management Committee. The same cannot be construed to be any prayer for enforcement of the personal rights.

6. The learned Single Judge formulated certain procedures for grant of leave by the Court. It was also held that there would be need for public notice under Order 1 Rule 8 CPC in a suit u/s 92. It was finally concluded that though there were certain

inadequacies they did not vitiate the proceedings. The Civil Revision was accordingly dismissed.

7. Learned Counsel for the appellant with reference to several averments in the plaint submitted that though the High Court correctly formulated the issue that there is no bar on trustees instituting the suit in terms of Section 92 CPC; yet there has to be a pointed consideration as to whether they were verblating a private or personal grievance or verdicating public rights in respect of trust in representative character. But having said so, it did not consider the true nature of the suit filed.

8. Referring to various averments it was pointed out that even on a cursory analysis the position comes clear that the plaintiffs were highlighting personal grievances. It is pointed out that plaintiff No. 1 was a Vice Chairman, Plaintiff No. 3 is the father-in-law of plaintiff No. 1 and most of the allegations of alleged improper action revolved round close relatives of these two plaintiffs. Reference to the senior teacher made is nobody else then the wife of plaintiff No. 1. All the resolutions were adopted by trustees. It is essentially an inter-trust dispute.

The prayers (a), (b), (c) and (d) focus on defendants 2, 3 and 10 and prayer (e) which was deleted initially was for removal of defendants 2, 3, 6, 9 and 10 and for supplementing the School Management Committee with plaintiffs 1, 2, 3 and 4 and defendant No. 4. Basically, the allegations are against defendants 2, 3 and 4.

9. It was submitted that it is desirable that before the leave is granted in terms of Section 92 CPC the other side should be heard. This should obviate the subsequent application for revocation of grant of leave. All the allegations according to learned Counsel for the appellant are personal grievances.

10. Learned Single Judge overlooked the fact that objections were taken by the governing council. Merely because their objections or views did not find acceptance by majority, that cannot be a ground to lay a suit u/s 92 CPC questioning legitimate decisions taken by the majority. The Court does not deal with administration of trusts. Only if the pre-conditions are satisfied then only leave can be granted as provided in Section 92. There must be an element of dis- honest intention and lack of probity. When action is taken bona fide though there may be mistaken action, that would not amount to breach of trust.

11. To find out whether the suit was for vindicating public rights there is necessity to go beyond the relief and to focus on the purpose for which the suit was filed. It is the object and purpose and not the relief which is material. A co-trustee is not remediless if the leave is not granted u/s 92.

12. In reply, learned Counsel for the respondents submitted that while deciding on the question whether leave is to be granted the statements in the plaint have to be seen and not to the allegations in the written submissions. It is permissible to strike down the portion of averment. Though the general principle may apply to the facts

of the present case, what is expected to be seen is if the trust has acted as a prudent man would do and the standards of care and caution required to be taken by a prudent man, and there should not be reckless indifference and highest standard of rectitude and accuracy is to be maintained.

13. The parameters to be kept in view while dealing with an application for grant of leave in terms of Section 92 CPC have been dealt with by this Court in several decisions. In 291464 , it was inter alia held as follows:

9. In this background, when a specific provision has been made in the CPC in Section 104(1)(ffa) allowing an appeal to be filed against an order refusing to grant leave to file a suit, the appeal filed by the respondents before the Division Bench was certainly competent to be considered by that Bench. In this case, on an earlier occasion, when one of the suits was filed u/s 92 CPC, when the founder had executed a deed of appointment of trustees and certain interim orders were passed in that suit, the said application was withdrawn without obtaining leave under Order 23 Rule 1 on 19- 9-1978 inasmuch as the newly appointed trustees had resigned their trusteeship and withdrew their application u/s 92 CPC, the two suits CSs Nos. 352 and 353 of 1978 filed by the appellants were disposed of as having become infructuous. Later on another Application No. 165 of 1981 had been filed u/s 92 CPC for leave to file a suit for appointing them as additional trustees and for rendition of accounts. In that proceeding Application No. 879 of 1991 was filed for permission of court to cross-examine the applicants therein R. Kannan Adityan and R. Kathiresa Adityan in particular to prove the fact that it was the father of those petitioners therein who was supplying all documents and materials and who was conducting the proceedings. Application filed to cross-examine the applicants was dismissed by the learned Single Judge. On further appeal, the Division Bench held that it would be in the interest of justice to permit the appellants to cross- examine the said parties. The matter was carried to this Court in SLP No. 6040 of 1982. This Court dismissed the said SLP noticing that the cross-examination "will be confined to the question of sanction and principles governing the same", of course, after noticing entire documents. Again, another Application No. 4738 of 1982 was brought before the court to dismiss Application No. 165 of 1981 under Order 11 Rule 21 CPC which was, however, dismissed by the learned Single Judge and the matter was carried in appeal which was also dismissed by the Division Bench. That matter was brought before this Court. This Court asked the parties to file the appropriate affidavits in regard thereto and thereafter all papers were placed before the Court. However, this Court dismissed the special leave petition. It is in this background the learned Counsel submitted that the Court ought to have examined the matter in all necessary details before granting permission u/s 92 CPC. In R.M. Narayana Chettiar case this Court considered in detail the history of the legislation and whether court is required to give an opportunity of being heard to the proposed defendants before granting leave to institute a suit u/s 92 CPC and stated the law on the matter. 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. 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 or even in the course of suit which may be established that the suit does not fall within the scope of Section 92 CPC. In that view of the matter, we do not think, there is any reason for us to interfere with the order made by the High Court.

