OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE,
NEW DELHI DISTRICT, PATIALA HOUSE COURTS, NEW DELHI

CIRCULAR

In compliance of the directions of the Ld. Principal District & Sessions Judge, New Delhi District, PHC, New Delhi, a letter No. 5373-5385/DHC/Gaz.IB/G-2/SC-Judgment/2025 dated 25-09-2025 a copy of Judgment dated 05-08-2025 passed by Hon'ble Supreme Court of India in Civil Appeal No. 10048 of 2025 titled as "Operation Asha Vs Shelly Batra and Ors". has been uploaded on the official website i.e. newdelhi.dcourts.gov.in.

Therefore, it is requested to kindly peruse the abovesaid judgment from the official website for kind information & necessary compliance of the said judgment.

18/12/25

(Deepali Sharma)
Officer-in Charge, General Branch
Ld. District Judge-Commericial Court-03
New Delhi District, PHC, New Delhi

No. 43 /Genl./NDD/PHC/2025 Dated, Delhi the 7.1.26

Copy to :-

1. All the Ld. Judicial Officers at PHC, New Delhi.
2. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.
3. PS to the Ld. Principal District & Sessions Judge, NDD, PHC, New Delhi for information.
4. Ld. Officer-in Charge, Computer Branch, PHC, New Delhi with the request to direct the concerned official to upload the same on the website of New Delhi District Courts as per rules.
5. Dealing Assistant, R & I Branch for uploading the same on LAYERS.
6. Administrative Officer (Judicial), PHC, to circulate the aforesaid judgment through WhatsApp. Group of Ld. Judicial Officers of New Delhi District.

18/12/25

Officer-in Charge, General Branch
Ld. District Judge-Commericial Court-03
New Delhi District, PHC, New Delhi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10048 OF 2025

(Arising out of S.L.P (Civil) No. 29830 of 2024)

OPERATION ASHA **…APPELLANT(S)**

VERSUS

SHELLY BATRA & ORS. **…RESPONDENT(S)**

J U D G M E N T

J.B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts: -

INDEX

A. FACTUAL MATRIX 2

B. THE IMPUGNED JUDGMENT 15

C. SUBMISSIONS OF THE PARTIES 18

i. Submissions on behalf of the Appellant 18

ii. Submissions on behalf of the respondent no. 1 22

iii. Submissions on behalf of the respondent nos. 3 and 4 24

D. ISSUES FOR DETERMINATION 25

E. ANALYSIS 25

i. The Object and purpose behind Section 92 of the CPC 25

ii. Conditions to be fulfilled for the applicability of Section 92 of the CPC 33

A. The trust being created for a public purpose of a charitable or religious nature…..... 36

I. Whether a Society can be construed to be a 'trust or a 'constructive trust'?..... 37

a. Circumstances under which the creation of a trust has been inferred 37

b. Views of different High Courts on the issue 55

c. Section 5 of the Societies Registration Act, 1860 and the 'vesting' of properties in the Executive Committee. 82

d. The doctrine of constructive trust and its applicability to a society functioning for public purposes of a religious or charitable nature 99

B. A breach of trust or the directions of the court being necessary for the administration of the trust..... 129

C. The institution of the suit must be made by two or more persons "*having an interest in the trust*" 136

D. The reliefs falling within the scope of those enumerated under Section 92(1) of the CPC along with the object, purpose and capacity in which the suit is brought..... 140

F. CONCLUSION 157

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Delhi dated 21.08.2024 in FAO(OS) No. 114 of 2024 (hereinafter, the "**impugned decision**"), by which the High Court dismissed the appeal filed by the appellant herein against the judgment and order dated 03.05.2024 passed by a learned Single Judge of the High Court in CS(OS) No. 153 of 2020 allowing the application under Section 92 of the Code of Civil Procedure, 1908 (hereinafter, the "**CPC**") filed by the respondent nos. 1 and 2 respectively, seeking leave to institute the subject suit.

A. FACTUAL MATRIX

3. Operation ASHA (hereinafter, the "**appellant Society/original defendant no. 1**") is a not-for-profit society founded in the year 2005 and registered under the Societies Registration Act, 1860 with its registered office in New Delhi. The appellant Society is engaged in providing health services through a plethora of activities primarily to the underprivileged sections of the society across India with special emphasis on the treatment, education and prevention of tuberculosis and other diseases. The same can be inferred from the Memorandum of Association (hereinafter, the "**MoA**") of the appellant Society. The aims and objectives of the appellant Society are as follows:

> "***4. AIMS AND OBJECTS***
>
> ***MAIN OBJECTIVES OF THE SOCIETY ARE GIVEN BELOW.***

4.1.1 *To develop, establish, maintain and provide health and all other related services, and to help, aid, assist, arrange, co-ordinate, organize maintain and carry on activities connected with one of health quality of life, nursing facilities, socio-economic aspects, general welfare and problems of the society with special emphasis on provision of services for the underprivileged sections of the society as per Govt. rule.*

4.1.2 *To develop, establish, make and provide microcredit microfinance and all other related services, and to help, aid, assist, arrange, contribute, co-ordinate, organize maintain and carry on activities connected with concerns of microcredit and micro finance. Socio-economic aspects, general welfare and problems of the society with special emphasis on provision of services for the underprivileged sections of the society as per Govt. rule.*

4.1.3 *To establish hospitals, medical schools and colleges, nursing schools and colleges, dispensaries, laboratories research institutions and other educational institutions as per Govt. rule.*

4.1.4 *To purchase or otherwise deal in medicines and equipment required for maintenance of health, hygiene and microcredit/ microfinance.*

4.1.5 *To aid, promote establish, maintain, run and encourage alternative systems of medicine and establish training and research centers for this purpose as Govt, rule.*

4.1.6 *To aid, promote, establish, maintain, run and encourage microcredit/microfinance as per Govt. rule.*

4.1.7 *To open centers and institutes for diagnostic, curative, therapeutic and research of medical sciences as per Govt. rule,*

4.1.8 *To provide free medicines to the poor."*

4. The MoA of the appellant Society also stipulates that all the incomes and earnings of the society, whether movable or immovable, shall solely be utilised to further the aims and objectives of the appellant Society. Furthermore, it is also stated that the

members of the appellant society would not be entitled to any profits by virtue of their membership. The relevant portion of the MoA is extracted hereinbelow:

> "*All the incomes, earnings, movable or immovable properties of the society shall be solely utilized and applied towards the promotion of its aims and objectives only as set forth in the memorandum of association and no profits thereof shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or past members or to any person claiming through any one or more of the present or the past members, no member of the society shall have any profits, whatsoever by virtue of his membership, the names, addresses, occupations and signatures of the present members of the executive committee to whom the management and affairs of the society are entrusted as required under section 2 of the societies registration act, 1860 (punjab amendment act of 1957) as extended and applicable to the national capital territory & all state of india*."
>
> (Emphasis supplied)

5. A few other relevant clauses from the Articles of Association (hereinafter, the "**AoA**") of the appellant Society are reproduced hereinbelow:

> *"**6. DUTIES & OBLIGATIONS OF MEMBERS***
> *All and every member*
> ***6.1** Shall attend the Board of meetings regularly;*
> ***6.2** Shall give necessary information to the Society, pertaining to matters necessary to be known by the Society;*
> ***6.3** Shall not indulge in activities, which may prove prejudicial to the Aims and Objects of the Society and/or to the Rules and Regulations of the Society;*
> ***6.4** Shall maintain sanctity of the secrets and confidentiality of police matters of the Society and its members;*
>
> *-xxx-*
>
> ***11.2 POWERS & DUTIES OF THE EXECUTIVE COMMITTEE***

11.2.1 *All the properties, movable, immovable, and other kind of assets shall stand vested in the Committee.*

11.2.2 *The business and the affairs of the Society shall be managed and administered by the Committee.*

11.2.3 *Without prejudice to the generality of the foregoing provisions, the Committee shall have the following powers.*

11.2.3.1 *To acquire by gift, purchase, exchange, lease or in any other manner land, building, or other immovable, property together with all rights pertaining thereto.*

11.2.3.2 *To manage the properties of the Society.*

11.2.3.3 *To accept the management of any trust, fund, or endowment or any other ... in which the Society is interested.*

11.2.3.4 *To raise funds for the Society by way of gifts, donations, grants-in-aid or otherwise within India or outside, as provided in the bye-laws.*

11.2.3.5 *To raise loans, stand guarantee for loans and do all acts necessary to raising the loans to further the objects of the Society.*

11.2.3.6 *To receive monies, securities, instruments, investments, or any other assets for and on behalf of the Society.*

11.2.3.7 *To enter into agreements contracts for and on behalf of the Society.*

11.2.3.8 *To manage, serve, transfer or otherwise dispose-off any property, movable or immovable of the Society.*

11.2.3.9 *To prescribe the powers, duties and functions of the office-bearers.*

11.2.3.10 *To exercise control over the President and the General secretary of the Society including the powers of dismissal.*

11.2.3.11 *To appoint the Secretary of the Society.*

11.2.3.12 *To elect new members to the Committee when casual vacancies occur.*

11.2.3.13 *To appoint the Secretary of the society.*

-xxx-

13. SOURCES OF INCOME & UTILIAZATION OF FUNDS

Funds will be raised by way of grants-in-aid, donations, gifts, subscriptions fees, and income from investments, loans and other means available to the Society under the Act. Funds will be used to carry out the Aims and Objectives of the Society."

6. Dr. Shelly Batra (hereinafter, the "**respondent no. 1/original plaintiff no. 1**") is a medical health professional and co-founder of the appellant Society. *Vide* communication dated 19.06.2020, Mr. Sandeep Ahuja (hereinafter, the "**respondent no. 3/original defendant no. 2**") who is also the co-founder and CEO of the appellant Society terminated the services/employment of the respondent no. 1. The communication alleged that the termination of the respondent no. 1 was on account of various "*omissions including misrepresentation*" of her daughter's previous employment, fabrication of documents, misappropriation of the assets and funds of the NGO as well as gross misbehaviour with the staff and the employees. Subsequently, on 23.06.2020, the Board of the appellant Society is said to have passed a resolution terminating the respondent no. 1 from the post/office of President of the appellant Society. Soon thereafter, on 27.06.2020, the Board of the appellant Society is also said to have removed the respondent no. 1 from her capacity as a member of their Board.

7. Mrs. Usha Gupta, (hereinafter, the "**Respondent No. 2/original plaintiff no. 2**"), who is the mother of the respondent no. 1, is one of the current members of the Board

of the appellant Society. Immediately after the removal of the respondent no. 1 as a Board member, both the respondent no. 1 and respondent no. 2 (collectively also referred to as the "**original plaintiffs**") instituted an Original Suit bearing CS (OS) No. 153 of 2020 on 28.06.2020 under Section 92 of the CPC before a learned Single Judge of the High Court for declaration, permanent & prohibitory injunction and, rendition of accounts. They alleged misconduct and breach of several of the society's by-laws by the respondent no.3 and one Ms. Suniti Ahuja (hereinafter, the "**respondent no. 4/original defendant no. 3**"). The original defendant nos. 4 to 8 respectively are current Board members and the original defendant no. 9 is a former Board member of the appellant Society.

8. To further elaborate in detail, the respondent nos. 1 and 2 respectively (original plaintiffs) alleged the following in the suit instituted by them:

i. That the respondent nos. 3 and 4 respectively, were indulging in gross financial impropriety, misconduct and siphoning off funds/donations which were received by the appellant Society into various shell companies/entities controlled by them and their friends/relatives. Such funds were utilised and misappropriated for personal gains. Furthermore, that the funds received by the society have been utilised for activities outside India, which is impermissible, since the requisite permission was not taken from the appropriate governmental authorities and yet, tax benefits were illegally availed for the same.

ii. That there has been a severe mismanagement in the administration of the appellant Society by the respondent nos. 3 and 4 respectively. They have avoided making accounting provisions for statutory disbursements in the form of provident fund or gratuity to their employees and are also engaging in cross-payment of salaries to employees through their sister concerns with a view to avoid the grant of statutorily mandated employee benefits.

iii. That the respondent no. 3 has misrepresented information and thereby misled the donors of the appellant Society with an intent to defraud them by claiming that the appellant society had provided COVID-19 related services to more than 12,600 families and 10,000 migrants, however, the same remains entirely uncorroborated and unsubstantiated.

iv. That the respondent nos. 3 and 4 respectively, used force and coerced several employees in order to illegally take away the property of the appellant Society. This includes pressurizing the original defendant no. 8 to hand over the ATM card, passbook etc. of the account in which his salary is remitted and utilising those funds for personal needs. Furthermore, it was alleged that they have also demanded compulsory kickbacks from the employees engaged by the appellant Society by threatening, coercing and blackmailing them with immediate termination of employment, with a view to siphon employee payments.

v. That respondent no. 3 has also regularly misbehaved by issuing threats of personal injury and also indulged in discriminatory behaviour against the employees of the appellant society on the basis of race, caste, religion and sex.

vi. That, around February 2020, the respondent no. 1 approached the respondent nos. 3 and 4 respectively to resolve the aforesaid issues, amongst others. In retaliation, she was harassed and threatened to exit from her position at the appellant Society.

9. The reliefs prayed for in the aforesaid suit are reproduced hereinbelow:

"***PRAYER***

35. In light of the above facts and circumstances of the case, Plaintiffs most humbly pray that this Hon'ble Court may grant the following reliefs in its favour:

(a) Pass a decree of declaration holding that all the decisions taken by the Board of Defendant No.1 and/or any Board member or employee or personnel w.e.f. 01-06-2020 onwards are illegal, wrong and void, in the present facts and circumstances, and therefore, set-aside; and/or

(b) Pass a decree of declaration holding that the termination of Dr.Shelly Batra (Plaintiff No. 1) from the post/office of President vide Board Resolution dated 23-06-2020 and ouster from the Board of Defendant No. I vide Board Resolution dated 27-06-2020 is illegal, wrong and void in the present facts and circumstances, and restoring her office/post in the affairs of Defendant No. 1; and/or

c) Pass a decree for permanent & prohibitory injunction against the Defendant Nos.2 and 3 by removing them from the Board of Defendant No.1 on account of the illegalities & breach of the bye-laws of Defendant No.1, and restraining them from being involved in the activities/affairs of the Board of Defendant No.1 either as member or employee or contractor or advisor or anyway whatsoever;

(d) Pass a decree for rendition of accounts of profits/monies siphoned, misappropriated, illegally earned by Defendant Nos.2-3 for their personal use/benefit from the accounts/funds of Defendant No.1, and further a decree for recovery of the amount be found to be due, siphoned, misappropriated, etc. by the

Defendant Nos. 2-3 along with interest @18% in favour of Defendant No. 1; and/or

I Pass a decree or order regarding settling the scheme of the Defendant No. 1 by amending its bye-laws in such manner that no one family gets complete control of the affairs of Defendant No. 1:

(f) Costs:

(g) Any other relief (s) which this Hon'ble Court deems, fit, just and proper may also be awarded in favour of the Plaintiffs, in the interest of justice."

10. In pursuance of the aforesaid, the respondent nos. 1 and 2 respectively, filed an application being I.A. No. 5009 of 2020 in CS (OS) No. 153 of 2020 seeking leave to institute the civil suit against the appellant Society along with the respondent nos. 3 to 10 (collectively referred to as the "**original defendants**") before the learned Single Judge of the High Court. In the said application, it was stated that the appellant Society is a public charitable institution - an NGO engaged in the healthcare industry. The main objectives of the society as evidenced by its by-laws is public welfare and therefore, it would fall under the ambit of "public charities" mentioned under Section 92 of the CPC. The respondent nos. 1 and 2 respectively (original plaintiffs) have been involved in the functioning of the appellant Society since its inception and have a justified and *bona fide* interest in the society, Therefore, they are "interested persons" as required by Section 92. Furthermore, since numerous breaches have occurred in the conduct of business/affairs of the appellant Society, the direction of the court would be of utmost necessity for its administration.

11. After taking *seisin* of the matter, *vide* order dated 05.08.2020, the learned Single Judge of the High Court appointed Justice (retd.) R.V. Easwar as the Chairperson of the Board of the appellant Society with the consent of both the parties. Directions were issued to the Chairperson to submit a report and conduct a financial audit in order to ascertain, amongst others, whether there has been a defalcation or siphoning off of funds that the donors have contributed towards the appellant Society and to make suggestions as to how the working of the society can be improved. The Chairperson submitted three reports dated 26.08.2020, 03.10.2020 and 09.12.2020 respectively. On, 13.08.2021, an Interim Forensic Audit Report and on 20.09.2021, a Final Forensic Audit Report respectively, are also said to have been submitted by the auditors appointed for the said purpose.

12. The learned Single Judge of the High Court *vide* the judgment and order dated 03.05.2024 granted leave to the respondent nos. 1 and 2 (original plaintiffs) for the purpose of instituting a suit under Section 92 of the CPC. While holding that all the elements and ingredients under Section 92 of the CPC stood fulfilled and granting leave, the learned Single Judge observed as follows:

i. ***First***, whether it be the Interim Forensic Audit Report dated 13.08.2021 or the various reports submitted under the Chairmanship of Justice (retd.) R.V. Easwar, there was no gainsaying that actions are required to be taken to remedy the state of affairs of the appellant Society, particularly in relation to its financial affairs and administrations, for which the directions of the court may be necessary.

ii. ***Secondly,*** heavy reliance was placed on the decision of this Court in ***Ashok Kumar Gupta & Anr vs. Sitalaxmi Sahuwala Medical Trust & Ors.*** reported in **(2020) 4 SCC 321** to grant leave under Section 92 of the CPC since the enunciation of law in the said decision is also said to have been made in a strikingly similar factual background. It was reiterated that it is the *dominant purpose* of the suit, as discernible strictly from the allegations made in the plaint that is required to be assessed by the court while considering whether leave must be granted to institute the suit or not.

iii. ***Thirdly*****,** that the respondent no. 1 (original plaintiff no. 1) being one of the co-founders of the appellant Society and a long-time President of its Board, along with the respondent no. 2 (original plaintiff no. 2) who has been associated with the appellant Society for an extended period of time while also continuing to be a member of its Board, would constitute '*persons having an interest in the trust*'.

iv. ***Fourthly***, while referring to Article 13 of the AoA as per which the society is entitled to raise funds by way of gifts, donations, grants-in-aid or otherwise strictly for the purpose of carrying out the aims and objectives of the society, it was opined that the formal 'entrustment' of property or funds by a third-party to the appellant Society would not be a necessary ingredient to hold that the society is a 'constructive trust'. If that formality were a *sine-qua-non*, the very distinction between a 'trust' and a 'constructive trust' would stand obliterated. Since any grant-in-aid, donation or gift made by a third-party to the society would, by its very nature, be intended to be used for the benefit of those in need

of medical care in furtherance of the objects of the society, it was held that this in-itself would be sufficient to infer that all such grants-in-aid, donations gifts etc., made to the society would become property 'entrusted' to it, by reason of which the society would acquire the character of a 'constructive trust'.

v. ***Fifthly***, after perusing the aims and objects of the appellant Society as detailed in the MoA it was declared that the appellant Society is evidently engaged in a 'public purpose of charitable nature' since they principally provide health care services to the underprivileged sections of the society, specifically with respect to the treatment, education and prevention of tuberculosis.

vi. ***Lastly,*** that the claims made in the suit also co-relate and fall within the scope of the reliefs contemplated under Section 92 of the CPC, more particularly sub-sections (1)(d) and (1)(h) thereof.

13. The relevant observations made by the learned Single Judge are reproduced hereinbelow:

> "***20.*** *Therefore, we must not lose sight of the fact, that for purposes of deciding whether leave should be granted under section 92 CPC, it is only the allegations in the plaint that should be looked into in the first instance; it being available to the court to even dismiss the suit if after evidence is led it is found that the breach of the trust alleged was not made-out.*
>
> ***21.*** *To reiterate it is the dominant purpose of the suit, as discernible only from the allegations in the plaint, that is required to be assessed by the court at the stage of considering whether leave should be granted under section 92 CPC to institute a suit.*"
>
> ***22.*** *In the present case, the following assertions are found in the plaint:*

22.1. *Plaintiff No.1 is one of the co-founders of defendant No. 1 society and has been a long time President of its Board, Plaintiff No.2. has been associated with defendant No.1 society for a long time and continues to be a member of the Board of the society, even if she is plaintiff No.1's mother. In fact these assertions appear to reflect the admitted position.*

22.2. *Plaintiff No.1 has played a pivotal role in the functioning of the society ever since it was established.*

-xxx-

"***22.4***. *Furthermore, a perusal of the Articles of Association ('AOA') of defendant No.1 society inter-alia shows that the management of the society is entrusted to an Executive Committee, which is entitled to raise funds for the society by way of gifts, donations, grants-in-aid or otherwise, which funds are to be used to carry-out the aims and objectives of the society. Attention in this behalf may be drawn to Article 13 of the AoA of the society, which reads as follows […]*

In the opinion of this court, the formal 'entrustment' of property or funds by a third-party to defendant No.1 society is not a necessary ingredient to hold that the society is a constructive trust'. If that formality were a sine-qua-non, the very distinction between a 'trust' and a 'constructive trust' would get obliterated. This court is of the view, that any grant-in-aid, donation or gift made by a third-party to the society is, by its very nature, meant and intended to be used for the benefit of those in need of medical care in furtherance of the objects and purpose of the society. This, in itself, is sufficient to infer that all such grants-in-aid, donations, gifts etc. made to the society are property entrusted to it, by reason of which the society acquires the character of a 'constructive trust'."

22.5. Also, defendant No.1 is evidently engaged in a public purpose of charitable nature, since it provides medical-aid and relief to patients of tuberculosis who otherwise cannot afford treatment, thereby fulfilling the other criterion of section 92 CPC.

22.6. In this manner, defendant No.1 society fulfils all conditions necessary to invoke section 92 CPC, as enunciated by the Supreme Court in Ashok Kumar Gupta (supra) and the elements required to qualify as a 'constructive trust' as laid down by a Co-ordinate

Bench of this court in The Young Mens Christian Association of Ernakulam (supra) cited above.

23. In addition, the IFAR as well as the multiple audit reports submitted in relation to the administration and financial affairs of the society, including under the chairmanship of Justice Easwar, clearly disclose that the manner in which the affairs of the society are being run, requires closer consideration and scrutiny.

24. Furthermore, the claims made in the suit also co-relate and fall within the scope of the reliefs contemplated in section 92 CPC, especially section 92(d) and (h) thereof;

25. In the above view of the matter, this court is persuaded to hold that all elements and ingredients of section 92 CPC are satisfied; and that therefore, the plaintiffs are entitled to grant of leave to institute the present suit under section 92, CPC.

