



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. \_\_\_\_\_ OF 2026  
(ARISING OUT OF SLP (C) NOs.25577-25579 OF 2025)

S.PANCHALINGU & ORS.

....APPELLANTS

VERSUS

PEOPLE'S EDUCATION TRUST (R)  
& OTHERS ETC.

....RESPONDENTS

J U D G M E N T

MANMOHAN, J.

1. Leave granted.

SUBSTANTIAL QUESTION OF LAW

2. The substantial question of law arising for consideration in these appeals is whether a Civil Court, seized of a plaint filed under Section 92 of the Code of Civil Procedure, 1908 ('Code'), together with an application seeking leave to institute the suit, possesses the power to pass protective or preservatory interim orders during the pendency of the leave application?

CONFLICTING JUDGMENTS OF DIFFERENT HIGH COURTS

3. On this question, a divergence of judicial opinion has emerged amongst the High Courts. The High Court of Allahabad in *Muhammad Ali Khan vs. Ahmad Ali Khan & Ors.*, *ILR 1945 All 818*; *Sri Vir Digambar Jain Dharmashala and*

*Sri Mahavir Jain Dharmarth Aushadhalai (Trust) & Anr. vs. Pramod Kumar Jain, 2008 SCC OnLine All 445*, the Bombay High Court in *Bai Sakri vs. Bai Dhani, ILR 1947 Bom 784*, the Kerala High Court in *Sulaiman vs. Chunakara S.M. Jama Ath, 1982 SCC OnLine Ker 145* and the Madras High Court in *N. Anandan vs. Ayyanna Gounder & Ors., 1993 SCC OnLine Mad 165; R. Shanmugam & Ors. vs. M. Ganesa Mudaliar & Ors., 2009 SCC OnLine Mad 917* have recognised the existence of a protective jurisdiction pending grant of leave. The High Court of Orissa in *Kintali China Jaganadham & Ors. vs. K. Laxmi Naidu & Ors., 1987 SCC OnLine Ori 44* and Karnataka in *Shree Beereshwara Swamy Devaru Temple vs. G.N. Sathya, W.P. No. 9267/2022, decided on 30.09.2022*, however, have taken the contrary view that such jurisdiction stands excluded.

4. By the impugned judgment dated 25<sup>th</sup> June 2025, the High Court of Karnataka reaffirmed its earlier view that a suit under Section 92 remains ‘*stillborn*’ in the absence of leave, and that the Court is denuded of jurisdiction to pass interlocutory orders pending the grant of such leave. On this basis, the High Court set aside the order dated 2nd May 2025 passed by the Principal District and Sessions Judge, Mandya, under Order XL Rule 1(a) of the Code, whereby an *ad hoc* committee comprising the existing trustees had been constituted to manage the day-to-day affairs of Respondent No. 1 – People's Education Trust, pending further directions.

ARGUMENTS ON BEHALF OF THE APPELLANTS

5. Dr. Aditya Sondhi, learned senior counsel appearing for the Appellants, submitted that once a Court is seized of an application under Section 92 of the Code, it cannot be relegated to the position of a *'mute spectator'* until leave is granted. He contended that the Court retains the power to appoint a receiver under Section 94, read with Order XL Rule 1 of the Code and further, in the exercise of its inherent jurisdiction under Section 151 thereof.

6. He submitted that an application for leave under Section 92 constitutes a civil proceeding to which the provisions of the Code apply *mutatis mutandis*, by virtue of Section 141 of the Code, which reads as under:

***“Section 141. Miscellaneous proceedings.***

*The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.*

*[Explanation.— In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceedings under article 226 of the Constitution.]”*

7. He drew attention to the Karnataka Civil Rules of Practice, 1967 framed under Section 122 of the Code. He pointed out that Rule 16-A of the said Rules expressly treats an application seeking leave under Section 92 of the Code as an *'independent and substantive application'* to be registered as a miscellaneous petition and stipulates that upon grant of leave, the Suit shall be deemed to be instituted on the date of filing of the miscellaneous petition.

8. Learned senior counsel submitted that nothing in the Code, either expressly or by necessary implication, restricts the appointment of a receiver to Suits alone.

