

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR. JUSTICE R. NATARAJ

WRIT PETITION NO.33264 OF 2016 (GM-CPC)

BETWEEN:

1. ADARSHA SUGAMA SANGEETHA ACADEMY
NO.22, 2ND FLOOR, SHOP STREET,
BASAVANAGUDI, BENGALURU-560 004
BY ITS DONOR TRUSTEE
SRI. KRISHNAMURTHY KIKKERI
2. SRI. KRISHNAMURTHY KIKKERI

...PETITIONERS

(BY SRI. RAJESH MAHALE, ADVOCATE FOR
SRI. D.S.JAYARAJ, ADVOCATE)

AND:

1. SMT. VRINDA S. RAO
2. SMT. PUSHPA M.K.

3. SMT. SANDHYA G.B.

4. SRI. RAVINDRANATH

5. YOGESH

...RESPONDENTS

(BY SRI. A.V.SRINIVAS, ADVOCATE FOR RESPONDENT NO.1;
SRI. S.R SREEPRASAD, ADVOCATE FOR RESPONDENT NO.2;
SRI. RAJATH H.V., ADVOCATE FOR RESPONDENT NO.5;
NOTICE IS SERVED ON RESPONDENT NOS.3 AND 4)

THIS PETITION IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED
ORDER DATED 06.02.2016 PASSED BY THE PRINCIPAL CITY
CIVIL JUDGE, BENGALURU, IN MISC. NO.548/2013 VIDE
ANNEXURE-E.

THIS PETITION COMING ON FOR HEARING THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

Respondent Nos.1 and 2 in Misc. No.548/2013 on the file of the Principal City Civil and Sessions Judge, Bengaluru, have filed this writ petition challenging the Order dated 06.02.2016 passed under Section 92 of the Code of Civil Procedure, 1908 (for short 'the CPC') granting leave to the petitioners therein/respondent Nos.1 and 2 herein to file a suit against them.

2. The parties shall henceforth be referred to as they were arrayed before the Trial Court.

3. A proceeding under Section 92(1) of the CPC was initiated by the petitioners seeking leave of the Trial Court to present a suit against the respondents in Misc. No.548/2013. The petitioner No.1 claimed to be a Trustee of the respondent No.1 while the petitioner No.2 claimed to be a music aficionado and interested in the activities of the Trust. The petitioners asserted that the respondent No.1 was a public charitable Trust of which the petitioner No.1 and respondent Nos.2 to 5 are the Trustees. The

petitioners alleged that the meetings of the Trust were not conducted regularly and that not even a single Annual General Body meeting of the Trust was held. They alleged that one of the Trustees, Sri G.Y. Bhagwan died long back and his place was not filled up. They also alleged that they noticed irregularities and misappropriation of funds and suggested to the respondent No.2 to induce democracy in the functioning of the Trust. They alleged that the respondent No.2 kept petitioner No.1 away from the activities of the Trust. They further alleged that the respondent No.2 was conducting the activities of the Trust as if it was a proprietary concern and spending the funds of the Trust at his will. The respondent No.2 was accused of organizing music concerts in the name of the Trust in foreign countries, proceeds of which were never accounted for. With these and various other allegations, the petitioners sought for permission to file a suit to frame a scheme for management of the Trust. Along with the petition under Section 92(1) of the CPC., the petitioners also placed on record a proposed plaint.

4. Notice of the petition was issued to the respondents and respondent No.2 who filed his objections to the petition under Section 92(1) of the CPC., contended largely (a) that the respondent No.1 was not a public charitable Trust and therefore, the provisions of Section 92 of the CPC., were not applicable to the respondent No.1; (b) that the petitioner No.2 was not interested in the affairs of the Trust and therefore, the petition was not filed by two or more persons having an interest in the Trust. He denied the allegations of misapplication and mismanagement of the funds of the Trust, but stated that the Trustees worked hard to secure publicity, name and earned goodwill amongst music lovers. He also claimed that the petitioner No.1 has laid low for more than 16 years and has thereafter hurled allegations against the respondents.

5. The Trial Court after hearing the parties, relied upon the judgment of the Hon'ble Apex Court in ***R.M. Narayana Chettiar and another v. N. Lakshmanan***

Chettiar and another [1991 (1) SCC 48] and cursorily passed an order dated 06.02.2016 allowing the petition filed under Section 92(1) of the CPC.