26. To obviate any ambiguity, it may be clarified that the grant of leave to the plaintiffs to institute the suit would not prevent the court from dismissing die suit subsequently, if the allegations contained in the plaint are found not to be substantiated.

27. The application is accordingly allowed."

(Emphasis supplied)

B. THE IMPUGNED JUDGMENT

14. Aggrieved by the aforesaid judgment and order of the learned Single Judge dated 03.05.2024, the appellant Society preferred an appeal being FAO (OS) No. 114 of 2024 before the Division Bench of the High Court. The Division Bench while dismissing the appeal, observed as follows:

i. ***First,*** reliance was, again, placed on the decision of this Court in ***Ashok Kumar Gupta*** *(supra)* in order to delineate the conditions that are required to be satisfied under Section 92 of the CPC.

ii. ***Secondly,*** the Division Bench echoed the observations made by the Single Judge in as much as observing that the appellant Society is admittedly of a charitable nature as evident from its MoA.

iii. ***Thirdly,*** reliance was placed on the relevant provisions of the MoA which stipulated that all the incomes, earnings, movable or immovable properties of the society shall be solely applied towards furthering the objectives of the society and no profits shall be paid, either directly or indirectly, to the members of the Board or any person claiming through or under them. Furthermore, while referring to Article 11.2.1 of the AoA which specifically stated that all the properties, movable, immovable and other kinds of assets shall stand vested in the Executive Committee of the appellant Society, the Division Bench expressed its agreement with the views of the Single Judge that all donations, gifts etc. made to the appellant Society are property 'entrusted' to it, due to which the society would acquire the character of a 'constructive trust'.

iv. ***Fourthly,*** referring to the decision of this Court in ***Shiromani Gurudwara Prabandhak Committee vs. Som Nath Dass*** reported in **2000 (4) SCC 146,** it opined that the donations, gifts, etc., being received by the appellant Society and being vested in the Committee from various institutions would constitute an 'endowment' for public purpose.

v. ***Lastly,*** although the Bench acknowledged the contention of the counsel for the appellant Society that prayer (b) of the plaint agitates a personal/private grievance, yet it took the view that the reliefs sought in prayers (d) and (e) of

the plaint fall within those reliefs contemplated under sub-section (1) of Section 92 of the CPC. The relevant observations of the Division Bench are reproduced hereinbelow:

> "***12.*** *Admittedly, the Appellant-society is of a charitable nature as it has been formed primarily for serving the under-privileged sections of the society, in particular, patients suffering from tuberculosis. […]*
>
> ***13.*** *The Memorandum of Association further stipulates that all the incomes, earnings, movable or immovable properties of the society shall be solely utilized and applied towards the promotion of its aims and objectives only as set forth in the Memorandum of Association and no profits thereof shall be paid or transferred directly or indirectly by way of dividends, bonus or profits in any manner whatsoever to the present or past members or to any person claiming through any one or more of the present or the past members. The Memorandum of Association also states that no member of the society shall have any profits, whatsoever by virtue of his membership, the names, addresses, occupations and signatures of the present members of the Executive Committee to whom the management and affairs of the society are entrusted, as required under Section 2 of the Societies Registration Act, 1860 (Punjab Amendment Act of 1957).*
>
> ***14****. Article 11.2.1 of the Articles of Association specifically stipulates that all the properties, movable, immovable and other kinds of assets shall stand vested in the Committee.*
>
> ***15****. Keeping in view the aforesaid as well as the fact that the Appellant has been set-up with the primary objective of providing medical relief to patients, who otherwise cannot afford such treatment, this Court is in agreement with the view of the learned Single Judge that all the donations, gifts etc. made to the Appellant-society are property entrusted to it, by reason of which the society acquires the character of a 'constructive trust'.*
>
> ***16.*** *In the above context, it would also be necessary to refer to the judgment of Supreme Court in Shiromani Gurudwara Prabandhak Committee vs. Som Nath Dass 2000 (4) SCC 146, wherein it has been held that an "endowment" is, when the donor parts with his*

property for it to be used for a public purpose and its entrustment is to a person or group of persons for carrying out the objective of such entrustment. It was held that once an endowment is made, it is final and irrevocable and it is onerous duty of the persons entrusted with such endowment to carry out the objectives of this entrustment. It was further held once an endowment, it never reverts even to the donor. The Supreme Court has also considered that endowment" means property or pecuniary means bestowed as a permanent fund, as endowment of a college, hospital or library, and is understood in common parlance as a fund yielding income for support of an institution. Having regard to the aforesaid, it is clear that donations, gifts etc. which were being received by the Appellant, and being vested in the committee, from various institutions would be endowment for public purpose."

17. *Though the learned senior counsel for the Appellant is correct in contending that prayer (b) of the plaint agitates a personal/private grievance yet this Court is of the view that the reliefs sought in prayers (d) and (e) of the plaint fall within the reliefs mentioned in sub section (1) of Section 92 CPC.*

18. *Consequently, this Court is of the view that the impugned order calls for no interference. Accordingly, the present appeal along with the application is dismissed.*"

(Emphasis supplied)

C. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Appellant

15. Mr. Dama Seshadri Naidu, the learned Senior Counsel appearing for the appellant Society submitted that the appellant Society is a 'registered society' under the Societies Registration Act, 1960 and is not a 'Trust' for the purposes of Section 92 of the CPC. It was argued that it is a settled law that the governing body members of the society shall only become 'trustees' if a trust is created for the purpose of

managing the assets of the society. The same not being the case in the present scenario, the suit cannot be held to be maintainable. To fortify his argument that a suit under Section 92 would not be maintainable against a 'registered society', the counsel placed reliance on the decision of the Delhi High Court in ***S.R. Bahugana v. All India Women's Conference and Ors.*** reported in **(2009) ILR 7 Delhi 614** and that of the Kerala High Court in ***Abhaya vs. JA Raheem*** reported in **2005 SCC OnLine Ker 234**.

16. The counsel submitted that as per the AoA of the appellant Society, the property of the society is not held in a 'trust', which is the fundamental requirement for the appellant Society to be termed as a 'constructive trust'. Specific reference was made to Clauses 11.2.1 and 11.2.3.8 of the AoA respectively to contend that the property of the society stands vested in the 'Committee' or Governing Body of the Society, as per the mandate of Section 5 of the Societies Registration Act, 1860. On this aspect, reliance was placed on the decision of the Madras High Court in ***K. Rajamanickam v. Periyar Self Respect Propaganda Institution, Thiruchirapalli*** reported in **2006 SCC OnLine Mad 379**.

17. Taking recourse to the decision of this Court in ***Swami Paramatmanand Saraswati v. Ramji Tripathi*** reported in **1974 2 SCC 695,** it was submitted that, while deciding an application under Section 92 of the CPC, the court must only look at the averments made in the plaint. The plaint, in the present case, is conspicuously silent on how the appellant Society falls within the definition of the term 'constructive

trust'. Therefore, it was submitted that the underlying suit is clearly beyond the ambit of Section 92.

18. To further substantiate his submissions as regards the appellant Society not being a 'constructive trust', the counsel stated that "*a constructive trust is another species of trust where a trust is automatically imposed by equity on an owner of property but in special circumstances where it is unconscionable for the owner of property to hold the property purely for his own benefit*". To illustrate, where a trustee of a leasehold property at the termination of the lease renews the lease purportedly in his own personal favour or where a trustee has wrongfully gratuitously transferred trust property to an innocent done who upon subsequently discovering the trust attempts to retain the property for himself. It was submitted that Mukherjee on the Indian Trust Act, 1881 (2021) also elaborated on the Doctrine of Constructive Trust by arguing that a 'constructive trust' arises not by the act of parties but by operation of law. When a trustee gains some personal advantage by utilising his trusteeship, he becomes a constructive trustee in respect of the advantages gained.

19. The counsel submitted that the Halsbury Laws of India on the nature of a constructive trust remarks that a constructive trust attaches by law to a specific property which is neither expressly subject to any trust nor subject to a resulting trust but, which is held by a person in circumstances where it would be inequitable to allow him to assert full beneficial ownership of the property. In the present case, he argued that the factual situation is entirely different and the property of the appellant Society is vested in the governing body of the Society.

20. It was also submitted that the prayers made in the present suit demonstrate that the same has been filed solely for the purpose of vindication of personal rights of the respondent no. 1. More specifically, the prayers seek to declare the board decisions taken by the appellant Society from 01.06.2020 as null and void, since her employment/services were terminated during this time. The respondent no. 1 also seeks a declaration that her termination was bad in law along with a direction that the respondent no. 3 be removed from the appellant Society. These reliefs are clearly beyond the scope of Section 92 and smack of personal vendetta and enmity. No relief has been sought for the benefit of the society or to improve its functioning.

21. It was submitted that the provisions under Section 92 of the CPC can be invoked only when two conditions are satisfied i.e. (a) it should be with regard to a public trust to obtain a decree for the purposes mentioned in the said provision, and (b) the suit should be on behalf of the Advocate General or two or more persons having an interest in the trust. He submitted that both the aforesaid conditions have not been fulfilled in the present case since the appellant Society is not a public trust and there is no pleading in the plaint showing that the respondent no. 2 (original plaintiff no. 2) is a party having an "interest" in the society. Moreover, the respondent no. 2 has not even signed the plaint in the instant suit.

22. In light of the aforesaid, it was submitted that the impugned decision is upheld, it would obliterate the distinction carved out by law between a 'trust' and a 'society' for which two different legislations have been enacted. Therefore, it was prayed that

the impugned decision be set aside and the underlying suit, pending before the High Court, be dismissed.

ii. <u>Submissions on behalf of the respondent no. 1</u>

23. On the other hand, Mr. Jai Anant Dehadrai, the learned counsel appearing for the respondent no. 1 submitted that the ingredients required to be satisfied before invoking Section 92 of the CPC was clearly laid down in ***Ashok Kumar Gupta*** *(supra)* as follows:

(a) There should be a breach of express or constructive trust;

(b) The trust must have been created for a public purpose, either of a charitable or religious nature;

(c) The suit must seek for reliefs as enumerated under Section 92(1) of the CPC.

24. The counsel submitted that the appellant society was formed with the specific aim to serve the underprivileged members of the society who are suffering from tuberculosis and who cannot afford its treatment. The same is evident from the MoA of the appellant Society. The donors, who are based in India as well as abroad, primarily the United States, were providing funds in order to further this very objective. Therefore, the appellant Society, being engaged in the social welfare of the general public, possesses the characteristics of an organisation with a 'charitable nature'.

25. In order to canvass the argument that a society registered under the Societies Registration Act, 1860 can be construed as a 'constructive trust', the counsel placed reliance on the decision of the Delhi High Court in ***The Young Mens Christian Association of Ernakulam and Ors. v. National Council YMCAS of India*** reported in **2018 SCC OnLine Del 9909** wherein it was opined that a society registered under the Societies Registration Act, 1860 can be construed as a constructive trust if its satisfies the elements mentioned in Section 3 of the Indian Trusts Act, 1882.

26. It was submitted that the appellant Society is being entrusted with the funds from the donors for public service. Upon a perusal of the Memorandum of Association, it is evident that all the earnings and income generated, or funds received by the society shall only be utilised for the betterment of the general public and to provide free health services, and no profits shall be transferred directly or indirectly to the members of the society. Additionally, Clause 11.2.1 of the AoA specifically provides that "*All the properties, movable, immovable and other kind of assets shall stand vested in the Committee*". Therefore, all the donor funds, gifts etc. are entrusted to the appellant Society to be utilised for the public purpose as enumerated in the aims and objectives contained in its MoA. For all these reasons, the society acquires the character of a 'constructive trust'.

27. It was submitted that the reliefs sought in the plaint are in complete consonance with Section 92(1) of the CPC and the impugned decision has specifically held that the reliefs sought by the respondent nos. 1 and 2 respectively in their plaint, in particular,

prayers (d) and (e) fall within the reliefs mentioned under Section 92(1). Hence, the plaint satisfies yet another ingredient required under Section 92 of the CPC.

28. In light of the aforesaid, it was submitted that the appellant Society though registered under the Societies Registration Act, 1860 yet must be construed as falling within the expression of a 'constructive trust' under Section 92 of the CPC as it holds property for charitable work. Therefore, the impugned decision granting leave to institute the suit, suffers from no infirmity and may not be interfered with.

iii. <u>Submissions on behalf of the respondent nos. 3 and 4</u>

29. The learned Counsel appearing on behalf of the respondent nos. 3 and 4 respectively, submitted that the application seeking leave to institute the present suit has been filed in complete disregard of the mandatory conditions stipulated under Section 92 of the CPC. Section 92 requires a suit of this nature to be filed by at least two interested parties. While the respondent no. 2 (original plaintiff no. 2) has been included as one of the plaintiffs, it is pertinent to note that the plaint has not been signed by the respondent no. 2. Additionally, there is neither any verification on behalf of the respondent no. 2 nor an affidavit in support of the plaint, as required under Section 26(2) of the CPC. These substantial procedural breaches render the plaint non-*est* in the eyes of law, and consequently, make it liable to be rejected at the very threshold. It was further submitted that there is a strong likelihood that the signatures of the respondent no. 2 was fraudulently affixed in the suit documents.

30. The counsel vehemently submitted that the suit under Section 92 of the CPC is legally untenable as it falls to fulfil the requisite conditions as regards maintainability and also for the reason that it is completely based on false allegations and has been filed to wreck a personal vendetta against the respondent nos. 3 and 4 respectively. Therefore, it was prayed that the present appeal be allowed and the impugned decision be set aside.

D. ISSUES FOR DETERMINATION

31. Having heard the learned counsel appearing on behalf of the parties and having gone through the materials on record, the only question that falls for our consideration is whether in the facts and circumstances of the present case, the appellant Society registered under the Societies Registration Act, 1860 can be said to have fulfilled all the requirements stipulated under Section 92 of the CPC for the purpose of instituting a suit under the said provision?

E. ANALYSIS

i. The Object and purpose behind Section 92 of the CPC.

32. Section 92 of the CPC reads as follows:

> " ***92. Public charities***—
>
> *(1) 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—

(a) removing any trustee;

(b) appointing a new trustee;

I vesting any property in a trustee;

[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]

(d) directing accounts and inquiries;

I declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], 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.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely:—

(a) where the original purposes of the trust, in whole or in part,—

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

I where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

I where the original purposes, in whole or in part, have, since they were laid down,—

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]"

(Emphasis supplied)

33. A suit under this provision can be termed as a '*representative suit of a special nature'* since the object behind the enactment of this provision is the protection of public rights in the public trust. Therefore, the parties filing a suit by invoking this section are considered to be representatives of the public.

34. A three-judge bench of this Court in ***Ahman Adam Sait and Others v. M.E. Makhri and Others*** reported in **1963 SCC OnLine SC 71** had elaborated on how a suit under

Section 92 of the CPC is a 'representative suit' while deciding whether the second suit would be barred by constructive *res judicata*. It was stated that when a suit is brought under Section 92, by two or more persons interested in the trust, they could be said to have taken upon themselves the responsibility of representing all the beneficiaries in the trust and though, all the said beneficiaries may not be expressly impleaded in the suit, the action is essentially instituted on their behalf and the relief claimed is representative in character. While stating so, however, it was clarified that the plaintiffs bringing the second suit must have the 'same interest' as that of the plaintiffs or defendants of the earlier representative suit, for the principle of *res judicata* to apply. In other words, it must be examined if the interest of the plaintiffs in the second suit was represented in the earlier representative suit. The relevant observations are thus:

> "*16. In assessing the validity of this argument, it is necessary to consider the basis of the decisions that a decree passed in a suit under Section 92 binds all parties. The basis of this view is that a suit under Section 92 is a representative suit and is brought with the necessary sanction required by it on behalf of all the beneficiaries interested in the Trust. The said section authorises two or more persons having an interest in the trust to file a suit for claiming one or more of the reliefs specified in clauses (a) to (h) of sub-section (1) after consent in writing there prescribed has been obtained. Thus, when a suit is brought under Section 92, it is brought by two or more persons interested in the trust who have taken upon themselves the responsibility of representing all the beneficiaries of the Trust. In such a suit, though all the beneficiaries may not be expressly impleaded, the action is instituted on their behalf and relief is claimed in a representative character. This position immediately attracts the provisions of Explanation VI to Section 11 of the Code. Explanation VI provides that where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. It is*

clear that Section 11 read with its Explanation VI leads to the result that a decree passed in suit instituted by persons to which Explanation VI applies will bar further claims by persons interested in the same right in respect of which the prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata. Where a representative suit is brought under Section 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matters directly and substantially in issue in the said earlier suit."

(Emphasis supplied)

35. Similarly, in ***Shiromani Gurdwara Parbandhak Committee v. Mahant Harnam Singh*** reported in **(2003) 11 SCC 377,** this Court had opined that a suit under Section 92 is of a special nature and for the protection of public rights in public trust and charities. It is for the vindication of public rights since the suit is instituted fundamentally on behalf of the entire body of persons who are interested in the trust. It cannot be said that only those persons whose names are in the suit-title would be considered to be the parties to the suit. The named plaintiffs are only the representatives of the public at large who are interested in the suit and therefore, in the eyes of law, all such interested persons would be considered to be parties to the suit. The relevant observations are reproduced hereinbelow:

"*19. As observed by this Court in R. Venugopala Naidu v. Venkatarayulu Naidu Charities [1989 Supp (2) SCC 356 : AIR 1990 SC 444] a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust 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 the public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 CPC and the suit-title in that event would show only their names as*

plaintiffs. Can we say that the persons whose names are in 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 the law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation VI to Section 11 CPC constructively bars by res judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier suit under Section 92 CPC."

(Emphasis supplied)

36. In ***Vidyodaya Trust*** **v.** ***Mohan Prasad*** reported in **(2008) 4 SCC 115**, this Court had emphasised that it is not every suit which relates to a public trust of religious or charitable nature and which contains reliefs which fall within some of the clauses under sub-section (1) of Section 92 that can be brought under the ambit of Section 92 of the CPC. Those suits must also essentially be initiated by individuals as representatives of the public for the vindication of public rights. While opining so, this Court also elaborated on the object behind requiring a 'grant of leave' from the appropriate court before the suit can be proceeded with. The same was said to have been mandated as a pre-requisite or a procedural safeguard in order to prevent the public trusts from being subjected to undue harassment through frivolous suits being filed against them. If the persons responsible for the management of the trusts are subjected to multiplicity of legal proceedings, then it would be the ultimate beneficiaries of the trust who would lose out since the trust would have to dedicate time to defend the suit and the funds which are to be utilised to further the objectives of the public trust would also have to be re-routed and wasted on litigation. In the

opinion of the Court, this ordeal might also dissuade persons of high moral character and honest intentions from becoming trustees of public trusts. The pertinent observations are reproduced hereinbelow:

> ***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 pubic trusts. Thus, there is need for scrutiny.*
>
> *-xxx-*
>
> ***25.*** *In Sugra Bibi v. Hazi Kummu Mia [AIR 1943 Mad 466] 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 of the individual or personal rights of the plaintiffs.*
>
> ***26.*** *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 under Section 92 by persons whose activities were not for protection of the interests of the public trusts.[…]"*
>
> (Emphasis supplied)

37. In ***Swami Shivshankargiri Chella Swami* v. *Satya Gyan Niketan*,** reported in **(2017) 4 SCC 771,** while holding that a trust can be created by virtue of a conditional gift, this Court had also elaborated on the purpose behind requiring grant of leave from the court under Section 92 before a suit can be instituted. It was opined that such a condition has been legislatively prescribed in order to prevent a public trust from being harassed or to obviate the institution of reckless or frivolous suits against its trustees. The relevant observations are as thus:

> "***11.*** *The present Section 92 CPC corresponds to Section 539 of the old Code of 1883 and has been borrowed in part from 52 Geo. 3, c. 101, called Romilly's Act of the United Kingdom. A bare perusal of the said section would show that a suit can be instituted in respect of a public trust by the Advocate General or two or more persons having an interest in the trust after obtaining leave of the Court in the Principal Civil Court of Original Jurisdiction. An analysis of these provisions would show that 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.*
>
> (Emphasis supplied)

38. Thus, the grant of leave under Section 92 of CPC serves as a procedural safeguard, ensuring that public charitable trusts are protected from *mala fide* suits that may have the consequence of impeding their operations. At this stage, however, the court neither adjudicates upon the merits of the dispute nor confers any substantive rights upon the parties; what is established is merely the maintainability of the suit which is sought to be initiated by the plaintiffs.

ii. Conditions to be fulfilled for the applicability of Section 92 of the CPC

39. Section 92 of the CPC has been created for a specific purpose and to address a specific kind of grievance which has the impact of affecting public rights as enumerated above. Therefore, not all suits can be blindly brought within the fold of this provision. In the facts and circumstances of each case, the court granting leave must examine whether the suit qualifies certain conditions which align with the intent behind the creation of this provision. Courts must tread with caution so as to weed out those suits which are camouflaged as falling within its ambit just with a view to take an undue benefit of provision and for causing harassment to the public trust or for the vindication of personal rights.

40. This Court in ***Ashok Kumar Gupta*** *(supra)* had laid down three conditions which are a *sine qua non* in order to invoke Section 92 of the CPC and maintain an action under the said provision. Upon placing reliance on various decisions of this Court, the conditions were delineated as follows – (a) the trust in question must be created for public purposes of a charitable or religious nature; (b) there must exist a breach of trust or a direction of the court must be necessary for the administration of the trust; and (c) the relief claimed must be one or other of the reliefs as enumerated under Section 92(1) of the CPC. The relevant observations are reproduced as thus:

> "*10. While considering the scope of Section 92(1), as it existed then, a Constitution Bench of this Court observed in Madappa v. M.N. Mahanthadevaru [Madappa v. M.N. Mahanthadevaru, (1966) 2 SCR 151 : AIR 1966 SC 878] , as under : (AIR p. 881, para 10)*

"10. ... Section 92(1) provides for two classes of cases, namely, (i) where there is a breach of trust in a trust created for public purposes of a charitable or religious nature, and (ii) where the direction of the court is deemed necessary for the administration of any such trust. The main purpose of Section 92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General, or two or more persons having an interest in the trust with the consent in writing of the Advocate General. The object clearly is that before the Advocate General files a suit or gives his consent for filing a suit under Section 92, he would satisfy himself that there is a prima facie case either of breach of trust or of the necessity for obtaining directions of the Court. The reliefs to be sought in a suit under Section 92(1) are indicated in that section and include removal of any trustee, appointment of a new trustee, vesting of any property in a trustee, directing a removed trustee or person who has ceased to be a trustee to deliver possession of trust property in his possession to the person entitled to the possession of such property, directing accounts and enquiries, declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust, authorisation of the whole or any part of the trust property to be let, sold, mortgaged or exchanged or settlement of a scheme. The nature of these reliefs will show that a suit under Section 92 may be filed when there is a breach of trust or when the administration of the trust generally requires improvement."