According to him, the appointment of a receiver in miscellaneous proceedings, unlike the grant of any other interim order such as an injunction, neither conflicts with any express provision of the Code nor runs contrary to the legislative intent underlying its scheme.

9. It was submitted that Section 94 (*Supplemental Proceedings*), read with Order XL Rule 1, empowers the Court to appoint a receiver even at the pre-leave stage. He stated that while Order XXXIX Rules 1 and 2 (*Injunctions*) and Order XXVI Rule 11 (*Local Commissioner*) employ the phrase '*in any suit*', Order XL Rule 1 authorises appointment of a receiver of '*any property*', whether '*before or after decree*'. Section 94(d) further empowers the Court to appoint a receiver to prevent the ends of justice from being defeated, '*if so prescribed*'. The term '*prescribed*', it was argued, refers to rules and forms in the First Schedule and those framed under Section 122 or 125, including Order XL.

10. Learned senior counsel emphasised that Order XL Rule 1 departs materially from Section 503 of the old Code in two respects: (a) a receiver may be appointed over '*any property*', not merely property forming '*the subject matter of a suit or attachment*'; and (b) the power is not confined to Suits or proceedings arising out of attachment.

11. According to him, the deliberate omission of the phrase '*in a suit*' in Order XL Rule 1 was decisive, conferring wider jurisdiction upon Civil Courts. He relied upon the decisions of the Bombay High Court in ***Bai Sakri vs. Bai Dhani*** (supra), Allahabad High Court in ***Ram Khelawan vs. Smt. Sudama Devi***, AIR

**1964 All 366** and Kerala High Court in ***Sulaiman vs. Chunakara S.M. Jama Ath*** (supra), each of which affirmed the Court's protective powers even in proceedings that had not yet crystallised into Suits. He submitted that the contrary views taken by the Orissa and Karnataka High Courts failed to engage with this legislative history and intent.

12. In the alternative, he contended that even if Order XL Rule 1 is held inapplicable during pendency of leave proceedings, Section 151 independently preserves the Court's inherent power to issue interlocutory protective orders necessary to secure the ends of justice or prevent abuse of process of the Court. Reliance was placed upon the Constitution Bench decision of this Court in ***Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal, 1962 Supp (1) SCR 450***, wherein it was held that the Code is not exhaustive and that Courts possess inherent jurisdiction to issue temporary injunctions in circumstances not covered by Order XXXIX. He pointed out that in the said judgment, this Court, *inter alia*, held as follows:

*"...The section itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it."*

13. He further relied upon the Full Bench decision of the Allahabad High Court in ***Muhammad Ali Khan vs. Ahmed Ali Khan*** (supra), wherein the Court recognised its inherent duty to prevent waste or damage to trust property during the pendency of proceedings. The relevant passage, as reproduced, reads thus:

*“... Jurisdiction to protect property pending the ascertainment of rights is inherent in any court which once has cognizance in any form of a dispute involving the execution of a trust or the administration of assets; and I think the court, has, not merely jurisdiction, but a duty to safeguard them.*

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*Bearing in mind the principles laid down by the authorities mentioned above in cases analogous to the present one, it seems to me that the appointment of a receiver for a short period would be eminently "just and convenient"; and the Court has ample powers for making such an appointment under Section 94 read with Order XL of the Civil Procedure Code or in the alternative under Section 151 of the Civil Procedure Code. In any view of the matter, in very exceptional circumstances of the present case, it seems to me that it cannot be said that the court has no power to pass an order of this nature simply because no express provisions of the Code or reported decision of a Court, exactly on all fours can be found to meet the requirements of the case....”*

14. Learned senior counsel submitted that the appointment of a receiver is protective and preservatory in nature and not adjudicatory. He emphasised that the very character and function of a receiver demonstrates why the ‘*stillborn*’ doctrine cannot operate as a bar to such appointment. A receiver, he urged, is not a representative of any party but acts as the ‘*hand of the Court*’, whose function is to take custody of, preserve and manage property *pendente lite* until rights are authoritatively determined. The appointment of a receiver does not amount to the grant of any of the substantive reliefs enumerated under Section 92(1) of the Code, for it neither removes a trustee, vests property, frames a scheme, directs accounts, nor prejudices the grant of leave. It merely places the *res in custodia legis* for the benefit of whichever party may ultimately succeed.