14. In 281121 , it was held as follows:

9. We may now discuss the main cases relied on by the learned Counsel for the respective parties. Coming first to the cases relied upon by learned Counsel for the appellants, we find that the first decision cited by him was the decision of this Court in Swami Parmatmanand Saraswati v. Ramji Tripathi. In that case it was held that to see whether the suit falls within the ambit of Section 92, only the allegations in the plaint should be looked into in the first instance. But, if, after the evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation of fact or reason but is made only with a view to bring the suit under the section then such a suit must be dismissed. Learned Counsel next drew our attention to the decision of this Court in Charan Singh v. Darshan Singh. Section 92 of the Code before its amendment in 1976 was applicable to the case. The court cited with approval the observations of Mukherjea, J. (as he then was), in 280018 which runs as follows: (SCR p. 517)

A suit u/s 92, Civil Procedure Code, is a suit of a special nature which pre-supposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions of the court are necessary.... It is only when these conditions are fulfilled that the suit has got to be brought in conformity with the provision of Section 92, Civil Procedure Code....

10. Neither of the aforesaid decisions of this Court deal with the question as to whether, before granting leave to institute a suit u/s 92, Advocate General, or later the court, was required to give an opportunity to the proposed defendants to show cause why leave should not be granted. What learned Counsel for the appellants urged, however, was that these decisions show that at the time when the Advocate General or the court is required to consider whether to grant leave to institute a suit as contemplated u/s 92, it is only the averments in the plaint which have to be examined and hence, the presence of the defendant is not necessary. We may now consider the High Court decisions relied on by the learned Counsel for the appellants.

16. As far as the decisions of this Court which have been pointed out to us are concerned, the question as to whether before granting leave to institute a suit u/s 92 of the Code, the court is required to give an opportunity of being heard to the proposed defendants did not arise for determination at all in those cases. As far as the High Courts are concerned, they have taken different views on this question. The legislative history of Section 92 of the Code 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 a public purpose of a charitable or religious nature should be enabled to file a suit for the reliefs set out in the said section without having to join all the beneficiaries since it would be 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 the said 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.

17. A plain reading of Section 92 of the Code indicates that leave of the court is a pre- condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave u/s 92 to institute a suit. 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 u/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. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave u/s 92 can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, 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.

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19. In the result, the appeals are allowed as afore-stated. The impugned judgment of the High Court is set aside. The trial court is directed to dispose of the application for revocation of leave on merits and in accordance with law.

15. In 282310 , it was held as follows:

5. The main allegations in the plaint were that Brahmanand did not execute the Will while he was in a sound disposing state of mind, that Respondent 1 had not the requisite learning in Sanskrit and the Vedas and, therefore, he was not qualified to be nominated as successor to the Headship of the Math, that he came into possession of the Math properties and has committed breach of trust by applying for grant of succession certificate and other acts, that Krishnabodhashram was duly installed as the Shankaracharya of the Math on June 25, 1953 and that direction of the Court was necessary for the administration of the Trust properties. The plaintiffs prayed for the removal of Respondent 1 from the Headship of the Math, a declaration that Krishnabodhashram was the duly installed Head of the Math and to appoint him as the Head, and in the alternative, to appoint any other competent person as the Head of the Math. They further prayed for vesting of the properties of the Jyotish Math in the new Head and for rendition of accounts by Respondent 1, etc., and to restrain him from prosecuting the application for succession certificate and also the mutation proceedings.