11. The statement of law so laid down was reiterated:

11.1. In Bishwanath v. Radha Ballabhji [Bishwanath v. Radha Ballabhji, (1967) 2 SCR 618 : AIR 1967 SC 1044] : (AIR p. 1046, para 7)

"7. It is settled law that to invoke Section 92 of the Code of Civil Procedure, 3 conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable or religious nature; (ii) there was a breach of trust or a direction of court is necessary in the administration of such a trust; and (iii) the relief claimed is one or other of the

reliefs enumerated therein. If any of the 3 conditions is not satisfied, the suit falls outside the scope of the said section."

11.2. In Sugra Bibi v. Hazi Kummu Mia [Sugra Bibi v. Hazi Kummu Mia, (1969) 3 SCR 83 : AIR 1969 SC 884] : (AIR p. 885, para 5)

"5. It is evident that this section has no application unless three conditions are fulfilled : (1) the suit must relate to a public charitable or religious trust, (2) the suit must be founded on an allegation of breach of trust or the direction of the court is required for administration of the trust, and (3) the reliefs claimed are those which are mentioned in the section."

12. Three conditions are, therefore, required to be satisfied in order to invoke Section 92 of the Code and to maintain an action under the said section, namely, that:
(i) the Trust in question is created for public purposes of a charitable or religious nature;
(ii) there is a breach of trust or a direction of court is necessary in the administration of such a Trust; and
(iii) the relief claimed is one or other of the reliefs as enumerated in the said section.
Consequently, if any of these three conditions is not satisfied, the matter would be outside the scope of said Section 92."

(Emphasis supplied)

41. As a natural corollary, it follows that in order to successfully establish that a suit is beyond the scope of Section 92 of the CPC, it would be sufficient to prove that any one of the conditions enumerated above has not been met. However, on the other hand, for a suit to be maintainable under this provision, the plaintiffs must be able to satisfy the court that all the conditions, or in other words, the necessary ingredients, under this section, have been fulfilled.

A. <u>The trust being created for a public purpose of a charitable or religious nature.</u>

42. A trust can be said to have been created for a 'public purpose' when the beneficiaries are the general public who are incapable of exact ascertainment. Even if the beneficiaries are not necessarily the public at large, they must at least be a classified section of it and not a pre-ascertained group of specific individuals.

43. What constitutes "charitable purpose" has been defined under Section 2 of the Charitable Endowments Act, 1890 as follows:

> "***2. Definition.—****In this Act "charitable purpose" includes <u>relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship</u>.*"
>
> (Emphasis supplied)

Therefore, the term includes relief to the poor, education, medical relief and the advancement of any other object of 'general public utility', while excluding activities whose purpose relates exclusively to religious teaching or worship.

44. There remains no doubt that the appellant Society in the instant case, working towards bringing equity in public health, with particular focus on providing for the education, treatment and prevention of tuberculosis, has been created for a 'public purpose of charitable nature'. This is clearly evident from its objectives outlined in the MoA and the beneficiaries that it seeks to serve, amongst others. The same is an

admitted position and we need not delve into the nitty-gritties of whether the appellant society qualifies this aspect of the aforesaid condition. What remains contested, however, is that the appellant society which has been registered under the Societies Registration Act, 1860 cannot be construed to be a 'trust' or a 'constructive trust' in order to subject it to the jurisdiction under Section 92 of the CPC.

I. Whether a Society can be construed to be a 'trust or a 'constructive trust'?

45. A suit under Section 92 of the CPC being one of special nature, presupposes the existence of a public trust of a religious or charitable character. The existence of a public trust is essential, whether express or constructive. Therefore, a crucial condition that needs satisfaction is whether the institution/organisation in relation to which certain reliefs are sought can in fact be considered to be a 'trust' or a 'constructive trust'. Having said so, however, an express declaration clearly signifying that an entity is a trust or that the properties are trust properties would not be a *sine qua non* in order to render a suit under Section 92 maintainable.

a. Circumstances under which the creation of a trust has been inferred

46. When no formal recognition has been given to the institution, the creation of a trust can be inferred from the relevant circumstances surrounding the coming into existence of and functioning of the institution/entity in question. The Privy Council in ***Babu Bhagwan Din and Ors. v. Gir Har Saroop and Ors.*** reported in **1939 SCC**

OnLine PC 47 was concerned with the question whether a public trust of a religious character existed in the facts and circumstances of the case. The decision also established when a private temple may become dedicated to the public by subsequent dealings. While negativing the contention that the private temple constituted a public trust, emphasis was particularly laid on two aspects i.e., - *First,* the land in question granted by the then Nawab of Oudh in 1781was not a grant to the idol or an endowment of a temple or a gift made by way of trust for a public religious purpose. Instead, it was a grant to a private individual and to his heirs in perpetuity. Therefore, the historical setting and the circumstances of the grant was given importance to. *Secondly*, While acknowledging that a private temple may become dedicated to the public and morph into a public trust of a religious nature over the course of years, it was held that such dedication has to be proved and the mere fact that the public were never turned away and that offerings from them were accepted would not by itself be sufficient proof of dedication, especially in the absence of an inference that the public user exercised any 'right' pertaining to the temple or had acquired any interest. Another pertinent factual aspect was also that the various forms of profit, whether by offerings or rents received by letting out portions of the lands in their own names, were divided amongst the family. The relevant observations are thus:

> "*Their Lordships agree with the Chief Court in holding that the grant of 1781 is not a grant to the idol or an endowment of a temple or a gift made by way of trust for a public religious purpose. The grant is to Daryao Gir and his heirs in perpetuity.[…] The general effect of the evidence is that the family have treated the temple as family property, dividing the various forms of profit whether offerings or rents, closing it so as to exclude the public from worship when marriage or other ceremonies required the*

attendance of the members of the family at its original home, and erecting samadhs to the honour of its dead. In these circumstances it is not enough, in their Lordships' opinion, to deprive the family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol : they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference, if made from the fact of user by the public, is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be, turned away; and as worship generally implies offerings of some kind, it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity. […] The Chief Court have, in the opinion of the Board correctly estimated the particular facts of the case, before them and have rightly negatived the contentions that the temple is a public temple and that the property in suit is impressed with a trust of a public religious character."

(Emphasis supplied)

47. On the other hand, the Privy Council in ***Gurunatharudhaswami Guru Shidharudhaswami v. Bhimappa Gangadhrawappa Divate*** reported in **1948 SCC OnLine PC 43**, the issue related to whether the Court under Section 92 could direct the removal of the head of the mutt while settling a scheme for the administration of public trust properties despite the fact that the previous swami desired the said person to succeed as the head of the mutt. The suit under Section 92, apart from the aforesaid relief, was also concerned with whether the institution in question could be called a 'public trust' of a religious or charitable nature. In deciding the aforesaid,

particular reference was made to the circumstances in which the various properties used in connection with the institution was acquired. Predominantly, all the offerings made and gifts given by the public to the Swami was for the purposes of the 'Math' and additional properties were purchased out of the offerings initially given, except one property which was concluded as having been received as a gift by the Swami's for his own personal benefit since there was no evidence to show that the said solitary land was ever used for the benefit of the 'Math'. Therefore, all the suit properties with the exception of one, were regarded as accretions to the original foundation/institution, and subject to an express or constructive trust created for public purposes of a charitable or religious nature within the meaning of Section 92 of the CPC. The relevant observations are reproduced hereinbelow:

> "*The learned trial Judge discussed in detail and with much care the documentary and oral evidence, particularly in relation to the circumstances in which the various properties used in connection with the Math had been acquired. In appeal the High Court again discussed the evidence in considerable detail, and both Courts reached the conclusions that the institution, whether it be called a Math or a Temple, was founded by the public for a public, charitable and religious purpose, viz., the worship of the Swami during his lifetime and of his Samadhi (tomb) after his death, and for the purpose of the various festivals which had been started in connection with the institution, and that the offerings made to the Swami, the properties purchased out of those offerings and those acquired by gifts after 1912 (when the Swami assumed control of the Math), must all be regarded as accretions to the original foundation, and that all the properties in suit form part of a trust created for purposes of a charitable or religious nature. Counsellor the appellant has referred their Lordships to all the relevant evidence and no useful purpose would be served by a further discussion of it in detail. Their Lordships can state shortly and in general terms their reasons for agreeing with the conclusions of the Courts in India.*

The only question in this appeal is whether the suit properties used for the purposes of the Math belonged to the Swami at the time of his death, or appertained to the Math and were subject to an express or constructive trust created for public purposes of a charitable or religious nature within the meaning of Section 92 of the Code of Civil Procedure. Except in regard to one small property, which will be presently mentioned, their Lordships have no doubt that the Courts in India were right in answering this question against the appellant. The evidence establishes beyond doubt, in their Lordships' view, that the properties in suit were either originally given, or were dedicated by the Swami, to the purposes of the Math which was a charitable or religious institution. It has been argued by Counsel for the appellant that even if this be so the trust was not for public, but for private, purposes. But this is clearly not so. It is common ground that anybody was at liberty to go at any time to the Math to worship the Swami and take food there. The trust was plainly one for public purposes.

The only property in suit which in their Lordships' view the respondents have failed to show belonged to the Math is that comprised in Exhibit D.127 by which a piece of land expressed to be of the value of Rs. 400 situate in Mouji Harti in Taluka Gadag was conveyed to the Swami, the motive expressed being the spiritual good of the donor. There is nothing in the conveyance to suggest that the land was given to the Swami for the purpose of the Math. There is no evidence that this land, which is situate, their Lordships are told, some 40 miles from Hubli was ever used, or that its rents or profits were applied, for the benefit of the Math. The fact that the Swami received many gifts of property for charitable purposes does not disqualify him from receiving gifts for his own personal benefit, and their Lordships think that this small piece of land must be excluded from the decree in the present suit.

By the decree which the learned trial Judge passed it was declared that the properties in suit were properties belonging to a public trust of a religious and charitable character: and that it was necessary to settle a scheme for the administration of the trust. […]"

(Emphasis supplied)

48. This Court in ***Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das*** reported in **(1971) 1 SCC 574** had to determine whether the entity in question constituted a religious trust so that it may be brought within the purview of a 'public trust' under Section 2(1) of the Bihar Hindu Religious Trusts Act, 1951. The Trial Court had also placed a lot of importance on ascertaining how the properties were originally acquired and since, the respondent did not produce the Sanads under which the founding Mahant had acquired the said properties and therefore, the nature of the gifts and the manner in which they were made could not be determined, an adverse inference was drawn against the respondent. However, this conclusion was held to be misplaced since the onus of proof to show that the properties were being held for public purposes of a religious or charitable character was said to rest on the appellant Board who alleged that it was so. In holding thus, this Court also observed as follows:

i. ***First***, that it is true that a charitable trust might either be created by a grant for an express purpose or a grant having been made in favour of an individual or a class of individuals, and that individual or that class of individuals might, after obtaining the grant, create a charitable trust.

ii. ***Secondly,*** that a property can be granted solely for the 'grantee's' personal benefit too, without there being any intention on part of the grantor to fetter the grantee with any obligation in dealing with the property granted. Courts have arrived at a conclusion whether the grant was for the benefit of the public, or an unascertained section of the public, or for the benefit of the grantee himself, or for class of ascertained individuals, either by keeping the manner and

conditions of the grant itself at the forefront or, from the other circumstances of the case. Further, an inference can also be drawn from the usage and custom of the institution or from the mode in which its properties have been dealt with along with other established circumstances.

iii. ***Lastly,*** that if a property is described as 'appertaining to an organisation/institution' then for those properties to be considered as properties of a public trust, the said organisation/institution must by itself first be a public trust for religious or charitable purposes.

49. The relevant observations in ***Bihar State Board*** *(supra)* are thus:

> "*8. It is true that the respondent Mahant did not produce the original Sanads whereunder certain lands had been gifted to the founding Mahant by the various zamindars. They were not produced because, as the respondent deposed, they could not be traced, but, as stated earlier, it was not impossible for the Board also, if it wanted to rely on them, to produce the record, such as that of Darbhanga Estate, and show therefrom the nature and the terms of those gifts. The trial court, however, was not entitled, as we shall presently show, from the mere failure of the Mahant to produce the original Sanads to draw an adverse inference which it did against him.*
>
> *-xxx-*
>
> *10. Properties of the temple being thus admittedly in the possession of the Mahants ever since the time of Gaibi Ramdasji, the onus of proof that the respondent Mahant held them on trust for public purposes of a religious or charitable character was clearly on the appellant Board who alleged that it was so. The trial Judge was, therefore, clearly in error in holding that the respondent Mahant ought to have produced the Sanads and that on his failure to do so an adverse inference could be drawn, namely, that had they been produced they would have shown that the grants to Gaibi Ramdasji were for public purposes of a*

religious or charitable character. (See Parmanand v. Nihal Chand.) [1938 ILR 65 IA 252]

11. The Sanads not having been available, the appellant Board tried to establish through the oral evidence of six witnesses (DWs 1 to 6), that the temple was founded and the properties in question were acquired for the benefit of the public or a section thereof.[…]

-xxx-

16. True it is that a charitable trust might either be created by a grant for an expresss purpose or a grant having been made in favour of an individual or a class of individuals, that individual or that class of individuals might, after obtaining the grant, create a charitable trust. […]

-xxx-

18. The existence of a private Mutt, where the property was given to the head of the Mutt for his personal benefit only, has in the past been recognised. (See Matam Nadipudi v. Board of Commissioners for Hindu Religious Endowments, Madras [AIR 1938 Mad 810] and Missir v. Das [(1949) ILR 28 Pat 890] .) In such cases there is no intention on the part of the grantor to fetter the grantee with any obligation in dealing with the property granted. In each case the Court has to come to its conclusion either from the grant itself or from the circumstances of the case whether the grant was for the benefit of the public or a section of it i.e. an unascertained class, or for the benefit of the grantee himself or for a class of ascertained individuals. An inference can also be drawn from the usage and custom of the institution or from the mode in which its/properties have been dealt with as also other established circumstances.

-xxx-

21. Lastly, reference was made to some of the deeds of gifts made by the reigning Mahants in favour of their nominees as successors where the properties were described as appertaining to the Asthal. Assuming that the scribes of these documents used the expression "appertaining to the Asthal" in the sense in which such expression is sometimes used in the deeds of conveyance, the expression means things which are appurtenant to and forming part of the principal property which is the subject-matter of the instrument. [See Stroud's Judicial Dictionary, (3rd Edn.), Vol. I, 177.] The

expression "appertaining to the Asthal" in these deeds, therefore, would at best mean that the properties formed part of the Asthal and are not the properties of the Mahant as distinct from those of the Asthal. (See Sri Thakurji Ramji v. Mathura Prasad [AIR 1941 Pat 354 at 358] .) But unless the Asthal itself is a public trust for religious or charitable purposes, the properties appertaining thereto would not be properties of a public trust for religious or charitable purposes. The use of the expression "appertaining to the Asthal", therefore, cannot lead to the conclusion that the properties in question were stamped with a trust for public purposes."

(Emphasis supplied)

50. In another decision of this Court in ***Kuldip Chand and Another v. Advocate-General to Government of H.P. and Others*** reported in **(2003) 5 SCC 46,** it was held that the history of the institution, conduct of the parties and the user of the properties are all factors to be examined to arrive to a determination as regards a public trust. The issue related to whether by the mere use of the premises as a Dharamsala for about 125 years an inference could be drawn that the same belongs to a public trust. Answering in the negative and holding that the Dharamsala was a private property and not a public trust, this Court observed that a dedication for public purposes and for the benefit of the general public would involve the complete cessation of ownership on the part of the founder and vesting of the property for the religious object. However, in circumstances where this dedication is not made *via* a formal or express endowment, its character may have to be determined on the basis of the history of the institution along with the conduct of the founder and his heirs. A dedication would involve the complete relinquishment of individual right of ownership. The owner must intend to divest himself of his ownership in the dedicated property. The relevant observations are reproduced hereinbelow:

"*37. From the materials brought on record by the parties, as noticed hereinbefore, the following facts emerge: (1) That the shops were let out to other people. (2) People could come and stay in the Dharamsala but for stay of more than three days, only upon seeking permission therefor. (3) Rent received from the shops was being used by the owners for their own purpose. (4) The Dharamsala was being managed/maintained from the personal funds of the owner. (5) The management and control of the Dharamsala was all along with the owners. (6) A school was opened in the Dharamsala. (7) A chowkidar was appointed by Ranzor Singh to look after the Dharamsala and his salary used to be paid by the owner from his own pocket. (8) The Dharamsala could be used for marriage purpose but only with the permission of the owners. (9) The first-floor rooms could be used only by the officers or by others with the permission of the owner. (10) The Dharamsala was ordinarily being used by the pilgrims only during fair. (11) The public never contributed anything for maintenance of the Dharamsala. (12) No member of the public had any say as regards management of the Dharamsala and had no legal right to use the same. (13) No member of public the ever participated in the management of the Dharamsala. (14) No manager had ever been appointed to look after and manage the property. (15) The Dharamsala was not registered under the Sarais Act. (16) There is no evidence to show that the owners acted as shebaits or trustees.*

38. A dedication for public purposes and for the benefit of the general public would involve complete cessation of ownership on the part of the founder and vesting of the property for the religious object. In absence of a formal and express endowment, the character of the dedication may have to be determined on the basis of the history of the institution and the conduct of the founder and his heirs. Such dedication may either be complete or partial. A right of easement in favour of a community or a part of the community would not constitute such dedication where the owner retained the property for himself. It may be that right of the owner of the property is qualified by public right of user but such right in the instant case, as noticed hereinbefore, is not wholly unrestricted. Apart from the fact that the public in general and/or any particular community did not have any right of participation in the management of the property nor for the maintenance thereof any contribution was made is a matter of much significance. A dedication, it may bear repetition to state, would mean complete relinquishment of his right of ownership and proprietary. A benevolent act on the part of a ruler of the State for the benefit of

the general public may or may not amount to dedication for charitable purpose.

39. When the complete control is retained by the owner — be it appointment of a chowkidar, appropriation of rents, maintenance thereof from his personal funds — dedication cannot be said to be complete. There is no evidence except oral statements of some witnesses to the effect that Raj Kumar Bir Singh became its first trustee. Evidence adduced in this behalf is presumptive in nature. How such trust was administered by Raj Kumar Bir Singh and upon his death by his successors-in-interest has not been disclosed. It appears that the family of the donor retained the control over the property and, therefore, a complete dedication cannot be inferred far less presumed. Furthermore, a trust which has been created may be a private trust or a public trust. The provisions of Section 92 of the Code of Civil Procedure would be attracted only when a public trust comes into being and not otherwise.

-xxx-

42. When a dedication to a charity is sought to be established in absence of an instrument or grant, the law requires that such dedication be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to charity. It must be proved that the donor intended to divest himself of his ownership in the dedicated property. The meaning of charitable purpose may depend upon the statute defining the same.".

(Emphasis supplied)

51. In ***Kuldip Chand*** *(supra)*, of the several factual circumstances that led this Court to reach the conclusion that the Dharamsala was not a public trust in addition to the owner's intention to not relinquish ownership of the property, some are especially pertinent – (a) in the premises of the Dharamsala, some portion was let out as shops to other people, unconnected with the religious or charitable purpose; (b) the income/rent received from those shops were not used to further the purpose of the

alleged trust but was being used by the owners for their own purpose; (c) the maintenance of the Dharamsala was also being done from the personal funds of the owner and no contribution was made by the public for the maintenance of the Dharamsala. All these facts were taken into account in arriving at the decision that the Dharamsala was not a public trust.

52. On a conspectus of the aforesaid decisions, it could be said that the method of devolution of the property to the institution or its acquisition, the intention behind the grant of property i.e. whether it was for the benefit of the organization or for the personal benefit of any particular individual/family – *in other words,* the historical setting and the circumstances of the grant has been given considerable significance while concluding whether a trust of a public charitable or religious nature exists. Even if the grant was initially of a private nature, any subsequent dealings could transform the organization into a public trust, however, such a 'dedication' to the public must be sufficiently proved. That the public user or an unascertained class of individuals could exercise any 'right' over the organization and its properties, could also be a significant factor in concluding that a public trust has come into existence. The manner of use of the profits accrued, more particularly, whether it was applied towards the benefit of the organization or its objectives, could also lead to an inference as regards the nature of the organization or the creation of a public trust.

53. ***Bihar State Board*** *(supra)* has reiterated that a charitable trust may either be created by a grant for an express purpose or a grant having been made in favour of an

individual(s), who might thereafter create a charitable trust. Due attention must also be paid to whether the grant is accompanied with any fetter/obligation or qualified with a condition, either express or implied, regarding its use by the grantee. Therefore, the trifecta i.e., the intention, manner and conditions of the grant might have to be scrutinized to see whether the grant was for the benefit of the public or an unascertained section of the public. The intention to create a trust must be indicated, either by words or acts with reasonable certainty. Other established circumstances, including the method of use of the property and customs of the institution or the mode and manner in which they have dealt with the properties in the past, could also prove to be relevant.

54. ***Kuldip Chand*** *(supra)* had also placed emphasis on the history of the institution/organization, the conduct of the parties and the beneficiaries of the properties as relevant factors. Whether the 'dedication' was complete i.e., whether there was an absolute cessation or complete relinquishment of ownership of the property on the part of the grantor and a subsequent vesting of the property for the said object, was also considered a key factor in determining if the dedication was for public purposes. Furthermore, how the properties are managed, more specifically, for whose benefit they are being managed; whether the profits are being re-routed to the public and for their benefit; whether any personal funds of any founder/proprietor are being applied for the running of the organization or is it maintained through funds sourced from the public, are also aspects that one might need to paid due attention to. Therefore, the overarching and fundamental purpose of the organization, the

mode in which properties are acquired and its beneficiaries could color it with the characteristics of a trust.