15. He submitted that the appointment of a receiver is not made as a matter of course, but is conditioned upon established principles, including the existence of a strong *prima facie* case, imminent danger to the property and the requirement that such appointment must be just and convenient. In support of this submission,

reliance was placed upon the judgment of the Madras High Court in ***T. Krishnaswamy Chetty vs. C. Thangavelu Chetty & Ors., AIR 1955 Mad 430***, which delineates the circumstances warranting appointment of a receiver.

16. Learned senior counsel contended that even if two constructions of the Court's protective jurisdiction pending leave under Section 92 are plausible, the construction preserving jurisdiction ought to be preferred. He submitted that exclusion of the Civil Court's jurisdiction is not to be readily inferred, as the presumption is always in favour of jurisdiction. In support of this proposition, reliance was placed upon the decision of this Court in ***State of Andhra Pradesh vs. Manjeti Laxmi Kantha Rao (Dead) by LRs. & Ors., (2000) 3 SCC 689***, wherein it was held:

*"5. The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognisance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try a civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it."*

17. Lastly, it was urged that protective jurisdiction pending leave is not unique to Section 92. Courts have consistently recognised that where a statute requires leave, permission or prior sanction before proceedings can formally advance, the Court's power to pass protective or preservatory orders subsists during the interregnum. A ruling that a Civil Court is powerless pending leave under Section 92, it was submitted, may have consequences far beyond the present case,

including in Suits involving minors or persons of unsound mind and Suits relating to public nuisance.

ARGUMENTS ON BEHALF OF RESPONDENTS

18. *Per contra*, Mr. Raghavendra S. Srivatsa, learned senior counsel and Mr. Amit Pai, learned counsel for the Respondents submitted that an application for leave of the Court under Section 92 is not a ‘*substantive proceeding*’ merely because it is required to be registered as a separate petition under the Karnataka Civil Rules of Practice, for no rights of the parties can be adjudicated while the Court remains seized of the question of grant of leave. They emphasised that even on the Appellants’ own submission, a Suit is deemed to be instituted only upon the grant of leave.

19. They further submitted that since the grant of leave does not determine substantive rights, an application under Order XL Rule 1(a) would not be maintainable. The provision contemplates appointment of a receiver ‘*before or after decree*’, which necessarily presupposes the existence of a pending Suit.

20. Learned counsel contended that the Appellants’ argument that omission of the phrase ‘*in a suit*’ in Order XL Rule 1 confers wider jurisdiction on Civil Courts—rests upon a fallacy of the ‘*undistributed middle*’, as elucidated by H.M. Seervai in his treatise ‘*Constitutional Law of India*’. The relevant passage, relied upon by the Respondents, reads thus:

“9.9 The new theory involves the fallacy of the undistributed middle. A standard book on Logic explains the fallacy thus:  
Consider the following standard-form categorical syllogism:

*All dogs are mammals*  
*All cats are mammals*  


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*Therefore all cats are dogs”<sup>1</sup>*

21. The learned senior counsel for the Respondents submitted that the requirement of leave to institute a Suit under Section 92 of the Code stands on a higher footing than any other provision of the Code dealing with leave. According to them, no provision analogous to Section 92 exists elsewhere in the Code. They pointed out that the other provisions of the Code which contemplate the grant of leave are as under:

|                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 80 - Notice                                                        | <i>“(2) A suit to obtain an urgent or immediate relief against the Government....<u>may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1)....</u>”</i>                                                                                                                                                                                                                                                               |
| Section 86 – Suits against foreign Rulers, Ambassadors and Envoys          | <i>“(1) No foreign State may be sued in any Court otherwise competent to try the suit <u>except with the consent of the Central Government certified in writing by a Secretary to that Government :</u> ....”</i>                                                                                                                                                                                                                                                        |
| Section 91 – Public nuisances and other wrongful acts affecting the public | <i>“(1) In case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction ...., <u>may be instituted,- ....</u><br/>(b) <u>with the leave of the Court</u>, by two or more persons, ....”</i>                                                                                                                                                                                                       |
| Order XXXIII – Suits by indigent persons                                   | <i>“Rule 2 – Contents of application.— Every application for permission to sue as an indigent person shall contain the particulars required in regard to complaints in suits:<br/>.....”<br/>“Rule 8 – Procedure if application admitted.— Where the application is granted, it shall be numbered and registered, and shall be deemed the complaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, .....</i> |