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10. A suit u/s 92 is a suit of a special nature which presupposes the existence of a public Trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit u/s 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 (see N. Shanmukham Chetty v. V.M. Govinda Chetty, Tirumalai Devasthanams v. Udiavar Krishnayya Shanbhaga, Sugra Bibi v. Hazi Kummu Mia and Mulla: CPC (13th edn.) Vol. 1, p. 400). A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under

the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.

11. We see no reason why the same principle should not apply, if what the plaintiffs seek to vindicate here is the individual or personal right of Krishnabodhashram to be installed as Shankaracharya of the Math. Where two or more persons interested in a Trust bring a suit purporting to be u/s 92, the question whether the suit is to vindicate the personal or individual right of a third person or to assert the right of the public must be decided after taking into account the dominant purpose of the suit in the light of the allegations in the plaint. If, on the allegations in the plaint, it is clear that the purpose of the suit was to vindicate the individual right of Krishnabodhashram to be the Shankaracharya, there is no reason to hold that the suit was brought to uphold the right of the beneficiaries of the Trust, merely because the suit was filed by two or more members of the public after obtaining the sanction of the Advocate-General and claiming one or more of the reliefs specified in the section. There is no reason to think that whenever a suit is brought by two or more persons u/s 92, the suit is to vindicate the right of the public. As we said, it is the object or the purpose of the suit and not the reliefs that should decide whether it is one for vindicating the right of the public of the individual right of the plaintiffs or third persons.

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14. It is, no doubt, true that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92 (See Association of R.D.B. Bagga Singh v. Gurnam Singh, Sohan Singh v. Achhar Singh and Radha Krishna v. Lachhmi Narain. But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in facts or reason but is made only with a view to bring the suit under the section, then a suit purporting to be brought u/s 92 must be dismissed. This was one of the grounds relied on by the High Court for holding that the suit was not maintainable u/s 92.

16. Prior to legislative change made by the CPC (Amendment) Act, 104 of 1976 the expression used was "consent in writing of the Advocate-General". This expression has been substituted by the words "leave of the Court". Sub-Section (3) has also been inserted by the Amendment Act. The object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of pubic trusts. Thus, there is need for scrutiny. In the suit against public trusts, if on analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in Swami Parmatmanand''s case (supra) a suit u/s 92 CPC is a suit of special nature, which pre- supposes the existence of a public trust of religious or charitable character. When the plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has no application.

17. In Swamy Parmatmanand''s case (supra) it was held that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92. But if after evidence is taken it is found that the breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in fact or reason but is made only with a view to bringing the suit under the Section then suit purporting to be brought u/s 92 must be dismissed.

18. In Chettiar''s case (supra) it was held that normally notice should be given before deciding the question as to whether leave is to be granted.

19. If in a given case notice has not been given and leave has been granted, it is open to the Court to deal with an application for revocation and pass necessary orders.

20. One of the factual aspects which needs to be highlighted is that the allegations which have been made against respondents 2, 3 and 10 are referable to a decision taken by the Board, though may be by majority. The fundamental question that arises is whether allegations against three of them would be sufficient to taint the Board''s decision. As was observed by this Court in Swamy Parmatmanand''s case, (supra) to gauge whether the suit was for vindicating public rights, the Court has to go beyond the relief and to focus on the purpose for which the suit is filed. To put it differently, it is the object or the purpose for filing the suit and not essentially the relief which is of paramount importance. There cannot be any hard and fast rule to

find out whether the real purpose of the suit was vindicating public right or the object was vindication of some personal rights. For this purpose the focus has to be on personal grievances.

21. On a close reading of the plaint averments, it is clear that though the color of legitimacy was sought to be given by projecting as if the suit was for vindicating public rights the emphasis was on certain purely private and personal disputes.

22. In 275482 it was held that the mere fact that the suit relates to public trust of religious or charitable nature and the reliefs claimed fall within some of the clauses of Sub-section (1) of Section 92 would not by itself attract the operation of the Section, unless the suit is of a representative character instituted in the interest of the public and not merely for vindication or the individual or personal rights of the plaintiffs.

23. To put it differently, it is not every suit claiming reliefs specified in Section 92 that can be brought under the Section; but only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. As a decisive factor the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought. The Courts have to be careful to eliminate the possibility of a suit being laid against public trusts u/s 92 by persons whose activities were not for protection of the interests of the public trusts. In that view of the matter the High Court was certainly wrong in holding that the grant of leave was legal and proper. The impugned order of the High Court is set aside. The appeal is allowed but without any order as to costs.