6. Feeling aggrieved by the said Order, the present writ petition is filed.

7. The learned counsel for the respondent Nos.1 and 2 / petitioners herein submitted that the respondent No.1 was not a public charitable Trust and the petitioner No.2 was not a person interested in the affairs of the Trust and therefore, the Trial Court without considering the case of the petitioners on the anvil of the above, allowed the petition by relying upon a judgment of the Hon'ble Apex Court in the case cited above. He submitted that a perusal of the Trust deed does not disclose any charitable activities of the respondent No.1 and that therefore, the respondent No.1 does not qualify to be a public charitable Trust and hence, the Trial Court cannot be clothed with the jurisdiction to entertain a petition to present a plaint to frame a scheme for administration of the Trust.

8. Per contra, the learned counsel for the petitioners/respondent Nos.1 and 2 herein submitted that respondent No.1 was registered as a charitable Trust and that it had obtained registration under Section 12A of the Income Tax Act, 1961. He also pointed out that in the Income Tax returns filed by the respondent No.1, it had declared itself as a charitable Trust. He further contended that the aims and objects of the Trust *inter alia* provided that the Trust could carry out the following activities:

"xxx

(d) To start, run and set up institutions and schools to teach music, both vocal and instrumental, dance and literature for the benefit of the people at large and particularly, the people of Scheduled Castes/Scheduled Tribes and physically handicapped and other backward classes.

xxx

(g) To help promotion of physically handicapped and financially backward students by way of freeships, scholarships etc.,

xxx

(m) To start funds for the purpose of granting freeships and scholarships and fellowships to the

students who evince keen interest in the field of music;

xxx

(p) To conduct deposits and discourses, seminars, meeting classes, to propagate and disseminate knowledge, information and understanding in any area of study and research, with which the Trust is concerned and to promote any of the objectives of the Trust;"

Therefore, he contended that the respondent No.1 was indeed a public charitable Trust and the Trial Court was justified in entertaining the petition under Section 92(1) of the CPC. He also submitted that the petitioner No.2 was a lover and practitioner of music and therefore, she was interested in the affairs of the Trust.

9. I have considered the submissions made by the learned counsel for the petitioners and the learned counsel for respondent Nos.1 and 2. I have perused the material placed on record. I have also perused the Trust deed by which the respondent No.1 was constituted.

10. Section 92 of the CPC is a special provision which provides for securing interest of the general public

who are interested in a public charitable or religious Trust or an Institution. In order to maintain a suit under Section 92 of the CPC., persons applying should show the existence of a public charitable or a religious Trust or a purpose. There should be a clear breach of the terms of the Trust. Such a petition could be filed by two persons interested in the affairs of the Trust. Therefore, for the Court to exercise jurisdiction, there must be a factual finding from the material placed on record whether the Trust was a public charitable or a religious Trust and also whether the persons approaching the Court have any interest in the Trust. Once the threshold is fulfilled, the only question would be whether there is a breach of the Trust and if yes, the Court would determine the modalities of a scheme for the better and effective administration of the Trust under its supervision.

11. In the case on hand, a perusal of the impugned Order does not show that the Trial Court had applied its mind to the question whether the Trust was

charitable or religious and whether the petitioners were really interested in the affairs of the Trust. However, the Court has proceeded on the assumption that the Trust is a public charitable Trust and that the petitioners are interested in the affairs of the Trust. Even in the judgment relied upon by the Trial Court in **R.M. Narayana Chettiar's** case (referred supra), the issue was not whether the persons were interested in the affairs of the Trust or whether the Trust was charitable or religious in nature but the issue was whether before granting leave to institute a suit under Section 92 of the CPC., the Court is required to provide an opportunity of being heard to the proposed defendants.

12. In that view of the matter, the impugned Order suffers from the vice of non-application of mind and therefore, deserves to be set aside. Having regard to the fact that the petition is filed in the year 2013, it is appropriate to direct the Trial Court to expedite the

consideration of the petition in accordance with law.

Hence, the following :

ORDER

- (i). The Writ Petition is allowed.
- (ii). The Order dated 06.02.2016 passed by the Principal City Civil and Sessions Judge, Bengaluru, in Miscellaneous No.548/2013 is set aside.
- (iii). The parties are directed to appear before the Trial Court on **06.08.2022** and the Trial Court is requested to dispose off the aforesaid petition filed under Section 92 of the CPC., at the earliest and not later than 30.09.2022.
- (iv). All contentions of the parties are left open.

**Sd/-
JUDGE**

sma