55. However, it must be noted that the aforementioned characteristics bear high significance, when, as mentioned previously, there has been no formal recognition of the entity in question and it has not been given a legal identity otherwise. Now, the next question would be, how an entity which satisfies the aforementioned criteria but has been, much later in time, registered as a society under the Societies Registration Act, 1860, would be treated in the eyes of law. The answer to this lies in the decision given by the Full Bench of the Kerala High Court in ***Kesava Panicker v. Damodara Panicker and others*** reported in **1974 SCC OnLine Ker 58.**

56. In ***Kesava Panicker*** *(supra),* the Full Bench had to decide, on the face of it, a strikingly similar question i.e., whether a society registered under the Societies Registration Act, 1860 could be considered to be a trust or a constructive trust for the purposes of Section 92 of the CPC. However, the facts revealed that a public trust was formed much before the society was registered. It is in such circumstances that the Court arrived at the conclusion that the subject school, its properties and monies formed a public trust of a charitable nature and that the suit under Section 92 was maintainable. The High Court elaborated as follows:

i. ***First,*** several factors led to the conclusion that the trust had been created, – that the entire community in the area took an active interest and contributed funds for the purpose of creating a 'trust fund' in order that the school may be

established; A committee was formed for collecting funds either as donations or as share capital; that long before the registration of the society, funds were collected from the public towards share money; and there were other forms of contributions as well. This according to the Full Bench reflected that there existed a clear intention to form a trust and also that a trust fund was created. These funds were utilized for the construction of the school building and for other ancillary purposes including establishing and maintaining the other functions of the school.

ii. ***Secondly,*** referring to *Tudor on Charities, Sixth Edition*, pg 128, it was opined that a trust may be created by any language sufficient to show the intention, and no technical words are necessary. Further, it was stated that the use of words such as 'intent' or 'purpose' or a direction that a fund shall be applied by, or be at the disposal of a person for certain intended charitable purposes, may very well be as effective as the use of the word 'trust'.

iii. ***Lastly,*** the mere factum of registration of a society under the Societies Registration Act, 1860 could not change the character of the properties which had already been constituted as trust properties and impressed with the trust, especially when a trust has clearly been created by the public for a public charitable purpose i.e., the establishing, maintaining and running of a school. Any addition to the said properties would also possess the characteristics of a trust property.

57. The relevant observations of the Full Bench are reproduced hereinbelow:

"*5. When once it has been found that the school building and the furniture etc. as well as the funds of the school did not belong to the appellant as is contended by him he was certainly liable to account for the property of the school including the monies and the direction to account cannot also be interfered with. Considering the nature of the contentions raised by the appellant the direction to remove him from management must also stand. It is further essential that a scheme must be framed for the management of the school and the decree permitting that being done cannot also be altered.*

6. All this we have said on the basis that the school and its properties and its monies formed a public trust of a charitable nature and that a suit such as the one envisaged by Section 92 of the CPC and which was the type of suit that was instituted - it is not even suggested that this is not so would be permissible and that the suit in question was maintainable and that the plaintiffs were entitled to sue. Regarding those questions the appellant's Counsel vehemently argued that there has been no trust at all justifying such an action. […] For a suit under Section 92 there must be a public trust of the religious or charitable character. Herendra Nath Bhattacharya v. Kaliram Das, (1972) 1 SCC 115 : AIR 1972 SC 246. The allegation in the plaint is that there is such a charitable trust and that the appellant acting as a trustee de son tort has misused the funds of the trust and have mismanaged the properties. If the existence of a trust as alleged is established the suit will have to be decreed. We shall presently consider whether there is such a trust as alleged. Before going to that question we shall refer to the other decisions as well relied on by counsel for the appellant.

7. Counsel very strongly relied on the decision in G. Chikka Venkatappa v. D. Hanumanthappa, (1970) 1 Mys LJ 296. The decision is authority for the proposition that the formation of a society under the Societies Registration Act to carry out any charitable or useful or social purpose cannot be regarded as amounting to creation of a trust for the application of Section 92 of the CPC. The effect of the Societies Registration Act is not to invest properties of the society with the character of trust property. Even if the purpose for which the society was formed was charitable purpose the property acquired for this purpose will belong to the society and there is no trust and no trust can be predicated. So it was urged that even if the properties were acquired by the Keralasseri High School Society there was no trust

which would enable a suit being instituted in accordance with the provisions of Section 92 of the CPC. If we may say so, with great respect, the position stated in the decision is the correct one. That was stated with reference to the facts of that case and the conclusion arrived at after discussing the facts is seen from paragraph 21 of the judgment which we shall extract.

> *"21. On the evidence, therefore, there cannot be the slightest doubt that the construction of this building was purely and exclusively an activity and concern of the registered society called the Devanga Sangha. It was not and cannot be described as a matter in which the entire Devanga Community as Community took any interest or any steps in such a way as to make it possible to suggest that a specified item of property was dedicated by it, or some members thereof, to public purpose, viz. some welfare of the community at large."*

8. On the other hand the facts of this case show that the entire community in the area took an active interest and contributed funds for the purpose of creating a "trust fund" in order that a school may be established. Though it was what was called the "Keralasseri Food Committee" that first made a move for the establishment of a High School by submitting Ext. A9 memorandum to the Chief Minister, Madras, the public took up the matter and there was a meeting of the public on the 1st February, 1947 and at that conference a resolution was passed to start a private school. A committee was formed for collecting funds either as donations or as share capital. Ext. A14 is the proceedings of that meeting embodying the decisions taken at the meeting. These proceedings clearly indicate that the intention was to create a trust fund. It is so specifically stated in Ext. A14. We shall extract the relevant part.

(Text in Malayalam Language.)

9. Long before the registration of the society funds were collected from the public towards share money is evidenced by Exts. A3, A4, A24 and B26 receipts. There have been contributions as well, has been established and this aspect has been discussed in the judgment of the court below. It is thus clear that there has been a clear intention to form a trust and that a trust fund was created and that the fund was utilised for the construction of the school building and for the ancillary purposes for establishing and maintaining the work of the school.

"A trust may be created by any language sufficient to show the intention, and no technical words are necessary. The use of such words as 'intent' or 'purpose' or a direction that a fund shall be applied by, or be at the disposal of, a person for the charitable purposes intended, may be as effectual as the use of the word 'trust'. Even the words 'authorise and empower' may be enough, upon the true construction of the instrument". (See Tudor on Charities, Sixth Edition, Page 128).

10. No corporation would be created within the meaning of the word "incorporated" occurring in Entry 44 of List 1 of the Seventh Schedule to the Constitution by the formation and registration of a society under the Societies Registration Act. The society would continue to remain as an unincorporated society though under the Societies Registration Act it would have certain privileges some of them being analogous to those of corporations. See Board of Trustees, Ayurvedic and Unani College, Delhi v. State of Delhi, AIR 1962 SC 458. If there was a trust created by the public for a public charitable purpose namely establishing, maintaining and running a school the fact of the registration of a society could not change the character of the properties which had already been constituted as trust properties and impressed with the trust and any addition to those properties must also have the same character.

11. We have therefore no hesitation in reaching the conclusion that a trust has been created and the High School buildings, the land, all appurtenances, furniture, equipment and all other properties are trust properties.

-xxx-

13. The suit is maintainable. By virtue of the registration of the society the nature of the trust properties has not been changed and on the allegations and the findings, a suit for the reliefs asked for is competent. We dismiss this appeal with costs."

(Emphasis supplied)

58. As indicated above, a crucial factual aspect in ***Kesava Panicker*** *(supra)*, was that the public trust was already created by the public and that it pre-existed the registration of the society. It was in such circumstances that it was held that a 'subsequent' registration of the same entity as a society under the Societies

Registration Act, 1860 would not take away from its character as a public trust and affect the maintainability of a suit under Section 92 of the CPC. A trust was already created by the public for a public charitable purpose and the properties were already imbued with the character of trust properties and impressed with the trust. The mere registration as a society to alter or circumvent the status of things which was already present, was what was disallowed. However, whether this factual peculiarity has a bearing on the facts of the present matter remains to be seen.

b. Views of different High Courts on the issue

59. Over the period of time, several decisions of different High Courts have been faced with the same question which remains at the centre of the present litigation i.e., whether a society can be considered to be a public trust for the purposes of Section 92 of the CPC. The High Court of Mysore in ***C. Chikka Venkatappa & Another v. D. Hanumanthappa & Others*** reported in **1970 SCC OnLine Kar 16** was concerned with a suit filed under Section 92 in relation to 'Devanga Sangha', a society registered under the Mysore Societies Registration Act of 1904 whose object was to advance the educational, economic and social welfare of the members of the Devanga community who are a section of Hindus. The plaintiffs prayed that the defendants be removed from the office they held in the Devanga Sangha and that they also be directed to render true and proper accounts as regards the collections made by them on behalf of the Sangha in connection with the Silver Jubilee Building

Fund of the Sangha. The suit was decreed and while the first prayer was not granted, the second prayer was granted only against two out of the five defendants. The High Court while holding that the suit was entirely misconceived on law and also wholly unnecessary on facts, observed as follows:

i. ***First,*** that the words 'creation of a trust' under Section 92 obviously has reference to similar phraseology employed in the Indian Trusts Act, 1882 although the same pertains to 'private trust'. 'Trust' is therefore, an obligation annexed to the ownership of property.

ii. ***Secondly***, due regard was given to the object behind the enactment of the Karnataka Societies Registration Act, 1960 and the Mysore Societies Registration Act of 1904 respectively, along with the express provisions in those legislations which provided that the property, whether moveable or immoveable, belonging to a society shall be deemed to be vested in the Governing Body of the Society unless it is separately vested in trustees. While also referring to the provisions which provide that a society may sue or be sued, it was concluded that the obvious effect of these legal provisions would be that such property would belong to the society and be owned by the society like any other individual since the society by itself is invested with the character of a legal person. This is despite the fact that the society's object may be described as being one of a charitable nature and that it acquires property for the purpose of achieving those objects. The existence of a trust, an author of the trust and a transfer of the said property as trust property to any trustee cannot be predicated in such circumstances where a society is involved. Further, it cannot be said that

whenever a society acquires property, it declares itself as a trustee in respect of that property. On the contrary, the obligation to use the property for the purposes of the society is an obligation which is inherent or implicit in the MoA, which is the basic document constituting the society. The same cannot be construed as amounting to any declaration of trust in respect of a specified property.

iii. ***Thirdly,*** after clarifying the aforesaid differences in law between a trust and a society, it was stated that it would not be possible to begin with the assumption that there is a trust created for public purposes for the invocation of Section 92 of the CPC, unless some special circumstances are made out.

iv. ***Fourthly,*** it was stated that one must be able to draw a difference between an act which is purely and exclusively an activity or concern of the registered society in contrast to a matter in which an entire community takes any interest or steps, which may suggest that a specified item of property was dedicated for a public purpose or for the welfare of the community at large. Unless there are indications of a separate vesting of the society's property in a trust, effect must be given to the normal provisions of law which vest the property in the Executive Council.

v. ***Lastly***, while agreeing that a trusteeship can be vested in a 'committee of persons' and that they can be treated as trustees for the purposes of Section 92, it was however, held that the same would be different from the vesting of properties in the governing body of a society registered under the Societies Registration Act, 1860.

60. The relevant observations in ***Chikka Venkatappa*** *(supra)* are reproduced hereinbelow:

> "*2. […] There is in Bangalore an association called the Devanga Sangha, which was registered as a society on the 12th of February 1924 under the Mysore Societies Registration Act of 1904. Like all other societies of that nature, the Sangha is governed by a Memorandum of Association, a set of Articles of Association and subsidiary bye-laws framed by the Society. The objects of the Sangha set out in the Memorandum are to advance the educational, economic and social welfare of the members of the Devanga community who are a section of Hindus. The membership is limited to those belonging to the said community and is subject to payment of donations or periodical subscriptions. There are, as in other cases, different classes of members like Patrons who are called by two different Kannada names 'Poshaka and Sahavaka', Life members. Hon. members and ordinary members. The management of affairs of the Sangha is vested in a body called the Executive Council consisting of a President, four Vice-Presidents, a Secretary, a Treasurer and 50 other members.*
>
> *-xxx-*
>
> *16. It is clear that the trust referred to in this section is one actually created for a public purpose, whether that purpose be a charitable one or a religious one. The choice of the words 'creation of a trust' obviously has reference to the similar phraseology adopted in the Indian Trusts Act. 'Trust' is an obligation annexed to the ownership of property—vide S. 3 of the Act. A trust is created when the author of the trust indicates with reasonable certainty by any words or acts an intention on his part to create thereby a trust, the purpose of the trust, the beneficiary and the trust property and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee—(vide S. 6 of the Act).*
>
> *17. <u>The question is whether the formation of a society under the Societies Registration Act to carry out any charitable or useful or social purpose can at all be regarded as amounting to creation of a trust in the sense mentioned above.</u> The Societies Registration Act is an Act promulgated for the ??? of making provision for regulating, controlling and improving the legal condition of societies established for the promotion of literature, science or fine arts or for the diffusion of useful knowledge or for any charitable*

purposes. The Act of 1960 which was substituted for the previous Mysore Act No. 3 of 1904, has, however, limited the object to the mere provision for registration of literary, scientific, charitable or other societies in the State of Mysore. The manner in which the said objects are given effect to in the two statutes is the same. They enable individuals to get themselves formed into an incorporated body, like Corporations or Companies with a separate legal personality conferred upon the incorporated body. And express provision is made (in S. 6 of the Act of 1904 and S. 14 of the Act of 1960) to the effect that the property, moveable or immoveable, belonging to a Society registered under the Act, unless it is vested separately in trustees, shall be deemed to be vested for the time being in the Governing Body of the society. S. 7 of the Act of 1904 corresponding to S. 15 of the Act of 1960 makes provision for the manner in which the societies may sue or be sued. The general provision is that every society registered under the Act may sue or be sued in the name of President or other office bearer specified for the purpose by the Rules and Regulations of the Society.

18. The obvious legal effect of these provisions is that although the object of a society may be described as a charitable purpose and by its regulations it is empowered to acquire property and use the same for achieving its objects, the property belongs to the society and is owned by the society like any other individual, because, the society is itself invested with the character of a legal person by virtue of the provisions of the statute. It is not property in respect of which it is possible to predicate a trust, an author of the trust and a transfer of the said property as trust property to any trustee, nor can it be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. The obligation to use the property for purposes of the society is an obligation which is inherent or implicit in the Memorandum of Association which is the basic document constituting the society. That does not amount to nor can it be, by any stretch of imagination, read as amounting to any declaration of trust in respect of a specified property.

19. Such being the clear position in law in regard to trusts and in regard to registered societies and the clear difference between the two, the prima facie opinion in this case should necessarily be that unless some special circumstances are made out, it is not possible to start with an assumption that there is a trust created for public purposes, in regard to which the provisions of S. 92 CPC. could be invoked.

-xxx-

25. On the evidence, therefore, there cannot be the slightest doubt that the construction of this building was purely and exclusively an activity and concern of the registered society called the Devanga Sangha. It was not and cannot be described as a matter in which the entire Devanga community as community took any interest or any steps in such a way as to make it possible to suggest that a specified item of property, was dedicated by it, or some members thereof, to public purpose, viz., some welfare of the community at large.

26. […] All that happens is that the registered society acquires a certain item of property which, under the law, must be deemed to vest in the governing body unless they take steps to vest it separately in trustees. There is no suggestion here of any such separate vesting. Hence effect should be given to the normal provisions of law which vest the property in the Executive Council.

-xxx-

29. The other four-decisions are relied upon to make out one general proposition, namely, that for the purpose of applying the provisions of S. 92 CPC., it is not obligatory that the trustees should be individual human beings, but may be statutory committees or statutory bodies including incorporated bodies. In T. Sitharama Chetty's case [ILR. 39 Mad. 700.] , it was held that an Area Committee appointed under one of the provisions of the Madras Endowments Act, which was in management of a certain temple, may clearly be regarded as a trust for the purpose of S. 92 CPC. In Commissioner, Lucknow Division's case [AIR. 1937 PC. 240.] , there was an unincorporated informal committee of persons who collected subscriptions for a specific purpose. In Gomathinayagam's case [AIR. 1963 Mad. 387.] , the founder of a certain school who had endowed properties for purposes of the school transferred those properties on trust to a Committee of persons who got themselves incorporated into a company without any motive of profits under S. 26 of the Indians Companies Act of 1913 (corresponding to S. 25 of the 1956 Act). In all these cares, it was held that the fact that the trusteeship vested in a Committee of persons, whether incorporated or not, made no difference to treating them as trustees for the purpose of S. 92 CPC. But that does not carry the plaintiffs' case any further in this case. In every one of these decided cases, there was a clear creation of a trust for public purposes within the meaning of S. 92 CPC. as explained

by us. In every case, there was already either a temple with endowed properties managed by the Area Committee or an actual transfer of property on trust by the founder of the school in favour of the Committee or the collection of funds by an informal committee for a specified public purpose amounting in law to a declaration of trust by themselves.

30. But one case which comes very near the present case is that in P. Mahadevayya's case [53 Mys H.C.R. 167] . That was a case of a registered society formed for the educational advancement of the Veerasaiva community which became the victim of serious differences of opinion between its members resulting in a split threatening to put an end to the useful activities of the society. A suit was filed with the consent of the Deputy Commissioner of the relevant district under S. 92 CPC. for the framing of a scheme. The bulk of the reported judgment discusses the facts and there is no discussion of the legal principles adverted to by us above. The Court seems to proceed upon the assumption that the case was one to which S. 92, CPC. could be rightly applied. There is reference made to the case reported in T. Sitharama Chetty's case [ILR. 39 Mad. 700.] at page 175 of the Mysore High Court Reports. The contention disposed of by reference to the said decision was that according to one of the rules governing the society, no changes in the rules can be made without the consent of ¾th of the members of the general committee and that as the rules themselves provided a proper procedure, it was not competent for the Court to interfere and frame a scheme. This is what the Court has stated in rejecting that contention:

> *"We do not think that there is much substance in this contention. The fact that there is a statutory body or committee which governs an institution does not bar the jurisdiction of the Court to frame a scheme because the Court is the ultimate protector of charities and it is the inherent right of the Court always to intervene to safeguard and preserve a charity whenever it is necessary to do so. In Sitharama Chetty v. S. Subramanja Iyer (ILR. 39 Mad. 700) where a similar contention was raised that the Court ought not to frame a scheme for a temple when there is a temple committee functioning under a statute, their Lordships Sir John Wallis and Seshagiri Ayyar repelled the contention and held that they had jurisdiction to do so."*

31. It will be seen that the analogy sought to be drawn between the case in Sitarama Chetty's case [ILR. 39 Mad. 700.] and the case

before the erstwhile High Court of Mysore may not have been possible if the great distinction that existed between a temple governed by an Area Committee under the Madras Endowments Act and a society registered under the Societies Registration Act had been brought to the notice of the Court. The Area Committee referred to in Sitharama Chetty's case [ILR. 39 Mad. 700.] is certainly not the same as the governing body of a society registered under the Societies Registration Act.

32. As the ruling relied upon did not discuss the principle of law ??? before us we do not consider it to be a clear authority in support of the proposition sought to be made by Mr. Nagaraja Rao on behalf of the plaintiffs. If the decision should be regarded as laying down by implication, that even in the case of an ordinary society registered under the Societies Registration Act, a matter exclusively and completely governed by the provisions of the said Act and the general law, can be brought within the scope of S. 92 CPC. as if the position is clearly one of creation of a trust for public purposes, with respect, we find ourselves unable to agree with it."

(Emphasis supplied)

61. On the other hand, the High Court of Bombay in ***Shri Dnyaneshwar Madhuradwait Sampradayik Mandal, Amravati v. Charity Commissioner, Bombay and another*** reported in **1980 SCC OnLine Bom 120** while dealing with Section 2(13) of the Bombay Public Trusts Act, 1950 observed that a society registered under the Societies Registration Act, 1860 having an object which is religious or charitable or both, would be covered by the definition of a 'public trust' under Section 2(13). However, the said observation was made since the aforesaid State legislation which governed public trusts explicitly included societies functioning for a public purpose of a religious or charitable nature within the definition of a 'public trust'. The relevant observations are thus:

"7. Section 2(13) of the Bombay Public Trusts Act, 1950 which defines "public trust" is in the following terms:

> *"2(13) "public trust" means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, church synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860."*
>
> *8. The present case falls under the last clause of this definition and satisfies both the conditions, namely, that it is a registered society under the Societies Registration Act and as pointed out above, the society was formed for a religious purpose."*
>
> (Emphasis supplied)

62. In ***Board of Governors St. Thomas School and Others v. A.K. George and another*** reported in **1984 SCC OnLine Cal 56** leave to institute a suit under Section 92 of the CPC pertaining to St. Thomas School, a statutory body constituted under the St. Thomas School Act, 1923 was sought on the allegation that the Board of Governors were not properly constituted and that the trust property was not being properly managed by the trustees i.e., the Board of Governors of the said school. Leave was granted *ex-parte* on the ground that the school constituted a public charitable trust. While holding that the school was not a public charitable trust, the High Court of Calcutta observed that the fact that a provision under the St. Thomas School Act, 1923 provided that all the property vested in the Governors by itself was not sufficient to lead to the conclusion that they were held in trust or that a charitable trust of a public nature was created. The relevant observations are thus:

> "*11. As regards the next contention that there is no public charitable trust in respect of the St. Thomas School which is expressly governed by the said St. Thomas School Act 1923, it was tried to be contended on behalf of the respondents by referring to*

Section 11 of the said Act that all the property vested in the Governors by or under this Act should be deemed to be held in Trust, thereby meaning constructive charitable trust of a public nature. This contention, in our opinion, is totally devoid of any merit in view of the fact that Section 11 of the said Act does not at all either expressly or impliedly purport to create a charitable trust of a public nature. St. Thomas School and its property have to be administered in accordance with the provisions of St. Thomas School Act 1923 and if there is any breach of the provision of the Act then the remedy is to be sought under the said Act. The mode of constitution of the Board of Governors had been specifically laid down in S. 2 of the said Act. In these circumstances the contention that the St. Thomas School is a public charitable trust cannot be sustained. Hence the instant suit filed under Section 92 of the Civil P.C. with the leave of the Court granted under the said section is not competent and the ex parte leave that was granted is liable to be revoked and withdrawn. […]I have already held that the St. Thomas School and its properties do not constitute a public charitable trust at all but they are governed by the provisions of the St. Thomas School Act, 1923 (Bengal Act XII of 1923)."

