

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2991/2011

LIWA EDUCATIONAL AND CHARITABLE SOCIETY,
KOTTAPPURAM & ANR.

APPELLANT(S)

VERSUS

MUSALIYARAKATH ABDUL AZEEZ & ORS.

RESPONDENT(S)

O R D E R

This appeal arises out of an order passed by the High Court of Kerala at Ernakulam, allowing the Civil Revision Petition(CRP) and revoking the leave granted in favour of the appellants herein in terms of Section 92(1) of the Code of Civil Procedure, 1908 (for short "CPC') and consequently throwing out a plaint instituted by the appellants herein.

We have heard Ms. Bina Madhavan learned counsel for the appellants and Mr. V. Giri learned senior counsel appearing for the respondents.

A perusal of the order of the Trial Court and the order of the High Court would show that both the Courts have overlooked a very vital aspect. The copy of the plaint shows that the suit was instituted by two plaintiffs. The first plaintiff was described as LIWA Educational and Charitable Society Kottappuram represented by its Treasurer Cum Member of the Working Committee, T.P. Chekku Haji, s/o Veeran, Aged 49 years residing at Anthiyookunnu Amsom, Vellare Desam, Kottappuram, Pulikkal Via, both in his individual

capacity and as the duly authorized representative of the society. The second plaintiff was described as Machingal Muhammed, S/o Moideenkutty Haji, Businessman, Aged 55 years, permanently residing at Omachapuzha amsom desam, Tirur Taluk.

In paragraph 3 of the plaint, it was claimed that the first plaintiff Society was founded and constituted as a Public Charitable Trust, for the purpose of maintaining orphans, establishing and running of schools etc.

In other words, the plaint gives an impression as though the Public Charitable Trust itself was the first plaintiff and it was represented by its Treasurer Cum Member of the Working Committee.

As a matter of fact, the second plaintiff had filed an affidavit before the Trial Court claiming that the Memorandum Of Association of the first plaintiff Society discloses the nature of the society to be a Public Charitable Trust and that the second plaintiff was duly authorized by a resolution of the Working Committee of the Society passed on 12.07.2009.

In the written statement as well as counter affidavit filed by the defendants, they have categorically denied both the claims namely:

- (i) that the first plaintiff is a Public Charitable Trust and;
- (ii) that the institution of the suit is not authorized by persons duly empowered under the bye-laws to do so.

In the teeth of the very foundation on which the plaint was instituted, the question of testing the requirements under Section 92(1) CPC does not arise. But unfortunately, the appellants/plaintiffs themselves indicated in the title to the plaint that it was filed under Section 92 CPC and they also filed necessary applications for leave under Section 92 CPC to institute the suit.

Misled by the application so filed and the title given to the suit as one under Section 92 CPC, the Trial Court first granted leave after numbering the suit.

When the defendants sought revocation of the leave granted under Section 92 CPC, the Trial Court rejected the same. Therefore, the defendants filed a Civil Revision Petition before the High Court and the High Court, by the order impugned in this appeal revoked the leave and rejected the plaint itself, forcing the plaintiffs to come up with above civil appeal.

As we have pointed out above, the suit was purportedly instituted on behalf of the Society which is claimed to be a Public Charitable Trust, along with one person arrayed as plaintiff No.2, claiming to have been duly authorized by the Working Committee. In a suit instituted by a Public Charitable Trust itself, if such an averment is true, the question of leave under Section 92 CPC does not arise.

In such a case, the only thing to be tested by the Court is as to whether the person claiming to represent the Society or the Public Charitable Trust is empowered by the bye-laws and have the authorization to institute a suit for and on behalf of the Society/Trust or not.

Unfortunately, both the Trial Court as well as the High Court did not look into this aspect at all in the light of Order XXXI CPC. Since the traffic signal provided by the plaintiffs in the form of the application under Section 92 CPC mis-directed both the Courts, the entire suit has gone in a wrong direction and the travel has got aborted.

Therefore, we are of the considered view that without any reference to Section 92 CPC, the only question that the Trial Court is obliged to consider is as to whether Shri T.P. Chekku Haji, who is the first appellant herein and Shri Machingal Muhammed who is the second appellant herein are actually competent to institute a suit on behalf of the Society as per its bye-laws and whether they have been authorised by the resolutions of the managing Committee to institute the suit. It is only after finding out answers to these questions, the next question as to whether the first plaintiff Society is a Public Charitable Trust or not would arise for consideration.

Therefore the appeal is allowed, the impugned order of the High Court and the Trial Court are set aside.

The matter is remanded back to the Trial Court for a fresh consideration to find out:

(i) Whether Shri T.P. Chekku Haji is duly authorised by the bye-laws of the first plaintiff Society and by the resolution of the Executive Committee to institute the suit in question? and;

(ii) Whether the society is as Public Charitable Trust or not?

Pending application(s), if any, shall stand disposed of.

.....J.
(V. RAMASUBRAMANIAN)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
MARCH 01, 2023

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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VERSUS

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Respondent(s)

Date : 01-03-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s) Ms. Bina Madhavan, Sr. Adv.

M/S. Lawyer S Knit & Co, AOR
Ms. Bina Madhavan, Adv.
Mr. Eeshan D. Khaire, Adv.
Mr. Katubadi Ismail, Adv.For Respondent(s) Mr. V Giri, Sr. Adv.
Mr. Nishe Rajen Shonker, AOR
Mrs. Anu K Joy, Adv.
Mr. Alim Anvar, Adv.UPON hearing the counsel the Court made the following
O R D E RThe appeal is allowed in terms of the signed order which
is placed on the file.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)
COURT MASTER (SH)(RENU BALA GAMBHIR)
COURT MASTER (NSH)