<sup>1</sup> Constitutional law of India, A Critical Commentary, 4<sup>th</sup> Ed., H.M. Seervai, Pg. 439

22. Learned counsel for the Respondents submitted that on a reading of the aforesaid provisions, it is evident that the phrase ‘*with the leave of the Court*’ has not been qualified by the words ‘*having obtained*’, as is expressly stipulated under Section 92. In support of this submission, reliance was placed upon the judgment of the Division Bench of the Allahabad High Court in ***Gopal Dei & Anr. vs. Kanno Dei & Ors., (1903) ILR 26 All 162***, wherein it was held, “*In our opinion such consent must be obtained as a condition precedent to the institution of the suit, and the words cannot be read as meaning merely that the Courts cannot proceed with a suit already instituted until that consent has been obtained.*”

23. They submitted that the recommendations of the 54<sup>th</sup> Report of the Law Commission of India with respect to Section 91 of the Code, highlight the distinction between Section 92 and other provisions pertaining to leave of Court. The Law Commission had recommended that Section 91 also be amended to read ‘*having obtained the leave of the Court*’. However, Parliament did not accept this recommendation and the provision continues to read ‘*with the leave of the Court*’. This, according to the Respondents, underscores the deliberate legislative choice to treat Section 92 as *sui generis*.

24. The Respondents also contended that reliance placed by the Appellants upon the Full Bench judgment of the Allahabad High Court in ***Muhammad Ali Khan vs. Ahmad Ali Khan*** (supra), for the proposition that a receiver may be appointed under Order XL Rule 1 in proceedings other than Suits, is misplaced. They submitted that the said judgment dealt exclusively with a private trust, to

which Section 92 was inapplicable. They referred to the following observations of Waliullah, J., to buttress this submission:-

*“It is clear from order XL, rule 1, Civil Procedure Code, that a receiver can be appointed in proceedings other than suits. Thus it has been held that a receiver may be appointed during the course of the proceedings for the appointment of a guardian under the Guardians and Wards Act vide Chandrawati v. Jagannath Singh [A.I.R. 1925 All. 489.] and Godobai v. Janabai [A.I.R. 1929 Nag. 119.]. Similarly in C. Kuppuswami Mudaliar v. Y. Subramaniam Chettiar [A.I.R. 1923 Mad. 224.], two learned Judges of the Madras High Court have held that in a suit under section 92 the court has power to appoint a receiver and take the management of the temple put of the hands of the trustees appointed by the Temple Committee pending the disposal of the suit even though there is no prayer for his removal and though he cannot be removed except on a proper enquiry. Similarly in T.A. Balkrishna Odayar v. Chakravarthy v. Jagannada Chariar [A.I.R. 1925 Mad. 820.], it was held by a Bench of two learned Judges of the Madras High Court that in a proper case the District Judge in a suit under section 92, Civil Procedure Code, could appoint an interim, receiver for the protection of the trust properties. That was a case where one of the trustees instituted a suit under section 92 for the removal of other trustees on the ground of mismanagement of the trust properties. It appeared to the District Judge that there were constant quarrels among the trustees and it was necessary to appoint a receiver for the protection of the trust properties pending the disposal of the suit. The learned Judges while upholding the order of the District Judge regarding the appointment of a receiver made the following observations:*

*“We need not go into detail in this matter. It is clear from the statement of both parties that there are internecine quarrels between the trustees, each charging the other with mismanagement and suppression of accounts and the issues in the case will entail an investigation of the charges against each. In these circumstances it is undesirable that either party should be left in exclusive control of the accounts or in exclusive authority over the temple servants....”*

*Bearing in mind the principles laid down by the authorities mentioned above in cases analogous to the present one, it seems to me that the appointment of a receiver for a short period would be eminently “just and convenient”; and the court has ample powers for making such an appointment under section 94 read with order XL of the Civil Procedure Code or in the alternative under section 151 of the Civil Procedure Code. In any view of the matter, in very exceptional circumstances of the present case, it seems to me that it cannot be said that the court has no power to pass an order of this nature simply because no express provisions of the Code or reported decision of a Court, exactly on all fours can be found to meet the requirements of the case...”*

25. The Respondents submitted that in the present case, the Trial Court failed to record any exceptional circumstance warranting appointment of a receiver and instead proceeded to pass a cryptic order. They emphasised that the conduct of the Appellants in filing the application under Order XL Rule 1 on the eve of the summer vacation, despite notices having already been issued in applications under Order XXXIX Rules 1 and 2 which remained pending demonstrates complete lack of bona fides and the absence of any urgent or intervening circumstance necessitating such appointment.