(Emphasis supplied)

63. In ***The Advocate General v. Bhartiya Adam Jati Sewak Sangh and Ors*** reported in **MANU/HP/0182/2001,** the High Court of Himachal Pradesh held that even if the defendant no. 1 and 2 societies respectively were performing charitable functions, the same by itself would not attract the provisions of Section 92 of the CPC since there was no evidence that any trust was expressly or impliedly created. In the said case also the societies functioning for a charitable aim, i.e., the social and economic upliftment of the weaker section of the society and money was being raised from various sources, including the public at large as well as in the form of grants-in-aid from the government. Further, the High Court interpreted Section 5 of the Societies Registration Act, 1860 to mean that if the properties were already vested in trustees, only then it shall not be deemed to be vested in the governing body of the society.

In other words, the subsequent registration of a trust as a society would not have the effect of altering the properties belonging to the trust and the trustees would continue to be the legal owners of such properties. It adopted the interpretation given in ***Kesava Panicker*** *(supra)*. In this context, it was held that there was no evidence to show that any funds were collected from the general public before the defendant nos. 1 and 2 societies respectively came to be registered as societies and therefore, no trust as such could be said to have been existed. Hence, all the monies received or collected by them would vest in the governing body of the society only. Therefore, there being no trust and the defendant nos. 1 and 2 respectively admittedly being societies, the suit under Section 92 was not maintainable. The relevant observations are reproduced hereinbelow:

> "*17. At this stage, reference is required to be made to Section 5 of the Societies Registration Act, 1860, which provides :*
>
> > *The property, movable and immovable, belonging to a society registered under this Act, if not vested in Trustees, shall be deemed to be vested, for the time being in the governing body of such society, and in all proceedings, civil and criminal may be described as the property of the governing body of such society by their proper title.*
> >
> > *(Emphasis supplied in original)*
>
> *18. Under the above provisions the properties shall not vest in the Society, if such properties were already with the trustees. In other words, the registration of a Trust as a Society under the Societies Registration Act, 1860 would not alter the position and the properties belonging to the trust would not vest in the society but the trustees would continue to be the legal owners of such properties.*
>
> *-xxx-*

21. In the present case, there are neither pleadings nor evidence to show that any funds were collected from the general public before the Defendants No. 1 and 2 came to be registered as Societies under the Societies Registration Act, 1860. Therefore there was no trust as such and vide Section 20 of the Societies Registration Act, 1860, all moneys received by the Defendants No. 1 and 2 either by way of grants-in-aid or in the form of contributions from the public would vest in the societies, that is, Defendants No. 1 and 2.

-xxx-

24. In the present case, the very first condition is lacking. As stated above, it is the admitted case of the Plaintiff that Defendants No. 1 and 2 are "societies" registered under the Societies Registration Act, 1860. There is no averment and/or evidence that any trust was expressly or impliedly created. Even if Defendants No. 1 and 2 are carrying on charitable purpose, the same by itself would not attract the provisions of Section 92, Code of Civil Procedure.

25. On the facts and circumstances of the case neither the Defendants No. 1 and 2 are public trusts nor the Defendants No. 3 to 7 are the trustees. The issue is decided against the Plaintiff."

(Emphasis supplied)

64. In ***Abhaya*** *(supra)*, the Kerala High Court also refused to accept the contention that a society can be considered to be a public trust for the purposes of Section 92 of the CPC. The organisation therein was registered under the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act, 1955 and was constituted with the objectives of serving the mentally-ill, improving the social and non-social environment of the mental hospitals in Kerala, provision of facilities to improve the life-conditions of the mentally-ill, and rehabilitation of the recovered patients, especially those patients who have no familial support. The required capital of the society was also raised by membership/subscription fees, donations, loans, grants

and other voluntary contributions, including from the public. Allegations of mismanagement, misconduct and misappropriation were levelled against the defendants. While dismissing the original petition, it was held as follows:

i. ***First,*** that there was absolutely nothing in the Rules and Regulations of the Memorandum of Association which indicated that prior to the formation and registration of the society there was a trust having any property. In such a scenario, the formation of a society to carry out any charitable or social purpose would not *ipso facto* make the society a public trust, especially since the society is also empowered to acquire property to use for its purposes. Such a property which is then acquired will only be the property of the society which is a legal person by virtue of the provisions of the statute and will not be a property in respect of which a trust can be predicated. It cannot be said that whenever a society acquires property, it declares itself as a trustee in respect of that property. While it does have a legal obligation to use the property for its prescribed purposes and strictly in accordance with the Rules and Regulations of the Memorandum of Association, by no stretch of imagination can it be considered as a declaration of trust.

ii. ***Secondly,*** on a reading of Section 8 of the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act, 1955, which is *pari materia* to Section 5 of the Societies Registration Act, 1860, it was inferred that unless the properties had already vested separately in trustees, they shall vest in the governing body of the society.

iii. ***Thirdly,*** it was opined that a procedure for the removal of the existing governing body, appointment of a fresh governing body and framing a scheme for the better and efficient management of the society was already contemplated within the Travancore-Cochin Literary, Scientific, and Charitable Societies Registration Act, 1955. Such a relief could be availed by the members of the society as well, however, provided that a minimum of 10% of the members on the rolls of the society join together. It was opined that this express provision cannot be sought to be circumvented by the aggrieved members of the society by making an allegation that the society is a public trust and adopting the route under Section 92 of the CPC instead.

iv. ***Lastly,*** while acknowledging that it is the allegation in the plaint that determines the jurisdiction of the court under Section 92 of the CPC and that if a breach of trust is 'alleged', the grant of leave may be given, it was cautioned that when the very existence of a trust of any kind is seriously disputed/denied, the court must *prima facie* satisfy itself of the existence of the trust. It is true that if the contention is that there is no public trust but only a private one, a decision on whether the trust is of a public or private nature can only be made after taking in evidence. However, the same principle would not apply when the issue is that a trust by itself is absent in the circumstances. There must be some material to convince the court that a trust has been created.

65. The relevant observations made in ***Abhaya*** *(supra)* are reproduced hereinbelow:

"*7. In the 1st paragraph of the petition itself it is admitted that the first petitioner-organisation "Abhaya" was constituted with the objectives of serving the mentally ill-persons, improving the social and non-social environment of the mental hospitals of Kerala, providing the mentally ill-persons with facilities to improve their life conditions and rehabilitating the recovered patients, especially those who are unwanted by their families. It is also admitted that in a general body meeting of the 1st petitioner held on 5-1-1986 it was decided to register the 1st petitioner-organisation under the provisions of Act XII of 1955 and the same was registered with Reg. No. 71 of 1986 by the Registrar of Co-operative Societies having its registered office at "Varda" Nandavanam, Trivandrum. In paragraphs 3 to 13 the respondents 1 to 6 have extracted the various provisions of the Rules and Regulation of the Society. A copy of the Memorandum of Association is produced by respondents 1 to 6. The Memorandum of Association shows that the name of the Society is "Abhaya" and its registered office is at "Varada" Nandavanam, Trivandrum. The area of activity of the Society is limited to State of Kerala. Clause 4 of the Rules and Regulations of the Memorandum of Association deals with the main objectives of the Society, which reads as follows:—*

> *4. The main objectives of the Society shall be the service of the mentally ill, alcoholics and drug addicts, women in distress and children and other groups in distress. The society shall aim at—*
> *(a) Improving the social and non-social environment of the mental hospitals of Kerala.*
> *(b) Providing the mentally ill with facilities to improve their life conditions.*
> *(c) Rehabilitating the recovered patients, especially those who are unwanted by their families."*

[…] Clause 10 deals with the capital of the society, which reads as follows:—

> *"10. The required capital of the society shall be raised by the membership and subscription fees and donations, loans, grants and other voluntary contributions from the public State and Central Governments and other institutions or organisations."*

[…]

8. It is true that Clause 4 of the Rules and Regulations shows that the Society is constituted with the main objectives of rendering service of the mentally ill, alcoholics and drug addicts, women in

distress and children and other groups in distress. But, there is absolutely nothing in the Rules and Regulations of Memorandum of Association to show that prior to the formation and registration, of the society there was a trust haying any property. On the other hand, a reading of the memorandum of Association shows that there were 7 promotees and they convened a General Body meeting on 5-1-1986. The General Body held on 5-1-1986 decided to register the 1st petitioner as a Society under Act XII of 1955. Clause 10 shows that on the date of formation of the Society there was no property over which the Society had any ownership. A formation of a Society under the provisions of Act XII of 1955 to carry out any charitable or social purpose will not make the Society a public Trust. The Society is empowered to acquire property also to use for its purposes. But, that property which is to be Acquired will only be the property of the Society and it will not be a property in respect of which it is possible to predicate a trust. The preamble of the Act XII of 1955 is relevant. It states as follows:—

> *"Whereas it is expedient that provision should be made for improving the legal condition of Societies, established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge or for charitable purposes."*

Section 3 of the Act provides that any seven or more persons associated for any charitable purpose may by subscribing their names to a memorandum of association and filing the same with the Registrar, form themselves into a society. Section 32 of the Act provides that the following Societies may be registered under the Act:

> *"Charitable societies, societies established for the promotion of science literature or the fine arts, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art collections of natural history mechanical and philosophical inventions, instruments or designs."*

Section 8 of the Act deals with the property of the Society. It reads as follows:—

> *"8. Property of society how vested. The property, movable and immovable, belonging to a society, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title."*

A reading of Section 8 makes it clear that unless the properties had already vested separately in trustees, it shall vest in the governing body of the society. […] Section 25 deals with application to court for dissolution framing schemes, etc. Section 25 reads as follows:—

> *"25. Application to Court for dissolution, framing a scheme, etc. — (1) When an application is made by the State Government or ten per cent of the members on the rolls of a society to the District Court within the jurisdiction of which the society is registered, the Court may, after enquiry and on being satisfied that it is just and equitable pass any of the following orders:—*
>
> *(a) removing the existing governing body and appointing a fresh governing body; or*
>
> *(b) framing a scheme for the better and efficient management of the society; or*
>
> *(c) dissolving the Society.*
>
> *(2) Where the application under sub-section (1) is by the members of the society, the applicant shall deposit in Court along with the application the sum of one hundred rupees in cash as security for costs."*

Section 25 makes it very clear that a suit can be filed before the District Court by 10% of the members of the society against the Society for removing the existing governing body and appointing a fresh governing body or for framing a scheme for the better and efficient management of the society. The right to file the suit to frame a scheme is not confined to the State Government alone. The relief that the District Court can grant is not restricted to ordering dissolution of the society only. Section 25 confers power on the members of the society to institute a suit for removing the governing body or for appointing a fresh governing body and for framing a scheme. The only condition is that to file such suit minimum 10% of the members on the rolls of the society shall join together and the suit is to be filed before the District Court, Sub-section (2) of Section 25 provides that the plaintiff has to deposit Rs. 100/- as security for costs.

9. A reading of the various Sections of Act XII of 1955 shows that even if the object of a society formed under the provisions of Act XII of 1955 is a charitable purpose and even if it acquires property and use the same for achieving the object of the society, the property is owned by the Society and it belongs to it. The property is that of the society which is a legal person by virtue of the provisions of the statute. It cannot be said that whenever a society acquires property, it declares itself as a trustee in respect of that

property. The Society has a legal obligation to use the property for purposes of the society acquired strictly in accordance with the provisions contained in the Rules and Regulations of Memorandum of Association. By no stretch of imagination it can be considered as a declaration of trust in respect of a property acquired by the Society.

-xxx-

11. The preamble of the Indian Trusts Act, 182, states that it was enacted to define and amend the law relating to private trusts and trustees. Section 3 of the Indian Trusts Act defines "trust". It reads as follows:—

> *"A "Trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner."*

To constitute a trust, there must be an author of the trust, trustees, beneficiary, trust property and beneficial interest. The concept of trust involves four ingredients; a settlor or donor, a trustee or trustees, the beneficiaries and the subject matter. Of course, the beneficiaries may be a specified group or general public. Trust may be either express or constructive. But, a trust is created only when the author of the trust indicates with reasonable certainty by words or act the intention in his part to create a trust, beneficiary and the trust property. The subject matter of a trust must be a property transferable to the beneficiary. It must not be merely a beneficial interest.

12. In Kesava Panicker v. Damodara Panicker 1975 Ker LT 797: (AIR 1976 Kerala 86) a Full Bench of this Court considered the effect of the subsequent registration of a society. […] That principle was followed in Sukumaran v. Akamala Sree Dharma Sastha Idol (1992) 1 Ker LT 432: (AIR 1992 Kerala 406), but in both those cases there were materials to show that a public trust was in existence and later that trust got registered under the provisions of Act XII of 1955. I shall consider whether there is any material in this case to show that the 1st petitioner was a trust and later it got itself registered under the provisions of Act XII of 1955.

13. […] A reading of various averments in the Original Petition shows that though the word "Trust" is used to describe the 1st petitioner, there is no averments in the pleadings to show the existence of a Trust, whether Public or Private. On the other hand,

the materials on record clearly shows that the 1st petitioner is a Society registered under Act XII of 1955.

14. A comparison of Section 25 of the Act XII of 1955 and Section 92 of C.P. Code shows that the reliefs provided under Section 25 of the Act and under Section 92 of the C.P. Code are similar. The suit under Section 25 of the Act is also to be filed before the District Court. The main difference is that to file a suit under Section 25 of the Act a minimum 10% of the members of the Society must join together as plaintiffs. But they need not obtain any permission as contemplated under Section 92 of the C.P. Code. The minimum number of 10% of the members is insisted to see that the Society is not unnecessarily dragged to court of law. The member of the Society cannot be allowed to circumvent that provision by making an allegation that the Society is a Trust.

15. The learned counsel appearing for the contesting respondents has argued that when there are averments in the petition regarding the existence of a trust, the Court is bound to grant the permission sought for and the Court cannot consider whether the allegation regarding the existence of trust is true or not. It is argued that is a matter to be decided after taking evidence.

16. It is true that it is the allegation in the plaint that determines the jurisdiction of the Court under Section 92 of C.P. Code. If a breach of trust is alleged in the plaint, it is sufficient to confer jurisdiction to the Court. But, when the very existence of a trust of any kind is denied, the court must look into the pleadings and the documents produced by the plaintiffs to see whether there is any material to show a prima facie case of existence of the trust. Of course, if the contention is that there is no public trust but only a private trust, a decision as to whether the trust is public or private can be taken only after taking evidence.

17. The learned counsel for the respondents 1 to 6 has argued that if there are averments in the original Petition to the effect that the O.P. relates to a trust the District Court shall not reject the O.P. on the ground that there is no trust. It is argued that the Apex Court has held that it is not even necessary to hear the respondent before granting leave. It is true that in B.S. Adityan v. B. Ramachandran Adityan 2004 AIR SCW 3044: (AIR 2004 SC 3448), the Apex Court has held that leave can be granted without issuing notice to the respondent. But in the very same decision it was also held that the respondent after appearing in the suit, can file petition to revoke the leave already granted. So, there is no merit in the contention

of the contesting respondent that if there are averments in the petition regarding the existence of trust, the District Court shall entertain the application and grant leave.

18. The learned counsel appearing for respondents 1 to 6 has argued that the scope of enquiry in an Original Petition is very limited and the District Court has merely to see whether there is prima facie case for granting the relief. […] It is true that the plaintiff need only establish a prima facie case of existence of a trust. But, there must be materials to make a prima facie case of existence of a trust. There is total lack of any such materials in this case.

-xxx-

21. The learned District Judge allowed the Original Petition on a wrong assumption that the 1st petitioner Society is a Trust. There is absolutely no material to show prima facie that 1st petitioner is a Trust, either public or private. There is also no material to show that there was a Trust of public nature, which subsequently got registered under the provisions of Act XII of 1955. Since there is no material to make out a prima facie case that the 1st petitioner is a public Trust and any person had settled any properties for the benefit of the beneficiaries, the provisions of Section 92 of C.P.C. cannot be invoked. So, the impugned order is illegal, unsustainable and liable to be set aside."

(Emphasis supplied)

66. While dealing with the same issue, the Madras High Court also in ***Periyar Self Respect Propaganda Institution*** *(supra),* took the view that the properties in question vested with a society and not a trust, thereby rendering the suit under Section 92 not maintainable. Therein, the fact that the institution was registered under the Societies Registration Act, 1860 and that the properties were vested in the President and Secretary of the institution who were empowered to purchase and sell properties on behalf of the institution, were, in the opinion of the High Court, factors

which indicated that a trust neither existed nor was created. The relevant observations are as thus:

> *"9. In order to maintain the suit under Section 92 CPC the petitioners/plaintiffs should show the existence of a Trust and the alleged breach of the terms of the Trust; besides which the interestedness of the petitioners/plaintiffs in the running the Trust shall also be made known.*
>
> *10. But as seen from the Memorandum of Articles of Association of the Periyar Self Respect Propaganda Institution (first defendant), Tiruchirapalli, it is found that it was incorporated and found to have been registered under the Societies Registration Act 21/1860. That Certificate number is 13/1952 with a Memorandum of Articles of Association containing 13 life members and 30 Rules; according to Clause 22, the life members of the Executive Committee alone shall be the Trustees of the properties already purchased. According to Clause 23, the properties of the Institution shall be in the names of the President and the Secretary and they shall have to power to purchase and sell the properties on behalf of the Institution. If it is a Trust Property, there will not be a clause empowering the President to sell the properties. That itself indicates that it is not a Trust. The fact that it was registered under the Societies Act may also lend support to the above view.*
>
> *-xxx-*
>
> *14. In this case also the property vest with the President and Secretary of the first defendant as per clause 23 of the Memorandum of Articles of Association of the first defendant Institution, which was registered under the Societies Registration Act 21/1860. Therefore, the property is vested with a society and not with a Trust and as per the observations made in the above cited case a suit under Section 92, CPC is not maintainable, (to) which Societies Registration Act is applicable, proceeding with a suit under Section 92, CPC was deprecated in Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik ((1984) 2 SCC 50 : AIR 1984 SC 192). There is also no interestedness shown upon the plaintiffs in the running of the Trust."*
>
> (Emphasis supplied)

67. In ***S.R. Bahuguna*** *(supra)*, the Delhi High Court had held that the suit under Section 92 was not maintainable for not having satisfied two crucial ingredients i.e., the defendant no. 1 was a society and not a public charitable trust, and the plaintiffs were also not 'persons interested' in the trust. Therein, for the purpose of constructing a building on a plot of land belonging to defendant society and develop it, a board of five trustees was set up by the standing committee of the defendant society through a registered trust deed dated 01.09.1975 where the President of the defendant society was the Managing Trustee. However, the trust was revoked almost two years later since the construction was complete and the purposes for which it had been set up was fulfilled. In this context, the Delhi High Court emphasized that Section 5 of the Societies Registration Act, 1860 cannot be construed to mean that the governing body members of the society would automatically become trustees if no trust is created to manage the assets of the society. The relevant observations are as follows:

> "*12. The sum and substance of the suit averments is that the AIWC, a registered Society, constituted a trust on 01.09.1975 for the purpose of constructing upon a plot of land allotted to it in 1962. This was part of the avowed objectives that govern the Society. The AIWC had resolved that after construction, the building would be utilized to provide housing for as many working women as was feasible and also at the same time generate rental income to sustain its other welfare activities. The plaintiffs allege various acts of financial irregularities in relation to construction activity undertaken by the AIWC as well as alleged acts of embezzlement on part of the Treasurer. They also rely upon certain observations by the AIWC's Chartered Accountants or Auditors. Their claim to be persons interested for the purpose of obtaining leave is that they were associated with the Society having worked there for some time and are, therefore, 'interested for its proper management and functioning'.*
>
> *-xxx-*

14. […] Besides, there is no denial that the first defendant is a society, not a Trust; a Trust was set up for a limited period, for a special purpose, i.e. to construct a building. Apparently, after that objective was achieved, the Trust was dissolved or wound up. In these circumstances, the Court is of opinion that the suit is not maintainable.

-xxx-

16. In view of the above discussion, the Court is of opinion that the suit is not maintainable, because two crucial ingredients, which are essential pre-requisites for action under Section 92 are lacking; the first, defendant is a society, and not a public charitable Trust. The Trust which had been set up earlier was dissolved in 1997; that has not been disputed. The suit was filed in 2001. Section 5 of the Societies Registration Act 1860, says that the property and assets of a registered society vest either in a trust, set up for that purpose, or the society's governing council or body. This however, does not mean that the governing body members if no trust is created to manage the society's assets, become trustees. No authority was shown to advance such an argument. The second ingredient, i.e. the plaintiffs being 'persons interested' is also lacking, in this case.

17. For the above reasons, the plaintiffs cannot be granted leave to file a suit, under Section 92 of the CPC. The suit and all pending applications are, therefore, dismissed without any order on costs."
(Emphasis supplied)

68. In ***Young Mens Christian Association of Ernakulam*** *(supra)*, the plaintiffs alleged before the Delhi High Court that the defendant society owned a large number of movable and immovable properties across India and held in trust, various properties of its member associations. The High Court accepted such a contention and leave to institute a suit under Section 92 was granted by delineating the following:

i. ***First***, emphasis was laid on several Articles of the Memorandum of Association of the defendant society of which one provided that certain properties were indeed held in trust by the defendant society on behalf of the member YMCAs.

Furthermore, the historical background indicated that the defendant society started administering and looking after existing member YMCAs which were formed even before it was registered as a society, quite similar to the factual scenario in ***Kesava Panicker*** *(supra)*. The defendant society was not only holding properties in trust but also exercised the power to enter into transactions in respect of such properties. On a consideration of all the above, it was held that there remained no doubt that the defendant society was in both 'express' and 'constructive' trust of the properties belonging to its members.

ii. ***Secondly***, by interpreting Section 3 of the Indian Trusts Act, 1882, the elements that were required to be fulfilled for an express or constructive trust were said to be – (a) ownership of a property, (b) a confidence reposed by the owner, and (c) the said confidence being accepted for the benefit of another. It was stated that if these elements are satisfied a trust could be said to be created. It was, however acknowledged that the term "express or constructive trust" in Section 92 of the CPC does not relate to a trust constituted under the Indian Trust Act, 1882 but any body or entity which holds in trust any property and is created for public purposes of a religious or charitable nature. Hence, a society might also be able to satisfy the test of an express or constructive trust, when the facts reveal the creation of a trust.

69. The relevant observations are reproduced as follows:

> "*11. A perusal of the above clauses of the Defendant's Memorandum reveals that the Society is one which possesses a public character. It is working for the people who constitute its*

members as also for the larger interest of the community. It is common knowledge that the Defendant not only has a large number of affiliated member associations in India but is also affiliated to the international network of YMCAs. It has been clearly created for a 'public purpose' and is both of a charitable and a religious nature.

