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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 97/2021, I.A. 2153-2154/2021, I.A. 6414/2024, I.A. 6420/2024 and I.A. 7345-7346/2024**

PAUL N PREM & ORS.

.....Plaintiffs

Through: Mr.Sanjeev Bahl, Mr.Sumit Ahuja,
Ms.Shweta and Mr.Pankaj Mehta,
Advocates.

versus

BAPTIST MISSIONARY SOCIETY BMS & ORS. ...Defendants

Through: Mr.Abhishek Kaushik, Advocate for
D-1 and 2.
Mr.Deepakirti Verma and Ms.Neha
Sharma, Advocates for D-3.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

% **ORDER**
24.04.2025

I.A. 7345/2024 (by applicant under Order I Rule 10(2) r/w Section 151 of CPC)

I.A. 7346/2024 (by applicant under Order I Rule 10(2) r/w Section 151 of CPC)

1. The instant applications have been filed on behalf of the applicants under Order I Rule 10(2) r/w Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as CPC) seeking impleadment of the respective applicants as one of the plaintiffs in the matter.

2. Mr.Sanjeev Bahl, learned counsel appearing on behalf of the applicants, submits that the instant present proceedings were initiated under

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Section 92 of CPC and in interregnum the original plaintiffs decided not to pursue the proceedings; and therefore, looking at the public interest involved herein, the present applicants seek to prosecute the proceedings under Section 92 of the CPC. He places reliance on the decision of the Supreme Court in the case of ***R. Venugopala Naidu and others vs. Venkatarayulu Naidu Charities and others***¹ and the decision of this Court in the case of ***Sh. Ram Sarup Lugani & Anr. Vs. Nirmal Lugani & Ors.***².

3. The aforesaid submissions are strongly opposed by Mr. Deepakirti Verma, learned counsel appearing on behalf of defendant no.3 who contends that, as on date, there is no civil suit under Section 92 of CPC. According to him, what is pending is an application seeking leave to institute a civil suit under Section 92 of CPC. Furthermore, he submits that for the applicants to be impleaded in the present proceedings, they are required to place on record sufficient material and averments to demonstrate their interest in the trust.

4. Leaned counsel for defendant no.3 further submits that this Court in the case of ***Rahul Jain & Anr. Vs. Pradeep Kumar & Ors.***³ in paragraph no.10 thereof, has unequivocally held that no suit can be instituted without leave of the Court, and therefore, merely filing a proposed plaint accompanied by an application under Section 92 seeking leave to institute a suit would not amount to institution of a suit within the meaning of the expression as laid down under Rule 1 of Order 4.

5. Mr. Verma, learned counsel for defendant no.3, raises various other objections regarding the maintainability of the instant applications. He

¹ 1989 Supp (2) SCC 356

² 2020 SCC OnLine Del 1353

³ 2006 SCC OnLine Del 945



further contends that there is no merit in the applications, which are misconceived, and thus they ought to be dismissed not only on the ground of maintainability but also on merits.

6. I have considered the submissions made by learned counsel for the parties and also perused the record.

7. The Court *vide* order dated 19.03.2024 has recorded the following submissions:-

“Ms. Aditya Paul Prem, plaintiff No.1 has joined via video conferencing. Rev Dr. William Samuel, plaintiff No.2 and Mr. Pinarow Reginal Dass, plaintiff No.3, are present in-person.

The plaintiffs have been identified by Mr. Kumar Mihir, their counsel.

All the plaintiffs state in unison that they do not wish to pursue the present matter and wish to withdraw the present suit.

The statements made by the plaintiffs are noted.

However, Mr. Sanjiv Bahl, learned counsel on instructions of Mr. Pankaj Mehta, proposed impleadment applicant, appears in the matter and submits that they have filed 02 separate applications under Order 1 Rule 10 of the Code of Civil Procedure, 1908 seeking impleadment as plaintiffs in the matter, submitting that the matter concerns a public charity and therefore requires to be pursued.

Mr. Bahl submits that the application will be listed soon.

Let copies thereof be supplied to learned counsel appearing for the defendants.

In the circumstances, re-notify on 02nd, April 2024.”

8. On a perusal of the record, the Court finds substance in the submissions Mr. Verma, learned counsel for defendant no.3 who contended that as on date, what is pending before this Court is an application seeking leave to institute a civil suit. He is also correct to contend that unless the application bearing I.A. 2153/2021 is allowed, no suit can be said to be pending.

9. Having noted the aforesaid fact that I.A. 2153/2021 itself is pending,

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which essentially is for leave to institute a civil suit, the Court needs to consider the mandate of Section 92 of CPC which *inter alia* provides that 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 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 as provided under Section 92 of CPC.

10. At this stage, the enunciation of law laid down by the Supreme Court in the case of **R. Venugopala Naidu and others** will also have to be looked into in the aforesaid context. In paragraph no.9 of the said decision, the Supreme Court has held as under:-

“9. The legal position which emerges is that a suit under Section 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 under Section 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 eyes of law to be parties to the suit. A suit under Section 92 of the Code is thus a representative suit and as such binds 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 II of the Code constructively bars by res judicata the entire body of interested persons

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from reagitating the matters directly and substantially in issue in an earlier suit under Section 92 of the Code.”

11. While taking note of the decision in the case of **Rahul Jain & Anr.** and the Co-ordinate Bench of this Court in the case of **Sh. Ram Sarup Lugani & Anr.** , in paragraph no.20 thereof has held as under:-

“20. The Court is thus of the considered opinion that the grant of the prayers as made in the instant application would not fall foul of any provision of the Code. No provision of the Code, either expressly or impliedly, prohibits persons from joining an application for leave to sue. All that Section 92 mandates is that the application seeking leave must be made by at least two persons. For the purposes of determining whether the aforesaid prescription stands satisfied, the Court must ensure that the statutorily prescribed minimum number of applicants exist on the record on the date when the said application is taken up for consideration on permission to sue is granted.”

12. In light of the foregoing, the Court is of the opinion that the veracity of the averments made in the application under Section 92 CPC, whether leave ought to be granted, must be examined after a full hearing.

13. Presently, the application seeking leave to institute the suit is at a nascent stage due to the original plaintiffs’ withdrawal. Denial of the present applications at this stage may negatively impact public interest. Conversely, permitting the applicants to pursue the matter and allowing both sides to be heard will enable the Court to pass appropriate orders.

14. It is under the aforesaid circumstances, without commenting on the merits of the instant applications, the Court finds it appropriate to allow the present applicants to contest the application under Section 92 CPC seeking leave to institute a civil suit.

15. All rights and contentions of the defendants stand reserved.

16. With the aforesaid submissions, the instant applications stand

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disposed of.

I.A. 2153/2021

1. Defendants are granted liberty to file the reply to the application which is pending as on date.
2. Learned counsel for the defendants submits that they have already filed the reply to the main application which is pending as on date. Nevertheless, they are at liberty to file an additional reply, in view of the liberty granted to the present applicants to pursue the matter.
3. In addition, the Court also directs the present applicants who have been allowed to prosecute the instant proceedings to file affidavit in support of the averments made in application bearing I.A. 2153/2021 within a period of four weeks from today.
4. List this application for consideration on 29.10.2025.
5. Interim order to continue.

APRIL 24, 2025
Nc/sph

PURUSHAINDR KUMAR KAURAV, J

Click here to check corrigendum, if any

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