26. It was further contended that reliance placed by the Appellants upon Section 94 of the Code is misplaced. They pointed out that the meaning of ‘*supplemental proceeding*’ as per Black’s Law Dictionary is as follows :-

***“supplementary proceeding***

1. *A proceeding held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor’s assets available to satisfy the judgment.*
2. *A proceeding that in some way supplements another.”*

27. They pointed out that this Court in ***Vareed Jacob vs. Sosamma Geevarghese and Ors., (2004) 6 SCC 378***, while considering the scope of the Court’s power to grant interim relief under Section 94, held as follows:

*“11. The above discussion shows that the source of power of the court to grant interim relief is under Section 94. However, exercise of that power can only be done if the circumstances of the case fall under the rules. Therefore, when a matter comes before the court, the court has to examine the facts of each case and ascertain whether the ingredients of Section 94 read with the rules in an order are satisfied and accordingly grant an appropriate relief. It is only in cases where circumstances do not fall under any of the rules prescribed that the court can invoke its inherent power under Section 151 CPC. Accordingly, the courts have to grant relief of attachment before judgment, if the circumstances fall under Order 38 CPC. Similarly, courts will grant temporary injunction if the case satisfies Order 39. So depending on the circumstances falling in the*

*prescribed rules, the power of the court to grant specified reliefs would vary. Therefore, each set of rules prescribed is distinct and different from the other and therefore, one cannot equate rules of temporary injunction with rules of attachment before judgment although all are broadly termed as interlocutory orders.”*

### REASONING

#### UNLIKE A CIVIL SUIT, A SUIT AGAINST PUBLIC CHARITIES IS INSTITUTED ONLY UPON GRANT OF LEAVE

28. Having heard learned counsel for the parties, this Court considers it necessary, at the outset, to examine the provisions of the Code governing the institution of Civil Suits in general and Suits against Public Charities under Section 92 of the Code in particular.

29. Section 26 of the Code, which governs the institution of Suits, provides that a Suit shall be instituted by the presentation of a plaint or *‘in such other manner as may be prescribed’*. Order IV of the Code further clarifies that a Suit commences with the filing of a plaint.

30. Sub-section (1) of Section 92 authorises the institution of a Suit in respect of an alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, *‘by the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court’*. Sub-section (2) mandates that *‘no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to, except in conformity with the provisions of that sub-section’*.

31. It bears mention that, by the Amendment Act of 1976, Section 92 was amended to substitute the requirement of the Advocate-General's administrative

consent with the mandatory requirement of ‘*having obtained leave of the Court*’, in the case of suits instituted by two or more persons. The threshold of scrutiny was thereby shifted from the executive to the judiciary. Consequently, the obtaining of leave of the Court is a mandatory pre-condition to the institution of a suit against Public Charities.

*SECTION 92 IS A SPECIAL PROVISION EMBODYING A DELICATE BALANCING ACT. IT IS BOTH A ‘PROTECTIVE SHIELD’ AND A ‘REMEDIAL SWORD’*

32. The essential pre-requisites for the maintainability of a Suit under Section 92 are: (a) the trust must be created for public purposes of a charitable or religious nature; (b) there must exist a breach of trust or a necessity for directions of the Court in the administration of the trust; and (c) the relief claimed must be one of those enumerated in Section 92(1)<sup>2</sup>. In ***Operation Asha vs. Shelly Batra and Ors., (2026) 1 SCC 569***, this Court held that non-maintainability under Section 92 may be established by showing that any one of these conditions is not satisfied, whereas maintainability requires that all three conditions be cumulatively fulfilled.

33. Upon an analysis of Section 92 of the Code, this Court is of the view that it constitutes a special provision contemplating a representative suit of a distinct character, inasmuch as the action is instituted not to vindicate private rights, but on behalf of public beneficiaries and in the larger public interest.