12. The Defendant has two bodies which manage and administer its duties and functions. The National Board is the governing body of the Defendant and under Article III(1), the management of the society vests with it. […]

13. As per Article X of the rules and regulations, all the property of the society is deemed to vest in the National Board which consists of all the members of the National Executive, Secretary members, immediate past National President, and Chairmen of the National Standing Committees, etc.

14. The second body is the National Executive which is primarily an elected body […]

15. Article X is relevant for the present purpose and is set out herein below:
"X (1). All property of the Society, whether movable or immovable, shall be deemed to be vested in the National Board who shall have power to sell, lease, mortgage or otherwise deal with the same, and also to purchase, take on lease, accept, grants of or otherwise acquire movable or immovable property on behalf of the society, and to enter into all contracts and convenants on its behalf."

16. Article XV in respect of 'Property matters' is extremely relevant and is set out below:
"1. All matters related to the use and management of properties owned and directly managed by the National Council shall be authorized by the National Board or its Executive Committee. Documents of such properties to which the seal of the society is affixed shall be signed on behalf of the society by the National General Secretary and by the President or Treasurer.
2. In respect of Property owned by the National Council and used for National Council projects, the signing authority will be the National General Secretary or his nominee as approved by the National Executive Committee and by the President of the National Council or the chairman of the project concerned as approved by the National Executive Committee.

3. In respect of the properties held in trust by the National Council on behalf of the member YMCA, for all dealings the Executive Committee may give a power of attorney on written requisition with a resolution of the Board of the member YMCA, to the President and Secretary of the member YMCA and such other representatives of the National Executive Committee if deemed necessary by the National Executive Committee.
In respect of properties mentioned in section (1) and [2] above, all sales or disposals are to be approved by the National Board."

(Emphasis in original)

-xxx-

18. Considering the nature and constitution of the Defendant, the question is whether it comes under the purview of the Section 92 of the CPC, it being a Registered Society under the Societies Registration Act.

19. Section 3 of the Indian Trusts Act reads as under:
*"**Section 3 - Interpretation clause - 'trust' -** A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in an accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner"*

20. From a perusal of the above definition, it is clear that the elements that are required to be fulfilled for an express or constructive trust are:
i) Ownership of a property;
ii) A confidence reposed by the owner;
iii) The said confidence being accepted for the benefit of another.

21. If these elements are satisfied, a trust is created.

22. In this backdrop, a perusal of Section 92 of the CPC reveals that the term "express or constructive trust" does not relate to a trust constituted under the Indian Trusts Act, but any body or entity which holds in trust any property and is created for public purposes of a charitable or religious nature. A society can also satisfy the test of express or constructive trust created for public purposes.

23. In Abhaya (supra) cited by the Defendant, the case involved a charitable Society which did not show that it held 'in trust' any

property belonging to a different organisation. The property vested in the governing body of the Society itself. Thus, the Kerala High Court held that a suit under Section 92 of the CPC would not be maintainable. […]

24. Thus, in the facts of the said case, the Court held that there was no prima facie material to show existence of a trust.

25. Even in Rukmini Devi Arundale (supra), the Court held that the question was as to whether the property belonged to the Trust or the Society. In Bhartiya Adam Jati Sewak Sangh (supra), the High Court of Himachal Pradesh held that there was no evidence to show that any funds were collected from the general public before the Society was created. […]

26. In the present case, as per Clause 3(ii) of the Preamble of the Memorandum, one of the main objectives of the Defendant was to promote the work of the Young Men's Christian Association Movement in India and to resuscitate the existing languishing YMCAs and aid in formation of new YMCAs in India. In effect, the Defendant started administering and looking after the existing YMCAs which were formed even before it came into existence as a Society. Paragraph 14 of the Plaint clearly sets out the past YMCA movement which dates back to 1857, the fore-runner of the Defendant being formed in 1891 and thereafter the registration of the Defendant as a Society only in 1964. All these organisations came under the administration and supervision of the Defendant. As per the Rules and Regulations set out hereinabove, the Defendant holds in trust, properties on behalf of the member YMCAs. The immovable properties are located across the country. Thus, there is no doubt that the Defendant is in both 'express' and 'constructive' trust of the properties belonging to its members. In fact, as pointed out by counsels, the agreements in respect of immovable properties are actually signed for and on behalf of the members by the Defendant. One such example is that of the property in Vishakhapatnam. The Defendant is thus playing the role of not merely an association holding something in trust but also has the power to enter into a transaction in respect of such properties."

(Emphasis supplied)

70. A conspectus of the aforesaid decisions of several High Courts indicate that they are unanimous in their view as regards the fact that a society registered under the

Societies Registration Act, 1860 cannot be termed as a trust or a constructive trust merely by virtue of the fact that its properties are vested in its governing body. The facts must contain circumstances clearly indicating the creation of a trust.

c. *Section 5 of the Societies Registration Act, 1860 and the 'vesting' of properties in the Executive Committee.*

71. The appellant Society has submitted that no trust has been created for the purpose of holding the society's properties or its assets and it has been 'vested' in its Executive Committee only as per the mandate under Section 5 of the Societies Registration Act, 1860 which reads as thus:

> "***5. Property of society how vested.—****The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.*"

72. A five-judge bench of this Court in ***Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. State of Delhi and Another*** reported in **1961 SCC OnLine SC 145** while deciding a challenge to a State legislation, had the occasion to decide whether an entity registered as a society can be considered to be a 'corporation'. Answering in the negative, it was stated that the most important aspect in resolving the said issue would be to determine whether there was an intention to incorporate. Upon perusal of the various provisions of the Societies Registration Act, 1860, it was concluded that there were no sufficient words to indicate an intention to

incorporate; on the contrary, the provisions only revealed the absence of such an intention. Further, it was stated that the expression "property belonging to the society" under Section 5, did not give the society a corporate status in the matter of holding or acquiring property and that it merely described the property which either vests in the trustees or the governing body for the time being. Though the provisions of the Act undoubtedly confer certain privileges to a registered society and those privileges are of considerable importance, some may even be analogous to the privileges enjoyed by a corporation, it was held that there is no incorporation in the sense in which the word is legally understood. The relevant observations are thus:

> "*9. The first and foremost question is whether the old Board was a corporation in the legal sense of that word. What is a corporation?[...]*
>
> *10. The learned Advocate for the petitioners has referred us to various provisions of the Societies Registration Act, 1860 and has contended that the result of these provisions was to make the Board a corporation on registration. It is necessary now to read some of the provisions of that Act.[...]*
>
> *11. Now, the question before us is — regard being had to the aforesaid provisions — was the Board a corporation? Our conclusion is that it was not. The most important point to be noticed in this connection is that in the various provisions of the Societies Registration Act, 1860, there are no sufficient words to indicate an intention to incorporate; on the contrary, the provisions show that there was an absence of such intention. Section 2 no doubt provides for a name as also for the objects of the society. Section 5, however, states that the property belonging to the society, if not vested in trustees, shall be deemed to be vested in the governing body of the society and in all proceedings, civil and criminal, the property will be described as the property of the governing body. The section talks of property belonging to the society; but the property is vested in the trustees or in the governing body for the time being. The expression "property belonging to the society" does not give the society a corporate status in the matter of holding or acquiring property; it merely*

describes the property which vests in the trustees or governing body for the time being. Section 6 gives the society the right to sue or be sued in the name of the president, chairman etc. and Section 7 provides that no suit or proceeding in a civil court shall abate by reason of the death etc. of the person by or against whom the suit has been brought. Section 8 again says that any judgment obtained in a suit brought by or against the society shall be enforced against it. It has been submitted before us that Sections 6, 7 and 8 clothe the society with a legal personality and a perpetual succession; and Section 10 enables the members of the society to be sued as strangers, in certain circumstances, by the society, and the costs awarded to the defendant in such a suit may be recovered, at his election, from the officer in whose name the suit was brought. Dealing with very similar provisions (Sections 7, 8 and 9) of the English Trade Union Act, 1871 (34 and 35 Vict. c. 31) Lord Lindley said in the celebrated case of Taff Vale Railway v. Amalgamated Society of Railway Servants [1901 AC 426] […]

-xxx-

13. It is clear from the aforesaid decision that provisions similar to the provisions of Sections 5, 6, 7 and 8 of the Societies Registration Act, 1860 were held not to show any intention to incorporate; on the contrary, the very resort to the machinery of trustees or the governing body for the time being acquiring and holding the property showed that there was no intention to incorporate the society or union so as to give it a corporate capacity for the purpose of holding and acquiring property. It appears to us that the legal position is exactly the same with regard to the provisions in Sections 5, 6, 7 and 8 of the Societies Registration Act, 1860. They do not show any intention to incorporate, though they confer certain privileges on a registered society, which would be wholly unnecessary if the registered society were a corporation. Sections 13 and 14 do not carry the matter any further in favour of the petitioners. Section 13 provides for dissolution of societies and adjustment of their affairs. It says in effect that on dissolution of a society necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the Rules of the society; if there be no rules, then as the governing body shall find it expedient provided that in the event of any dispute arising among the said governing body or the members of the said society, the adjustment of the affairs shall be referred to the court. Here again the governing body is given a legal power somewhat distinct from that

of the society itself; because under Section 16 the governing body shall be the governors, council, directors, committee, trustees or other body to whom by the Rules and regulations of the society the management of its affairs is entrusted.

14. *We have, therefore, come to the conclusion that the provisions aforesaid do not establish the main essential characteristic of a corporation aggregate, namely, that of an intention to incorporate the society. […] Those provisions undoubtedly give certain privileges to a society registered under that Act and the privileges are of considerable importance and some of those privileges are analogous to the privileges enjoyed by a corporation, but there is really no incorporation in the sense in which that word is legally understood.*"

(Emphasis supplied)

73. In ***Board of Trustees*** *(supra)*, this Court while deciding on the question whether the Board members enjoyed any rights over the property of the society, clarified that, during the subsistence of the society, the right of the members was to ensure that the property was utilised for the charitable objects as set out in its memorandum and as such, that did not include any beneficial enjoyment on the part of the board members. The members also do not acquire any beneficial interest *vis-à-vis* the property on the dissolution of the society since Section 14 of the Societies Registration Act, 1860 expressly negatives the right of the members of the society to any distribution of the assets of the dissolved body. Upon dissolution, the property has to be given over to some other society to be utilised for like purposes and the only right of the members was to determine which society the funds or property might be transferred to. The aforesaid right of the members to determine which new society the funds and property may be transferred to, was held to be not a right to "acquire, hold and dispose of property" within the meaning of the then Article 19(1)(f). The context in

which the words "dispose of" occurred in Article 19(1)(f) was said to denote that the kind of property which a citizen has a right to hold and upon dissolution of the society, the members cannot be said to acquire any right to "hold" the property in their individual capacity. The relevant observations made are reproduced hereinbelow:

> "*23. […] We have already held that the impugned legislation was well within the legislative competence of the Delhi State Legislature. Now the question is — is the impugned legislation bad on the ground that it violates the right of the petitioners under Article 19(1)(f)? The property for the protection of which Article 19(1)(f) is invoked belonged either to the Board or to the members composing the Board at the date of the dissolution. In either event, on the terms of Section 5 of the Societies Registration Act, 1860, the property was to be deemed to be vested in the governing body of the Board. There could be no doubt that if the Board was dissolved by competent legislative action, and in view of our conclusions on the first point raised it must be held that this had taken place, the Board would cease to exist and having ceased to exist cannot obviously lay any claim to the property. This however may not be sufficient to negative the contention urged before us by the petitioners. If the legal ownership of the property by the Board or the vesting of it in the governing body was merely a method or mechanism permitted by the law whereby the members exercised their rights quoad the property, the dissolution of the Board and with it of the governing body thereof would merely result in the emergence of the right of the members to that property. It is, therefore, necessary to ascertain the precise rights the members of the Board possessed to see whether the changes effected by the impugned Act amount to an infringement of their rights within the meaning of Article 19(1)(f). During the subsistence of the society, the right of the members was to ensure that the property was utilised for the charitable objects set out in the memorandum and these did not include any beneficial enjoyment. Nor did the members of the society acquire any beneficial interest on the dissolution of the society; for Section 14 of the Act, quoted earlier, expressly negatived the right of the members to any distribution of the assets of the dissolved body. In such an event the property had to be given over to some other society i.e. for being managed by some other charitable organisation and to be utilised for like purposes, and the only right of the members was to determine the*

society to whom the funds or property might be transferred and this had to be done by not less than three-fifths of the members present at the meeting for the purpose and, in default of such determination, by the civil court. The effect of the impugned legislation is to vary or affect this privilege of the members and to vest the property in a new body created by it enjoined to administer it so as to serve the same purposes as the dissolved society. The only question is whether the right to determine the body which shall administer the funds or property of the dissolved society which they had under the pre-existing law is a right to "acquire, hold and dispose of property" within the meaning of Article 19(1)(f), and if so whether the legislation is not saved by Article 19(5). We are clearly of the opinion that that right is not a right of property within the meaning of Article 19(1)(f). In the context in which the words "to dispose of" occur in Article 19(1)(f), they denote that kind of property which a citizen has a right to hold — the right to dispose of being part of or being incidental to the right to hold. Where however the citizen has no right to hold the property, for on the terms of Section 14 of the Societies Registration Act the members have no right to "hold" the property of the dissolved society, there is, in our opinion, no infringement of any right to property within the meaning of Article 19(1)(f). In this view, the question as to whether the impugned enactment satisfies the requirements of Article 19(5) does not fall to be determined."

(Emphasis supplied)

74. In ***Illachi Devi and Others v. Jain Society, Protection of Orphans India and Others*** reported in **(2003) 8 SCC 413**, this Court held that a society cannot be the grantee of a probate or a letter of administration in accordance with the Indian Succession Act, 1925 by reiterating that a society registered under the Societies Registration Act, 1860 is not a body corporate or a juristic person and therefore, ineligible to be a grantee for the aforesaid purposes. The fact that a society is not capable of ownership of any property by itself was a characteristic which assumed significance in arriving at the conclusion that it cannot be construed to be a body corporate. It is due to this incapability that the property is vested either in trustees or the governing

body of the society. Nevertheless, it was held that a probate or letter of administration can be granted to a person who is authorised by the society, either under the statute or through a resolution, so that a Will or gift in favour of a society does not become totally unenforceable in law. Such an authorised person would carry out the wishes of the testator for the benefit of the society. The relevant observations made are reproduced hereinbelow:

> "*20. […] The mere fact of registration of a society under the Societies Registration Act will not make the said society distinct from association of persons. Sections 223 and 236 of the Act in very categorical terms provide that an association of persons, be it a society, a partnership or other forms of associations, a Letter of Administration can be granted only to a company fulfilling the conditions laid down under the Rules. […] A society registered under the Societies Registration Act is not a "company" within the meaning of "company", as provided in the Act and the Rules. In terms of Sections 223 and 236, a "company" must be a "company" registered under the Companies Act. We are, therefore, of the considered opinion that neither the provisions of the Act nor the Rules framed thereunder contemplate that the societies registered under the Societies Registration Act would qualify to be considered as a company for the purpose of Sections 223 and 236.*
>
> *21. A society registered under the Societies Registration Act is not a body corporate as is the case in respect of a company registered under the Companies Act. In that view of the matter, a society registered under the Societies Registration Act is not a juristic person. The law for the purpose of grant of a probate or Letter of Administration recognises only a juristic person and not a mere conglomeration of persons or a body which does not have any statutory recognition as a juristic person.*
>
> *22. It is well known that there exist certain salient differences between a society registered under the Societies Registration Act, on the one hand, and a company corporate, on the other, principal amongst which is that a company is a juristic person by virtue of being a body corporate, whereas the society, even when it is registered, is not possessed of these characteristics. Moreover, a society whether registered or unregistered, may not be prosecuted*

in a criminal court, nor is it capable of ownership of any property or of suing or being sued in its own name.

23. Although admittedly, a registered society is endowed with an existence separate from that of its members for certain purposes, that is not to say that it is a legal person for the purposes of Sections 223 and 236 of the Act. Whereas a company can be regarded as having a complete legal personality, the same is not possible for a society, whose existence is closely connected, and even contingent, upon the persons who originally formed it. Inasmuch as a company enjoys an identity distinct from its original shareholders, whereas the society is undistinguishable, in some aspects, from its own members, that would qualify as a material distinction, which prevents societies from obtaining Letters of Administration.

26. Vesting of property, therefore, does not take place in the society. Similarly, the society cannot sue or be sued. It must sue or be sued through a person nominated in that behalf.

-xxx-

48. The apprehension of the High Court that in a case of this nature, in the event, a Letter of Administration is not granted in favour of the beneficiary society, the purport of the "Will" will be frustrated, is not wholly correct and for grant of Letter of Administration what is necessary is that the person duly authorised by the society in accordance with the law may file such an application.

52. We, however, intend to lay emphasis on the fact that a Will or gift in favour of a society is not totally unenforceable in law. A probate or Letter of Administration with a copy of the Will annexed although may not be granted in favour of a society but may be granted in favour of a person authorised by a society either in terms of the statute or a resolution adopted in this behalf by the society, as the case may be, so that such person may be answerable to the court. On grant of a Letter of Administration the person so nominated by the society shall carry out the wishes of the testator for the benefit of the society.

55. For reasons stated above, the appeal is allowed in part. The judgment under challenge stands modified. The matter is sent back to the High Court with liberty to the respondent to amend the petition for grant of the Letter of Administration. It would be open

to the respondent Society to nominate any of its office-bearers to whom the Letter of Administration is granted. Such nominated person may move an application for substitution of his name for grant of the Letter of Administration. If such amendment application is made, the High Court shall permit this amendment and grant the Letter of Administration in favour of the person nominated by the Society for carrying out the wishes of the testator which is for the benefit of the Society."

(Emphasis supplied)

75. In ***Tata Memorial Hospital Workers Union v. Tata Memorial Centre and Another*** reported in **(2010) 8 SCC 480**, this court considered in detail the effect of Section 5 of the Societies Registration Act, 1860. Therein, the Rules and Regulations of the respondent society had provided for the vesting of certain properties in the governing body of the society distinct from what was or may be vested separately in the trustees. While explaining the *raison d'être* behind Section 5, it was opined that:

i. ***First,*** the deeming provision, by default, creates a fictional vesting in favour of the governing body of the society and not automatically in the society itself or under a trust. The vesting is not with the society for the obvious reason that a society is not a body corporate capable of holding the property by itself. On the other hand, for a trust to hold the properties of the society, the creation of a separate trust and the dedication of the property belonging to society, to itself, must be made out. By keeping the smooth functioning of the society and its autonomy at the forefront, this Court opined that the law has created this automatic vesting of the property belonging to the society in its governing body since – (a) the society cannot hold property in its name, and (b) the vesting of properties solely in trusts would likely hinder the administration of the property,

more particularly, when the trustees themselves or their legal representatives claim adversely to the trust,.

ii. ***Secondly,*** that the phrase, "property belonging to a person" has two general meanings – *One,* ownership, and *two,* the absolute right of user. The words "property belonging to the society" would therefore, in the context of Section 5, indicate that the society has an absolute right of user over its immovable properties which is vested in its governing body.

76. The relevant observations are reproduced hereinbelow:

> "*68. Rule 26 of the Rules and Regulations of the first respondent Society provides that all properties and funds of the Centre (except the immovable properties as specified) vest in the Council:*
> *"26. Properties and funds vested in the Council.—Except the existing immovable properties of the Centre and such immovable properties as may be vested in the holding trustees, all the other properties of the Centre shall vest in the Council and more particularly the following:*
> *(a) recurring and non-recurring grants made by the Government;*
> *(b) other grants, donations and gifts (periodical or otherwise), other than those intended to form the corpus of the property and funds of the Centre or held for the benefit of the Centre by the holding trustees;*
> *(c) the income derived from the immovable properties and the income of the funds vested in the holding trustees and income of the funds vested in the Council and also fees, subscription and other annual receipts; and*
> *(d) all plant and machinery, equipment and instruments (whether medical, surgical, laboratory, workshop or of any other kind), books and journals, furniture, furnishings and fixtures belonging to the Centre."*
>
> *69. <u>However, even when it comes to the immovable properties, Section 5 of the Societies Registration Act provides for deemed vesting of the properties belonging to a society into the governing body of such society.</u> Section 5 of the Societies Registration Act reads as follows:*

"5. Property of society how vested.—The property, movable or immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title."

70. In this behalf, we must keep in mind, the raison d'être of the above referred to Section 5 that once a trust is established and a society is registered for the administration of the trust, the statute contemplates that the society should be fully autonomous and that the lack of actual transfer of property of the trust should not prevent the governing body in its administration. Law recognises that it would be proper to regard that as done which ought to have been done. The deeming provision creates a fictional vesting in favour of the Governing Council and not in favour of the society or the trust. This is also for the reason that society is not a body corporate which has also been held by this Court in Ayurvedic and Unani Tibia College v. State of Delhi [AIR 1962 SC 458] and reiterated in Illachi Devi v. Jain Society, Protection of Orphans India [(2003) 8 SCC 413 : AIR 2003 SC 3397] . Since the society cannot hold the property in its name, vesting of the property in the trustees is likely to hinder the administration of the trust property, particularly where the trustees themselves or their legal representatives claim adversely to the trust. It is for this reason that the law vests the property belonging to the society in its governing body.

71. The phrase "property belonging to a person" has two general meanings (1) ownership, (2) the absolute right of user (per Martin, B. in Attorney General v. Oxford & C. Railway Co. [(1862) 31 LJ 218] , LJ at p. 227). "Belonging" connotes either ownership or absolute right of user (Wills, J. in Governors of St. Thomas's, St. Bartholomew's and Bridewell Hospitals v. Hudgell [(1901) 1 KB 364]). The Centre has an absolute right of user over its immovable properties which it has been exclusively exercising all throughout. Section 5 of the Societies Registration Act clearly declares that the property belonging to the society, meaning under its user, if not vested in the trustees shall be deemed to be vested in the Governing Council of the society.

72. In the present case, it is nobody's case that the property remains vested in the trustees of Dorabji Tata Trust. It has been canvassed on behalf of the first respondent that the property is vested in the Central Government. However, the Central

Government has never claimed any title to the property adverse to the first respondent Tata Memorial Centre. It is true that the property dedicated to Tata Memorial Centre has not been transferred to the Society by the Central Government. But the fact is that it is the Governing Council of the first respondent which has been administering and controlling the day-to-day affairs of Tata Memorial Centre and its property funds, employment of its staff and their conditions of service. Hence, in view of the above referred to factual as well as legal scenario the first issue will have to be decided that the property dedicated to the first respondent will be deemed to be vested in the Governing Council of the first respondent Society."

(Emphasis supplied)

77. What follows from a conspectus of the aforesaid decisions discussing Section 5 of the Societies Registration Act, 1860 and the vesting of property in the governing body of the society is that, a society registered under the aforesaid Act is not a juristic person or a body corporate capable of holding property by itself. It is for this reason that a fictional vesting of the 'property belonging to the society' has been made in favour of the governing body of the society.

78. However, it is to be noted that the property can also be held in trust by certain trustees and this is evident from the use of the phrase "*if not vested in trustees*". Several decisions have interpreted this to mean that there must be certain circumstances which give rise to the existence of a trust prior to the registration of the entity/institution as a society. However, it is our view that the aforesaid phrase cannot be restricted to such a narrow interpretation i.e., that the formation of the trust, either expressly or impliedly, must pre-exist the registration of the society. We say this simply because, if it were so, instead of using the phrase "*if not vested in*

trustees", the language employed in the provision would have read "*if not already vested in trustees*". Therefore, the property belonging to the society can be vested in trustees even after its registration as a society. There is nothing under Section 5 which bars the same.

79. However, if it is argued that a trust has instead separately been created for holding the property of the society after its registration as a society, the same must be clear and sufficiently proven. The considerations that would have to be weighed in order to ascertain if a public trust has been created prior to the registration of the society are already very lucidly elaborated in the decisions of this Court in ***Babu Bhagwan Din*** *(supra),* ***Gurunatharudhaswami*** *(supra)*, ***Bihar State Board*** *(supra)* and ***Kuldip Chand*** *(supra).* Therein there remained no formal recognition of any sort of the entity/institution and the court was tasked to see if - (a) properties were vested in a public trust and, (b) if the trustee(s) was fettered with any obligation that required the properties to be applied for a certain purpose and, (c) if there was any condition or conduct which revealed a restriction of the exercise of individual rights over the said property or its proceeds. The aforesaid considerations, along with some others may also be pertinent to determine if the society, after its registration, has created a trust or entrusted other trustees with the property belonging to itself. It is not possible to exhaustively lay down all those circumstances in which such a separate trust can be said to be created. Having said so, one of the possible methods in which the society can create or intend to create a separate trust for holding its properties is when its Rules and Regulations or the Articles of its Memorandum of

Association provide for a separate trust or trustee(s) for the purpose of holding its properties. Alternatively, as in ***Young Mens Christian Association of Ernakulam*** *(supra)*, the trustee (if they happen to also be a society) can mention in their Articles of Memorandum of Association that they hold the property belonging to another society as trustees. Further, the existence of an unequivocal trust deed executed by the society or its member representative, in favour of another trustee, for the purpose of holding its properties, could also seal the deal as far as the separate creation of a trust is concerned. All these could be a pertinent factors in determining the existence of a trust, separate from the governing body of the society, in which the property belonging to the society is vested. In this scenario, such a trust could be subjected to the jurisdiction under Section 92 of the CPC provided the other conditions for its invocation are met.

80. In the absence of the creation of a trust as aforesaid, property would be deemed to be vested in the governing body only. The governing body of the society upon which property is otherwise vested is duty bound to ensure that the property is put towards and utilised for the purposes/aims of the society as laid out in its Memorandum of Association or any Rules and Regulations governing the said matter. In case the society is dissolved, a decision must be made to transfer or vest all the property in another society working towards a like cause and the members would not have any right to distribute the assets belonging to the society between themselves. Therefore, both during the subsistence and dissolution of the society, the members or the

governing body cannot be said to possess any beneficial or individual interest over the property vested in them.

81. Hence, it follows that whenever a property is transferred to a society which is working towards a public purpose of a religious or charitable nature, the property would be said to belong to the society and be automatically vested in its governing body. Once a society is registered, all gifts, donations, grants-in-aid, etc. would vest in its governing body as per the mandate of Section 5 of the Societies Registration Act, 1860, in the absence of the creation of a separate trust/entrustment to other trustee(s), for the said purpose.

82. Moving ahead, the mere fact that a distinct trust can also be created i.e., either prior to or post the registration of a society under the Societies Registration Act, 1860 would not alter the capacity in which the governing body holds the properties belonging to the society. The governing body would also hold such properties in a well-confined fiduciary capacity. In other words, the phrasing of Section 5, more specifically that "*if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society*", does not indicate that if a trust has not be created for the purpose of holding the society's properties, any fiduciary obligation that the governing body might owe to the society *vis-à-vis* the management and administration of the properties would dissipate into thin air. The aforesaid language employed in Section 5 must not be seen as giving rise to two polar opposite mechanisms through which the property of the society can be held

i.e., either in a trust with air-tight fiduciary obligations or not in a fiduciary capacity at all. In other words, it must not be read to mean that if the property is not vested in trustees, then it would remain vested in the governing body who would have zero fiduciary obligations. The governing body is also bound by duties of that of a fiduciary and this remains further fortified by the fact that the governing body does not enjoy any beneficial interest over the properties that it holds and must ensure that it is used for the object for which the society has been created.

83. In our opinion, the reason behind the use of the word "*trustees*" in the phrase "*if not vested in trustees*", is a reflection of the intention of the legislature that the vesting of the property belonging to the society cannot be made in a casual manner to any and all persons regardless of any obligation. For argument, let's say that the phrase instead read as "*if not vested in any person*". In such a scenario, the persons in whom the property of the society vested would be able to possibly assert their own individual title or a competing claim to the property. This would give rise to a conflicting situation and deviate from the original purpose for which the property belonging to the society came to be vested in a third person. This is precisely the reason due to which the word "*trustees*" has been used under Section 5 of the Societies Registration Act, 1860. While interpreting the words employed in Section 5, we must not detract from the underlying purpose and objective for which it came to be enacted. Legislative creativity was employed to ensure that the incapability of the society to hold the property by itself does not have any practical effect on its ability to use and administer those properties. The idea was to ensure that the

property of the society may not be squandered or the object and purpose for which the society was formed may not be defeated by persons having control of the properties. The property was vested in such persons such that, in all circumstances, they would remain bound and accountable to the society. The governing body of the society would, no doubt, remain tethered to the aims and objectives for which the society was formed and would be able to deal with the properties only as per the Rules and Regulations of the Memorandum of Association. The other persons who are capable and allowed to hold the property of the society were also intended to be bound in a similar fashion and hence, the provisions incorporated the word "*trustees*" to instil in such person(s), a fiduciary obligation which they could not deviate from or ignore. However, this by itself, by no stretch of imagination, can be interpreted to mean that since the provision allows for the property to be held by trustees separately, the governing body of the society would not be constrained with any fetter as regards their dealing with the property belonging to the society. It may happen, more often than not, that a society does not create a trust for the purpose of holding its properties and that is precisely why, there is an automatic vesting in the governing body. What must instead reinforced is that, despite this automatic vesting in the governing body, the fiduciary capacity in which the governing body would hold the properties, not be altered. In simpler words, Section 5 seemingly provides two options, or mechanisms through which a society can hold the property belonging to itself – *One,* in trustee(s) or, *two,* in the governing body of the society. Both these mechanisms/options belong to the same genus (fiduciaries), albeit they don't fall in the same species (the former is a trustee *stricto sensu* and the latter is not).

84. The governing body of the society would not only hold the properties and administer it as per their bye laws to fulfil its fundamental aims but also safeguard it for the future members of the society or the future governing body who would also have to tread the same path and continue the aims and objects of the society as envisaged by the founding members or as reflected in its governing documents. Therefore, perpetuity is assigned not only to the identity of the society but also to the properties which belong to it, provided the society is not dissolved. This adds to the reason that the governing body also acts within the contours of a strict fiduciary relationship.

85. Therefore, while it cannot be considered as an 'express trust', what must also be noted, at this crucial juncture, is that, for an entity to be brought within the rigours of Section 92, the plaintiff has the option of also contending that a 'constructive trust' exists in the circumstances and a breach of such a constructive trust has occurred or that the directions of the Court are necessary for the administration of such a constructive trust.

d. *The doctrine of constructive trust and its applicability to a society functioning for public purposes of a religious or charitable nature*

86. In light of the discussion in the preceding paragraphs, we are tasked with determining whether a constructive trust could be created in a circumstance

wherein a society vests its property in its governing body through the deeming fiction employed under Section 5 of the Societies Registration Act, 1860.

87. On the one hand, an express trust is a legal relationship which is created by an individual(s) out of his own volition, while manifesting an intention to create a trust. This manifestation of intention can be express, either by words or through conduct. However, it is not always necessary that such intention be overt, unambiguous and unequivocal. Sometimes, the existence of an express trust might have to be inferred from the attending circumstances. In other words, a trust would be an express trust whether expressed in certain unambiguous language or whether inferred from uncertain ambiguous words and conduct of the settlor, *for example,* where precatory words are used by the settlor indicating a prayer or expectation that something be done in a specific manner such that it be imperative and binding in the circumstances. In English private trust jurisprudence, as expounded in the landmark decision in ***Knight v. Knight*** reported in **(1840) 3 Beav 148,** 'three certainties' were required – (a) certainty of intention or an imperative that a trust be created; (b) certainty of the subject-matter or the property subject to the trust and; (c) the certainty of objects or the beneficiaries and the interest to be enjoyed by them. In that context, it was observed as thus:

> "*[…] To create by precatory words such a trust as the Court will carry into execution, there are three requisites; first, the precatory words must be sufficiently clear; secondly, there must be a certainty as to subject of the gift; and, thirdly, the objects to take must be certain. […]*

[...] As to the first requisite, no particular form of words is necessary; it is sufficient for a testator " to express a desire as to the disposition of the property, and the desire so expressed amounts to a command [...]

-xxx-

Secondly, the subject of the gift is sufficiently certain, being the estates and personal property devised and bequeathed by the will.

Thirdly, the persons to take are sufficiently defined being persons in the male line in succession; a description much more perfect than the expressions "family," "relations," which have been held sufficiently certain to be carried into execution; [...]

-xxx-

On the whole, I am under the necessity of saying, that for the creation of a trust, which ought to be characterised by certainty, there is not sufficient clearness to make it certain that the words of trust were intended to be imperative, or to make it certain what was precisely the subject intended to be affected, or to make it certain what were the interests to be enjoyed by the objects."

(Emphasis supplied)

88. The aforesaid principle has been codified in Indian jurisprudence under the Indian Trust Act, 1882 governing private trust which defines a private trust as a an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. While we are not directly importing the aforesaid principles laid out under the Indian Trusts Act, 1882, which governs private trusts, for application to a 'public trust', these principles aid in construing how an express trust, whether public or private, may be created. **P Ramantha Aiyar** in his ***Advanced Law Lexicon*** also adds that it is not necessary that the word 'trust' be used. The trust would be express even if it has to be made out from the terms of

an instrument. Therefore, a declared and ascertainable intention to create a trust is the cornerstone of an express trust which further determines where the trustee's fiduciary obligation can be sourced from.

89. Importing these principles to a society and its governing body which holds property on its behalf, it cannot be ascertained with reasonable certainty whether a fairly clear intention to create a trust on part of the settlor could be said to exist when the deeming fiction under Section 5 of the Societies Registration Act, 1860 is set into motion. It goes without saying that if the society creates a trust separately, as reflected in the words "*if not vested in trustees*", an express trust would be created. However, in the absence of the same, the intention of the settlor to create a trust is difficult to ascertain, more so because the legislative framework under which this vesting is done is distinct. This is notwithstanding the fact that the governing body would still be acting in a fiduciary capacity.

90. On the other hand, a constructive trust, arises by operation of law, without regard to or irrespective of the intention of the parties to create a trust. It is imposed predominantly because the person(s) holding the title to the property would profit by a wrong or would be unjustly enriched if they were permitted to keep the property. In other words, a constructive trust, does not, like an express trust, arise because of a manifestation of an intention to create it, but it is imposed as a remedy to prevent unjust enrichment. A fiduciary element may be present in the declaration of a constructive trust when, say, *for example*, whenever a person clothed with a

fiduciary character, gains some personal advantage by availing himself of his situation as a trustee. In such cases, such person would also become a trustee of the advantage so gained. In other words, if a trustee, by reason of his position, acquires any advantage of a valuable kind, he would be a constructive trustee of that advantage. Furthermore, although some form of wrongdoing is generally required for the imposition of a constructive trust, it is not always a necessary element. It may also be imposed in case of a mistake where no wrongdoing is involved, say, for instance, when a fiduciary makes some profit even though he has not acted fraudulently.

91. However, it cannot be strictly said that only cases which contain a fiduciary element would serve as a bedrock for the declaration of a constructive trust. The circumstances which give rise to it may or may not involve a fiduciary relation - at least, this is the proposition laid down under American jurisprudence. Quoting the observations of Cardozo, J. in ***Beatty v. Guggenhein Exploration Co.*** reported in **(1919) 225 N. Y. 380** - "*a constructive trust is a formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee*". In his subsequent decision rendered in ***Meinhard v. Salmon*** reported in **(1928) 249 N.Y. 458,** he also observed that – "*A constructive trust is then the remedial device through which the preference of the self is made subordinate to loyalty to others*". It is, therefore, designed to prevent fraud or other inequity. In applying this doctrine, courts be said to also resort

to the maxim – "*equity regards as done that which ought to be done*". According to American jurisprudence, an express trust is a substantive institution whereas a constructive trust is purely a remedial institution. That the term "constructive trust" was an expansive remedial concept and quite different from a fiduciary relation present in express trusts, was set in stone by the **Restatement of the Law, Restitution** promulgated by the American Law Institute in the year 1936. Comment (a) to Section 160 defining a constructive trust reads as follows:

> "*The term "constructive trust" is not altogether a felicitous one. It might be thought to suggest the idea that it is a fiduciary relation similar to an express trust, whereas it is in fact something quite different from an express trust. An express trust and a constructive trust are not divisions of the same fundamental concept. They are not species of the same genus. They are distinct concepts. A constructive trust does not, like an express trust, arise because of a manifestation of an intention to create it, but it is imposed as a remedy to prevent unjust enrichment. A constructive trust, unlike an express trust, is not a fiduciary relation, although the circumstances which give rise to a constructive trust may or may not involve a fiduciary relation.*"
>
> (Emphasis supplied)

92. It is largely believed that English Courts are generally reluctant to accept the doctrine of unjust enrichment as a broad ground for imposing a constructive trust, whereas the United States is more open to recognising it as a sufficient basis. In other words, American courts more often use constructive trust as a remedial device where specific restitution is appropriate on detailed consideration of the facts, whereas English Courts adopt a more institutional approach where some form of a fiduciary or quasi-fiduciary relationship is a pre-requisite instead of just prioritizing the overall equities. Therefore, in implying the existence of a constructive trust, the

English Courts recognise or give legal efficacy to a relationship or 'institution' that already exists. Some critics argue that the traditional American approach was, however, akin to that of England but that the doctrine was slowly expanded beyond the parallels of a fiduciary relationship over the period of time.

93. An example of the modern American approach is evident from the decision in ***Newton v. Porter*** reported in **69 N.Y. 133 (1877)** wherein a constructive trust was imposed on the products of larceny. According to experts, this decision marked the cusp in the change of approach by the American Courts (from the English model to a remedial one) because in ***Campbell v. Drake*** reported in **39 N.C. 94 (1845)**, on similar facts, the Supreme Court of North Carolina had held that where a clerk in a store pilfered money and goods from his employer and uses those proceeds in the purchase of a tract of land, the employer who was robbed could neither hold the clerk nor his representatives after his death, as trustees of the land for the benefit of the employer, so as to enable him to call for a conveyance of the legal title to himself. To further elaborate, ***Campbell*** *(supra)* held as follows:

> "*Nevertheless, we believe the bill cannot be sustained. The object of it is to have the land itself, claiming it as if it had been purchased for the plaintiff by an agent expressly constituted; and it seems to us, thus stated, to be a bill of the first impression. We will not say, if the plaintiff had obtained judgment against the administrator for the money as a debt, that he might not come here to have the land declared liable, as a security, for the money laid out for it. But that is not the object of this suit. It is to get the land, which the plaintiff claims as his; and, upon the same principle, would claim it, if it were worth twenty times his money, which was laid out for it. Now, we know not any precedent of such a bill. <u>It is not at all like the cases of dealings with trust funds by trustees, executors, guardians, factors, and the like; in which the owner of the fund</u>*

may elect to take either the money or that in which it was invested. For, in all those cases, the legal title, if we may use the expression, of the fund, is in the party thus misapplying it. He has been entrusted with the whole possession of it, and that for the purpose of laying it out for the benefit of the equitable owner; and therefore all the benefit and profit the trustee ought, in the nature of his office, and from his relation to the cestui que trust, to account for to that person. But the case of a servant or a shop-keeper is very different. He is not charged with the duty of investing his employer's stock, but merely to buy and sell at the counter. The possession of the goods or money is not in him, but in his master; so entirely so, that he may be convicted of stealing them, in which both a cepit and asportavit are constituents. This person was in truth guilty of a felony in possessing himself of the plaintiff's effects, for the purpose of laying them out for his own lucre; and that fully rebuts the idea of converting him into a trustee. If that could be done, there would be, at once, an end to punishing thefts by shop men. If, indeed, the plaintiff could actually trace the identical money taken from him, into the hands of a person who got it without paying value, no doubt he could recover it; for his title was not destroyed by the theft. But we do not see how a felon is to be turned into a trustee of property, merely by showing that he bought it with stolen money. […]"

(Emphasis supplied)

94. However, in ***Newton*** *(supra)*, the Court of Appeals of New York took the view that the absence of a conventional relation of a trustee and *cestui que* trust between the plaintiff and the persons who committed larceny, would not stand in the way of enforcing an equitable remedy in the form of a constructive trust. It was opined that this would place the owner, who had been a victim of larceny and was deprived of his property, in a less favourable position in a court of equity than persons who lost their property through an abuse of trust or by the wrongful acts of a trustee to whom the possession of that trust property was confided. This must not be countenanced, according to the Court. The relevant observations are thus:

> "*It is insisted by the counsel for the defendants that the doctrine which subjects property acquired by the fraudulent misuse of trust moneys by a trustee to the influence of the trust, and converts it into trust property and the wrong-doer into a trustee at the election of the beneficiary, has no application to a case where money or property acquired by felony has been converted into other property. There is, it is said, in such cases, no trust relation between the owner of the stolen property and the thief, and the law will not imply one for the purpose of subjecting the avails of the stolen property to the claim of the owner. It would seem to be an anomaly in the law, if the owner who has been deprived of his property by a larceny should be less favorably situated in a court of equity, in respect to his remedy to recover it, or the property into which it had been converted, than one who, by an abuse of trust, has been injured by the wrongful act of a trustee to whom the possession of trust property has been confided. The law in such a case will raise a trust invitum out of the transaction, for the very purpose of subjecting the substituted property to the purposes of indemnity and recompense. "One of the most common cases," remarks Judge Story, "in which a court of equity acts upon the ground of implied trusts in invitum, is when a party receives money which he cannot conscientiously withhold from another party." (Sto. Eq. Juris., § 1255.) And he states it to be a general principle that "whenever the property of a party has been wrongfully misapplied, or a trust fund has been wrongfully converted into another species of property, if its identity can be traced, it will be held in its new form liable to the rights of the original owner, or the cestui que trust." (§ 1258. See also, Hill on Trustees, p. 222.)*
>
> *We are of opinion that the absence of the conventional relation of trustee and cestui que trust between the plaintiff and the Warners, is no obstacle to giving the plaintiff the benefit of the notes and mortgage, or the proceeds in part of the stolen bonds. (See Bank of America v. Pollock, 4 Ed. Ch., 215.)*"
>
> (Emphasis supplied)

95. In a similar fashion, in ***Pope v. Garrett*** reported in **147 Tex. 18 (1948),** the Supreme Court of Texas had opined that a constructive trust could arise in a situation wherein the testator was prevented, by physical force or by creating a disturbance, shortly before her death, by two of her heirs, from executing a will solely in favour of the plaintiff who was the intended beneficiary. Therein, the legal title to the heirs has

passed on account of intestate succession and it was held that the heirs who were guilty of the wrongful acts would become constructive trustees for the intended beneficiary. Additionally, since some of the other innocent heirs would not have inherited interest in the property but for the wrongful acts committed by some of the heirs, it was opined that the imposition of a constructive trust on the property that passed to all the heirs was a necessary remedy in the interests of justice. In other words, the policy against unjust enrichment was also considered sufficient to justify the imposition of a constructive trust upon the other innocent heirs as well. In deciding so, it was observed as follows:

> "*[…] In Binford v. Snyder, 144 Texas 134, 138, 189 S.W. (2d) 471, the court quoted with approval the general rule as to the use of the constructive trust thus stated in Ruling Case Law:*
>
> *"It is a well settled general rule that if one person obtains the legal title to property, not only by fraud, or by violation of confidence of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carrier out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner." See also 54 Am. Jur., pp. 167-169, Sec. 218.*
>
> *It has been said that "The specific instances in which equity impresses a constructive trust are numberless, -- as numberless as the modes by which property may be obtained through bad faith and unconsientious acts." Pomeroy's Equity Jurisprudence, (5th Ed.) Vol. 4, p. 97, Sec. 1045. A few cases will be cited where trusts have been raised on account of facts like, or somewhat like, those in the instant case.*
>
> *-xxx-*
>
> *The argument is often made that the imposition of the constructive trust in a case like this contravenes or circumvents the statute of*

descent and distribution, the statute of wills, the statute of frauds, or particularly a statute which prohibits the creation of a trust unless it is declared by an instrument in writing. It is generally held, however, that the constructive trust is not within such statutes or is an exception to them. It is the creature of equity. It does not arise out of the parol agreement of the parties. It is imposed irrespective of and even contrary to the intention of the parties. Resort is had to it in order that a statute enacted for the purpose of preventing fraud may not be used as an instrument for perpetrating or protecting a fraud. […]

In this case Claytonia Garrett does not acquire title through the will. The trust does not owe its validity to the will. The statute of descent and distribution is untouched. The legal title passed to the heirs of Carrie Simons when she died intestate, but equity deals with the holder of the legal title for the wrong done in preventing the execution of the will and impresses a trust on the property in favor of the one who is in good conscience entitled to it.

-xxx-

The policy against unjust enrichment argues in favor of the judgment rendered herein by the district court rather than that of the Court of Civil Appeals. But for the wrongful acts the innocent defendants would not have inherited interests in the property. Dean Roscoe Pound speaks of the constructive trust as a remedial institution and says that it is sometimes used "to develop a new field of equitable interposition, as in what we have come to think the typical case of constructive trust, namely, specific restitution of a received benefit in order to prevent unjust enrichment." 33 Harvard Law Review, pp. 420-421. See also Pomeroy's Equity Jurisdiction, (5th Ed.) Vol. 4, p. 95, Sec. 1044; 54 Am. Jur. p. 169, Sec. 219; Restatement of the Law of Restitution, Sec 160, Subdivisions c and d, pp. 642-643. Further and in the same trend, it has been said that equity is never wanting in power to do complete justice. Hillv. Stampfli (Com. App.) 290 S.W. 522,524."