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<sup>2</sup> *Ashok Kumar Gupta Vs. Sitalaxmi Sahuwala Medical Trust, (2020) 4 SCC 321*

34. One of the objects underlying the enactment of Section 92 is to enable two or more persons interested in a trust created for a public purpose of a charitable or religious nature to institute a suit against such trust and/or its trustees, without the necessity of joining all the beneficiaries, a course that would otherwise be highly inconvenient and impracticable. Accordingly, any two or more such persons are entitled to institute a suit for the reliefs enumerated in Section 92(1) of the Code. At the same time, a further object of Section 92 is to protect public trusts and trustees of a charitable or religious nature, from harassment through vexatious suit and to avert the wastage of resources that ought properly to be directed towards charitable or religious purposes. It is for this reason that the obtaining of leave of the Court has been made a condition precedent to the institution of a suit under Section 92 of the Code<sup>3</sup>. The provision thus embodies a delicate balancing act of safeguarding public trust property from mismanagement, while simultaneously shielding the trust from vexatious and malicious litigation. Consequently, it is both a *‘protective shield’* and a *‘remedial sword’*.

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<sup>3</sup> See: Mulla, The Code of Civil Procedure, 21<sup>st</sup> Edition Pg 1068 and Gour Mohun Das Baishnav v Sajedur Raja Ghowdhuri, (1897) ILR 24 Cal 418. Also in ***Vidyodaya Trust vs. Mohan Prasad R and Ors., (2008) 4 SCC 115***, it has been held :-

*“18. Prior to legislative change made by the Code of Civil Procedure (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 public trusts. Thus, there is need for scrutiny.”*

(emphasis supplied)

CONSIDERATION OF LEAVE IS A THRESHOLD PROCEEDING

35. This Court is also in agreement with the submission of learned counsel for the Respondents that an application for leave under Section 92 is not a ‘*substantive proceeding*’ merely because it is required to be registered as a separate petition under Rule 16-A of the Karnataka Civil Rules of Practice as consideration of leave is a ‘*threshold proceeding*’<sup>4</sup>. In fact, the proceedings under Section 92 are substantial proceedings in the nature of a Suit and interlocutory orders can be passed only after leave has been granted.

36. Further, the Code contains no provision analogous to Section 92. Even those provisions which incorporate the condition of ‘*leave of the Court*’, such as those relating to public nuisance, are not qualified by the expression ‘*having obtained*’, as is the case under Section 92 of the Code.

37. Moreover, there is no provision in Order XXXII of the Code to the effect that a suit for or against a minor, instituted without a next friend or a guardian is incompetent. A Court is, therefore, competent to appoint a next friend during the pendency of the suit, before a decree is passed<sup>5</sup>.

38. Consequently, the grant of leave under Section 92 is an essential and mandatory pre-condition, in the absence of which there exists no pending proceeding in which interlocutory applications can be entertained.

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<sup>4</sup> *R.M. Naryana Chettiar vs. N. Lakshmanan Chettiar*; (1991) 1 SCC 48; *Operation Asha vs. Shelly Batra and Ors.*, (2026) 1 SCC 569

<sup>5</sup> *Bachacha vs. Lakhpatri Devi*, AIR 1972 All 513.

SUPPLEMENTAL PROCEEDINGS NECESSARILY PRESUPPOSE THE  
EXISTENCE OF AN UNDERLYING PROCEEDING

39. This Court is further of the view that ‘*supplemental proceedings*’ under Section 94 necessarily presuppose the existence of an underlying proceeding. The concept of ‘*supplemental proceedings*’ cannot be invoked to circumvent the ‘*gateway proceedings*’ of leave under Section 92 of the Code. Indeed, an application under Order XL Rule 1 cannot be maintained as a supplemental proceeding, since the original action under Section 92, in the absence of leave, does not mature into a proceeding within which a supplemental application can be entertained. Accordingly, until leave is granted, there is no *lis* before the Court and consequently no jurisdiction to invoke supplemental powers.

40. To hold otherwise would involve the logical fallacy of simple conversion, as illustrated by the noted jurist Mr. H.M. Seervai and referred to by learned counsel for the Respondents.

41. Consequently, an application under Order XL Rule 1(a) would not be maintainable as a supplemental proceeding prior to the grant of leave, which constitutes the ‘*threshold requirement*’ leading to the institution of the Suit.

SECTION 141 CANNOT BE INVOKED TO OVERRIDE SAFEGUARDS  
VESTED IN PUBLIC CHARITIES

42. Further, Section 141 only makes the procedure contained in the Code applicable to miscellaneous proceedings as far as it can be made applicable. A Full Bench of Kerala High Court in ***Thresia vs. Xavier, 1976 SCC OnLine Ker 23*** has held that Section 141 of the Code does not apply to provisions relating to

substantive rights and applies only to procedural rights. This Court is in agreement with the view taken by the Kerala High Court.

43. In *R.M. Narayana Chettiar & Anr.* (supra), this Court held that a suit instituted without leave under Section 92 is not maintainable at all. Leave under Section 92 is thus peremptory and non-derogable and interlocutory applications can be entertained only after leave has been granted.

44. Consequently, this Court is of the view that the safeguards enshrined in Section 92 of the Code, as well as the appointment of receiver are not mere procedural steps, but constitute and affect the substantive rights of the parties.

45. Additionally, the deliberate use of the expression '*whether before or after decree*' in Order XL Rule 1(a) presupposes the existence of a validly instituted Suit under the Code. After all, there cannot be a decree without a properly instituted Suit. Consequently, Order XL has no applicability prior to the institution of a Suit against Public Charities.

46. Even assuming that an application under Order XL is maintainable in an application seeking leave to sue, by virtue of Section 141 of the Code, the very pre-condition of Order XL, namely, the existence of a validly instituted suit remains unfulfilled.

47. Accordingly, this Court is of the opinion that Section 141 of the Code cannot be invoked to alter or override the substantive rights and safeguards vested in the parties.

NEITHER THE INHERENT POWER NOR THE CONSTRUCTION THAT PRESERVES JURISDICTION CAN BE RELIED UPON

48. This Court is of the view that neither the inherent powers of a Civil Court under Section 151 of the Code nor the principle of preference for a construction that preserves jurisdiction, can be relied upon in contravention of the express provisions of the Code. Since Order XL of the Code governs the procedure for appointment of a receiver and Section 92 of the Code provides a statutory safeguard, the Court cannot invoke its inherent powers under Section 151 of the Code or the principles of statutory interpretation, to appoint a receiver. Inherent powers and principles of statutory interpretation can be invoked only where jurisdiction already exists.

49. Moreover, it is settled law that the generality of the inherent power preserved under Section 151 of the Code cannot override the special provision contained in Section 92, in light of the principle *generalia specialibus non derogants*<sup>6</sup>. The special provision must prevail over the general and the safeguards embedded in Section 92 must be complied with before any interlocutory orders are passed.

50. Additionally, there are binding precedents to the effect that interim orders are to be granted in aid of the final relief in a Suit<sup>7</sup> and not in a proceeding which the Court cannot entertain until leave has been granted.

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<sup>6</sup> A Latin legal maxim that translates to 'general things do not derogate from special things'. Also, in *Vareed Jacob vs. Sosamma Geevarghese (supra)*, it has been held "...the inherent power of the court under Section 151 CPC is in addition to and complementary to the powers expressly conferred under CPC, but that power will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of CPC. If there is express provision covering a particular topic, then Section 151 CPC cannot be applied..."

<sup>7</sup> *Cotton Corporation of India Limited vs. United Industrial Bank & Ors. (1983) 4 SCC 625*

51. It is also an established principle that where a power is conferred to do a certain thing in a certain manner, it must be done in that manner alone, or not at all; the performance thereof by any other method is forbidden<sup>8</sup>.

52. Consequently, neither the inherent power nor the submission that where two constructions are possible, the Court must prefer the one that preserves jurisdiction, is of any assistance to the Appellants.

RECEIVER CANNOT BE APPOINTED PRIOR TO GRANT OF LEAVE

53. The submission that the appointment of a receiver is protective and preservatory in character, rather than adjudicatory, is of no consequence where the Court lacks the power and jurisdiction to appoint a receiver in the first place. A Court which lacks jurisdiction cannot assume jurisdiction merely on the basis of how the relief sought is characterised.

54. This Court is further of the view that the appointment of a receiver in respect of a public trust cannot be regarded as merely preservatory. Such appointment is intrusive in nature and has the effect of dislodging the management of the trust, thereby defeating the very purpose of the requirement of leave, namely, protection from litigation. A situation in which leave is ultimately refused, but a receiver has in the interim been appointed, would undoubtedly prejudice the management of the trust.

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<sup>8</sup> *Taylor Vs. Taylor (1875) 1 Ch.D.426, Nazir Vs. King Emperor AIR 1936 PC 253, Babu Verghese Vs. Bar Council of Kerala (1999) 3 SCC 422*

55. Additionally, acceptance of learned senior counsel for the Appellants' argument would mean that the Court has no power, until leave is granted under Section 92, to pass any interim order except the appointment of a receiver. This distinction would be not only without any legislative basis, but would also run counter to the intent and object of Section 92 of the Code, which ascribes the role of 'gatekeeper' to the Court.

56. Moreover, this Court is in agreement with the submission of learned counsel for the Respondents that the Full Bench judgment of the Allahabad High Court in ***Muhammad Ali Khan vs. Ahmed Ali Khan*** (supra) offers no assistance to the Appellants as the said judgment deals exclusively with a private trust<sup>9</sup>, to which Section 92 is inapplicable.

HOWEVER, WHERE FACTS WARRANT URGENT RELIEF THERE IS NO NEED TO ISSUE NOTICE PRIOR TO GRANT OF LEAVE

57. However, this Court is mindful that circumstances may arise necessitating urgent interim measures, including *ex parte* temporary injunctions, in suits instituted under Section 92 of the Code, to safeguard the property of public charities. While the statutory framework affords a 'protective shield' to such institutions, it is the considered view of this Court that, where facts disclose

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<sup>9</sup> In *Muhammad Ali Khan vs. Ahmed Ali Khan* (supra), it has been stated as under:-

*On 8<sup>th</sup> September, 1930, Nawab Iqbal-ud-daula Moqim Ali Khan created a waqf alal-aulad and nominated his wife, Mst. Razia Bani Sultan Begam, as the mutwalli....*

*The position, therefore, is that there is no statutory provision vesting a District Judge, or any other civil court with the power of appointing or removing a mutawalli in a case of a private trust like a waqf alal-aulad....*

compelling urgency, issuance of notice prior to grant of leave is not indispensable. Nonetheless, Courts must exercise utmost care, caution and circumspection in granting leave *ex parte*.

58. This approach finds support in the pronouncement of this Court in ***R.M. Narayana Chettiar & Anr.*** (supra), wherein it was held that, at the stage of considering leave, the Court neither adjudicates upon the merits of the controversy nor confers substantive rights upon the parties. In keeping with the object and language of Section 92, notice to proposed defendants ought ordinarily to precede the grant of leave, save where impracticable. However, a suit instituted pursuant to leave granted without notice is not, on that account, rendered bad in law or non-maintainable. The *ex parte* grant of leave does not defeat or seriously prejudice any right of the defendants, who remain entitled to seek revocation of leave, which must then be adjudicated on merits and in accordance with law.

59. Such an approach harmonises the dual objectives of Section 92, namely, the '*protective shield*' and the '*remedial sword*'. The Court, at that stage, must record *prima facie* cogent reasons for granting leave, while retaining the power to pass interim orders beyond the mere appointment of a receiver. In this manner, the competing interests are balanced and the public charity is afforded liberty to seek recall of the order granting leave.

#### ANSWER TO THE SUBSTANTIAL QUESTION OF LAW

60. In light of the foregoing discussion, this Court holds that a Civil Court, seized of a plaint under Section 92 of the Code together with an application

seeking leave to institute the suit, is not empowered to pass protective or preservatory interim orders pending disposal of the leave application. However, for compelling reasons to be recorded in writing like where facts disclose the necessity of urgent relief, notice prior to the grant of leave may be dispensed with.

61. Accordingly, with the aforesaid clarification, the present appeals stand dismissed. Pending applications, if any, shall stand disposed of.

.....J.  
[MANOJ MISRA]

.....J.  
[MANMOHAN]

**New Delhi;**  
**September 18, 2026**