(Emphasis supplied)

96. In ***Pope*** *(supra),* it was clarified that there may be multiple circumstances in the background of which a constructive trust may be impressed upon the property in favour of the one who is, in good conscience, entitled to it and who would be

considered as its beneficial owner in equity. It may be when one person obtains legal title to property by (a) fraud, or (b) violation of confidence of fiduciary relations, or (c) in any other unconscientious manner, such that he cannot equitably retain the property which belongs to another. Further, it was added that there may be a numberless amount of situations, as numberless as the modes by which the property may be obtained through bad faith and unconscientious acts, wherein equity can impress a constructive trust.

97. In ***McAnulty v. Std. Ins. Co.*** reported in **(2023) 81 F.4th 1091**, the United States Court of Appeals for the Tenth Circuit was faced with a dispute over the life insurance proceeds between a decedent's ex-wife and his wife during his death. The ex-wife complained of unjust enrichment and imposition of a constructive trust on her behalf. The decedent's only life insurance policy named his wife as the beneficiary while a divorce decree between the decedent and his ex-wife required him to maintain a $10,000 life insurance policy with the plaintiff as the sole beneficiary until his maintenance obligation to her was lawfully terminated. Amongst other things, while remanding the matter for further proceedings, it was underscored that unjust enrichment must first be established before the doctrine of constructive trust is resorted to as a remedy and that gaining an advantage for oneself through fraud or breach of fiduciary duty would not be the exclusive ground for establishing a constructive trust. The relevant observations are thus:

> "*One final comment on constructive trusts. The district court apparently assumed that a claim of unjust enrichment requires a showing that the defendant's property can be traced back to the*

plaintiff. But this is not so. The constructive-trust doctrine, including the practice of tracing, arises only after the plaintiff has established a cause of action for unjust enrichment. "The first step [in an unjust-enrichment constructive-trust claim] is to establish that the defendant is liable in restitution." Restatement (Third) § 55 cmt. a. Only once a cause of action has been shown does the inquiry turn to whether "the transaction that is the source of the liability is one in which the defendant acquired specifically identifiable property." Id. If the answer is yes, that property can be subject to a constructive trust with no need for any tracing analysis. But that entrusted property can then be traced forward to other property upon which a constructive trust can be imposed. […] That a "constructive trust is a remedy," Restatement (Third) § 55 cmt. a. not a prerequisite to a showing of unjust enrichment, is underscored by the Restatement (Third)'s placement of § 55 (the section dedicated to constructive trusts) in Chapter 7, which is titled "Remedies."

-xxx-

however, Coriell did not say that gaining an advantage for oneself through fraud or breach of fiduciary duty is the exclusive ground for establishing a constructive trust. Indeed, the very next sentence of the opinion states: "Constructive trusts are such as are raised by equity in respect of property which has been acquired by fraud, or where, though acquired originally without fraud, it is against equity that it should be retained by him who holds it." 563 F.2d at 982 (internal quotation marks omitted; emphasis added). Hence, Coriell is fully consistent with imposing a constructive trust in this case."

(Emphasis supplied)

98. Therefore, the American approach is that there is no unyielding formula to which a court of equity is bound to, in deciding whether a constructive trust can be imposed since it is the equity of the transaction which will shape the measure of the relief. To put it simply, the focus of judicial enquiry would shift from the establishment of a fiduciary/confidential relationship and its abuse, to a determination of only whether

someone has been unjustly enriched and should therefore, be subject to an 'equitable duty' to return the unjust benefit.

99. On the other hand, English courts have stuck to the institutional model which is underpinned by the existence of a fiduciary/confidential relationship between the person(s) upon whom a constructive trust is imposed and the person(s) in whose favour it is created. Since the imposition of a constructive trust would have an impact on property rights, the English Court are circumspect in imposing it for the bare reason that justice be done *inter se* parties. According to English jurisprudence, a constructive trust is an institution very much like the express trust – a *trust by analogy*. It arises by operation of the law but when one person is under an existent obligation to hold a certain property for another. The constructive trust would come into existence from the date of the circumstances which give rise to it and the function of the court would only be to declare that such a trust has arisen in the past. In ***Bailey v. Angove's Pty Ltd.*** reported in **(2016) UKSC 47**, the United Kingdom Supreme Court stressed on the differences between an institutional and a remedial constructive trust as follows:

> "*27 English law is generally averse to the discretionary adjustment of property rights, and has not recognised the remedial constructive trust favoured in some other jurisdictions, notably the United States and Canada. It has recognised only the institutional constructive trust: Westdeutsche Landesbank Girozentrale v Islington London Borough Council [1996] AC 669, 714–715 (per Lord Browne-Wilkinson), FHR European Ventures LLP v Cedar Capital Partners LLC [2015 AC 250, para 47. In the former case, the difference was explained by Lord Browne-Wilkinson in the following terms:*

> *"Under an institutional constructive trust, the trust arises by operation of law as from the date of the circumstances which give rise to it: the function of the court is merely to declare that such trust has arisen in the past. The consequences that flow from such trust having arisen (including the possibly unfair consequences to third parties who in the interim have received the trust property) are also determined by rules of law, not under a discretion. A remedial constructive trust, as I understand it, is different. It is a judicial remedy giving rise to an enforceable equitable obligation: the extent to which it operates retrospectively to the prejudice of third parties lies in the discretion of the court.*"
>
> (Emphasis supplied)

100. ***Keech v. Sandford*** reported in **(1726) Sel Cah Ch 61** is a landmark English decision on constructive trusts and a reflection of the rule that a person in a fiduciary position must not put himself in a position where his interest conflicts with that of the *cestui que trust*. Therein, a trustee, who held a lease on behalf of an infant beneficiary, made use of his influence in order to obtain a renewal of the lease for himself. Applying the principles of equity, the trustee was declared as holding the renewed lease also for the beneficiary and it was observed as thus:

> *"If a trustee on the refusal of a lessor to renew a lease to the trust were permitted to take a lease for himself, few leases would ever be renewed in favour of trusts. This prohibition was wholly understandable at that time. Many ecclesiastical , charitable and public bodies were by law restricted as to the length of leases which they were able to grant and leases were therefore renewed more or less as a matter of right. By taking a renewal of a lease for himself, a trustee was therefore in practice depriving the trust of a grant which it had a right to expect."*

101. In ***Paragon Finance plc v. Thakerar & Co.*** reported in **(1999) 1 All ER 400**, the Court of Appeal highlighted a fine distinction between the use of the words 'constructive trust' and 'constructive trustee' by equity lawyers in two entirely

different situations. The *first,* is where, a person, though not expressly appointed as a trustee, has assumed the duties of a trustee and is holding property by virtue of a lawful transaction or legal arrangement and subsequently, commits a breach of trust. The legal arrangement through which he assumes the duties of a trustee/fiduciary in the first place, is independent of the breach of trust and such an underlying relationship by which control of the property is obtained is not what is assailed or impeached by any plaintiff. He does not receive the trust property in his own right but by an agreeable transaction and his possession of the property is characterised by the confidence/trust reposed in him. The subsequent appropriation of the property by him for his own use is a breach of that trust and he is made accountable since he was entrusted with obligations of a trustee and it would be unconscionable for him to assert any adverse beneficial interest over the property entrusted to him. The *second,* is where the trust obligation itself arises as a direct consequence of the transaction through which control of the property is obtained. That very transaction is impeached by the plaintiff, as fraudulent. No obligation or confidence is reposed on the defendant and if he received any trust property at all, it would be by means of an unlawful transaction and from the moment of receipt, be adverse to the plaintiff. What English jurisprudence refers to as the 'institutional constructive trust' is the former scenario and not the latter. The relevant observations are reproduced below:

> "*Regrettably, however, the expressions 'constructive trust' and 'constructive trustee' have been used by equity lawyers to describe two entirely different situations. The first covers those cases already mentioned, where the defendant, though not expressly appointed as trustee, has assumed the duties of a trustee by a*

lawful transaction which was independent of and preceded the breach of trust and is not impeached by the plaintiff. The second covers those cases where the trust obligation arises as a direct consequence of the unlawful transaction which is impeached by the plaintiff.

A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another. In the first class of case, however, the constructive trustee really is a trustee. He does not receive the trust property in his own right but by a transaction by which both parties intend to create a trust from the outset and which is not impugned by the plaintiff. His possession of the property is coloured from the first by the trust and confidence by means of which he obtained it, and his subsequent appropriation of the property to his own use is a breach of that trust. Well-known examples of such a constructive trust are McCormick v Grogan (1869_ LR 4 HL 82 (a case of a secret trust) and Rochefoucald v Boustead [1897] 1 Ch 196 (where the defendant agreed to buy property for the plaintiff but the trust was imperfectly recorded). Pallant v Morgan [1952] 2 All ER 951, [1953] Ch 43 (where the defendant sought to keep for himself property which the plaintiff trusted him to buy for both parties) is another. In these cases the plaintiff does not impugn the transaction by which the defendant obtained control of the property. He alleges that the circumstances in which the defendant obtained control make it unconscionable for him thereafter to assert a beneficial interest in the property.

The second class of case is different. It arises when the defendant is implicated in a fraud. Equity has always given relief against fraud by making any person sufficiently implicated in the fraud accountable in equity. In such a case he is traditionally though I think unfortunately described as a constructive trustee and said to be 'liable to account as constructive trustee'. Such a person is not in fact a trustee at all, even though he may be liable to account as if he were. He never assumes the position of a trustee, and if he receives the trust property at all it is adversely to the plaintiff by an unlawful transaction which is impugned by the plaintiff. In such a case the expressions 'constructive trust' and 'constructive trustee' are misleading, for there is no trust and usually no possibility of a proprietary remedy; they are 'nothing more than a formula for equitable relief': Selangor United Rubber Estates Ltd

v Cradock (No 3) [1968] 2 All ER 1073 at 1097, [1968] 1 WLR 1555 at 1582 per Ungoed-Thomas J.

The constructive trust on which the plaintiffs seek to rely is of the second kind. The defendants were fiduciaries, and held the plaintiffs' money on a resulting trust for them pending completion of the sub-purchase. But the plaintiffs cannot establish and do not rely upon a breach of this trust. They allege that the money which was obtained from them and which would otherwise have been subject to it was obtained by fraud and they seek to raise a constructive trust in their own favour in its place."

(Emphasis supplied)

102. In ***Stevens v. Hotel Portfolio II UK Ltd.*** reported in **(2025) UKSC 28**, one Mr. Ruhan, a director of Hotel Portfolio II UK Ltd (hereinafter HPII) was a constructive trustee of unauthorised profits in the sum of around £95m made in breach of his fiduciary duty as the director of HPII. Starting about a week later, the whole of that dividend was spent by him upon speculative projects of his own such that all of it was lost, untraceable and could not be recovered. Therefore, there was a breach of his duties as a constructive trustee as well. The main issue was whether a constructive trust of this kind would give rise to any liability on part of the dishonest assistant of the constructive trustee to compensate the beneficiary (HPII) for loss caused by such breach. While answering in the affirmative, the majority opinion observed as follows:

i. ***First,*** that there was no fundamental difference in the relationship between a trustee and beneficiary on one hand, and the analogous relationship between a fiduciary and principal on the other. Therefore, when unauthorised profits were made by the fiduciary, he became a constructive trustee of the said monies immediately upon its receipt under an institutional constructive trust.

This principle, that a trustee or fiduciary hold such profits upon an immediate institutional constructive trust for the beneficiary cannot be said to depend upon the fact that the fiduciary acted dishonestly. This rule of equity must not be solely anchored on the existence of fraud or the absence of *bona fides* on part of the fiduciary. A constructive trust can be imposed in the absence of fraud as well.

ii. ***Secondly***, when the unauthorised profits are dissipated, the constructive trustee is said to have breached his duties because, at the very least, he must conserve the said property/money for the benefit of the beneficiary and not deploy it in such a manner which destroys the beneficiary's proprietary interest in it. The relevant observations are thus:

> "*21. […] First, there is no fundamental difference between the relationship between trustee and beneficiary and the analogous relationship between fiduciary and principal (such as director and company) in the present context. Most of the basic principles were originally fashioned to regulate the former and later applied analogically to the latter, once it was clearly established, over a century ago, that a company is both legal and beneficial owner of its property: see Rukhadze v Recovery Partners GP Ltd [2025] UKSC 10; [2025] 2 WLR 529, paras 3, 16, 24-25. In what follows I will refer generally to trustee and beneficiary, save where it is necessary to speak distinctly of fiduciary and principal.*
>
> *-xxx-*
>
> *23. Thirdly and importantly, it is common ground that Mr Ruhan became a constructive trustee of the dividend immediately upon its receipt, under an institutional (rather than purely remedial) constructive trust. Furthermore, although there may be debate in particular cases about the precise nature and extent of the duties of the trustee under such a constructive trust, it is common ground that Mr Ruhan's dissipation of the dividend was a breach of them. This is because at the very least the constructive trustee's duty is to conserve the trust property for the benefit of the beneficiary,*

rather than to deploy it in a way which destroys the beneficiary's proprietary interest in it, as Mr Ruhan did, dishonestly assisted in that regard by Mr Stevens. And it is inherent in that common ground that, whereas Mr Ruhan had been a fiduciary for HPII rather than a trustee stricto sensu, the relationship between them in relation to the dividend once received by Mr Ruhan was that of trustee and sole beneficiary, in which capacity HPII had a right to call on Mr Ruhan for the transfer of the property on demand, albeit in fact in ignorance of that right, or indeed of the existence of the dividend itself or of the constructive trust of it affecting Mr Ruhan. […]

-xxx-

25. The present case is not of course about bribes, but it is an example of a profit made by a fiduciary "as a result of his fiduciary position", squarely within the settled equitable principle which Lord Neuberger derived from Keech v Sandford and recently examined by this court in Aquila Advisory Ltd v Faichney [2021]UKSC 49; [2021] 1 WLR 5666 and Rukhadze. Applied to this case, it means that Mr Ruhan is to be taken as having made the profit constituted by the dividend on behalf of HPII, so that from the moment of its receipt it was beneficially owned by HPII. Furthermore, to the extent that there is any discernible distinction between Keech v Sandford and this appeal, it is that this is a plain case of fraud, whereas the older case was not. But the principle that a trustee or fiduciary holds such profits upon an immediate institutional constructive trust for the beneficiary does not depend at all upon the fiduciary having acted dishonestly. As Lord Russell of Killowen put it in relation to the parallel liability to account in Regal (Hastings) Ltd v Gulliver [1967] 2 AC 134 at 144:

"The rule of equity which insists on those, who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of bona fides".

-xxx-

29. […] This is not how the constructive trust arises. It is equity's automatic and immediate response to a set of facts, just as is the common intention trust which ordinarily comes into existence when two people together buy a home which is conveyed into the name of one of them, with the mutual intent that they should be co-owners of it.

-xxx-

42. […] <u>The constructive trust of profits imposes the usual obligation on the constructive trustee not to dissipate the trust property, and the usual obligation on both him, and upon any dishonest assistant in the dissipation, to compensate the beneficiary for any loss caused thereby.</u>

-xxx-

100. It may assist in the digestion of this over-long judgment if I summarise my essential conclusions of law, as follows:

(1) Like any other trust, a constructive trust of unauthorised profits gives rise to an immediate proprietary interest of the beneficiary in the fund representing those profits, from the moment of their receipt by the trustee.

(2) A dissipation of the fund by the trustee is a breach of trust for which the trustee is liable to compensate the beneficiary for the loss of its proprietary interest. That loss is generally to be assessed by reference to the value of that proprietary interest, but for the dissipation of which would still belong to the beneficiary.

(3) A person who dishonestly assists the trustee in the dissipation is jointly liable with the trustee for the loss caused by the dissipation.

(4) Those general principles are unaffected by the facts that (a) the fund held on constructive trust is or represents unauthorised profits made in an earlier breach of fiduciary duty to the same beneficiary, (b) the making of the profits caused the beneficiary no loss and (c) the effect of the constructive trust of the profits was to confer a gain on the beneficiary.[…]"

(Emphasis supplied)

103. The constructive trust, according to England, arises the moment the breach of fiduciary duty occurs which obliges the fiduciary to treat the profit as belonging to the principal. They reject the idea that this constructive trust could be regarded as remedial which is imposed at some later date by the court in exercise of their

remedial discretion. It is merely recognized at a later date but is 'institutional' since it is deemed to arise automatically as a matter of law in specified circumstances as opposed to being dependent on the discretion of the court.

104. Therefore, constructive trusts are usually regarded as a residual category and is a legal fiction 'constructed' by equity i.e., it attaches by law to specific property which is not expressly subject to any trust but held by a person in circumstances where it would be inequitable to allow said person to assert full beneficial ownership of the property. Therefore, it is imposed not necessarily to effectuate an expressed or implied intention but to redress a wrong. It is the result of judicial intervention. A constructive trustee is not necessarily a trustee in the traditional sense but is nevertheless treated as such by equity. While English courts emphasize on a pre-existing and underlying fiduciary obligation, American courts are much more liberal with the concept and impose it as a remedy where circumstances warrant such intervention.

105. Most common law jurisdictions are accepting towards the doctrine of constructive trust as adopted in England i.e., the institutional model rather than a purely remedial one. Therefore, jurisprudentially there would remain no bar for India to also adopt such an approach. We say so also because, the Indian Trusts Act, 1882 (although dealing with private trusts) recognises the concept of an English 'constructive trust'. Under Chapter IX titled 'Obligation in the nature of trusts' delineates several provisions wherein a resulting or a constructive trust, as accepted in common law

may be created. Additionally, the Statement of Objects and Reasons of the Act reads as follows:

> "*With the few exceptions mentioned in this Statement, the rules contained in the Bill are substantially those now administered by English Courts of Equity and (under the name of 'justice, equity and good conscience') by the Courts of British India.*
>
> *The Bill distributes the subject under the following heads : I, Preliminary : II, the creation of trusts : III, the duties and liabilities of trustees : IV, their rights and powers : V, their disabilities : VI, the rights and liabilities of the beneficiary : VII, vacating the office of trustee : VIII, the extinction of trusts; and IX, certain obligations of the nature of trusts.*
>
> *-xxx-*
>
> *Where no trust is declared, but for the purposes of justice the law deems one to have been created, the trust is by English lawyers termed constructive. Benami transactions, where property is transferred to A for a consideration paid by B, and B makes the payment for his own benefit, have for centuries been familiar to the people of India : gains made by one person at the cost of another are an everyday source of litigation; and in no country, owing to the extreme sub-division of immovable property and the partition of inheritances, are constructive trusts more common. Chapter IX avoids the fiction implied in the term 'constructive trusts' by treating such confidences as obligations in the nature of trusts properly so called. It specifies the fourteen principal cases in which such an obligation arises, as follows:*
>
> 1. *Where it does not appear that the transferor of property intended to dispose of the beneficial interest (Section 80):*
> 2. *Where property is transferred to one person for a consideration paid by another (Section 81):*
> 3. *Where the trust is incapable of execution or is executed without exhausting the property (Section 82):*
> 4. *Where a transfer of property is made for an illegal purpose (Section 83):*
> 5. *Where a bequest is made for an illegal purpose, or where the revocation of a bequest is forcibly prevented (Section 84):*

6. Where a transfer is made in pursuance of a rescindable contract (Section 85):

7. Where a transfer is made in fraud of the transferor's creditors (Section 86):

8. Where a debtor becomes his creditor's legal representative (Section 87):

9. Where a pecuniary advantage is gained by a person in a fiduciary character (Section 88):

10. Where an advantage is gained by the exercise of undue influence (Section 89):

11. Where an advantage is gained by a tenant for life or other qualified owner in derogation of the rights of other persons interested in the property (Section 90):

12. Where property is acquired with notice of an existing contract affecting it (Section 91):

13. Where a person contracts to buy property to be held on trust (Section 92):

14. Where one of several compounding creditors, by a secret arrangement with the debtor, gains an advantage over his co-creditors (Section 93):

The Bill also contains a general clause (Section 94) providing for cases not so specified. It is believed that this clause will cover that form of constructive trust which the Punjab Courts have held to arise when a co-sharer in a village community absents himself without expressly abandoning his rights."

(Emphasis supplied)

106. It is evident from the Statement of Objects and Reasons that the provisions contained in the Indian Trusts Act, 1882 are substantially those which were administered by the English Courts of Equity. As regards Chapter IX, a reference is made to the English approach of constructive trusts and it is stated that where no trust is declared but the law deems one to have been created for the purposes of justice, such a trust would be termed as 'constructive'. The rationale behind

the enactment of Chapter IX was to avoid the fiction implied in the term 'constructive trusts' and to codify the doctrine within established parameters so that, even when motivated by the canons of justice, equity and good conscience, unfettered discretion is not employed by the courts while declaring a constructive trust (like in American jurisprudence). However, merely because the Chapter is titled 'Obligations in the nature of a trust', it cannot be stated that the concept of constructive trusts have been effaced from our statute books. Furthermore, the repeal of a few provisions under this Chapter, more specifically Sections 81, 82 and 94 respectively, by the Prohibition of Benami Property Transactions Act, 1988, cannot be considered to reflect the intention of the legislature to do away with the concept of constructive trusts in the Indian context, in its entirety. At the most, it could be said that certain types of constructive trusts were declared to be impermissible under the Indian regime. Therefore, there being no prohibition on the declaration of 'constructive trusts' or as we call it, 'obligations in the nature of a trust' as far as private trusts are concerned, there would also remain no inhibition on courts to declare or impose a constructive trust on public entities. The same is an equitable doctrine which can be resorted to when the conditions for its imposition are met.

107. That constructive trusts can be imposed in the Indian regime was also alluded to by this Court in ***Janardan Dagdu Khomane and Another v. Eknath Bhiku Yadav & Ors.*** reported in **(2019) 10 SCC 395** which elaborated on the doctrine of constructive trust. While also quoting Story who explained the doctrine of

'constructive trust' in equity jurisprudence, it was stated that the receiving of money which cannot be conscientiously retained is sufficient to raise a trust, in equity, in favour of the party for whom or on whose account the money was received. It was reiterated that a constructive trust arises by operation of law, irrespective of whether the parties harboured any intention to create a trust. The relevant observations are reproduced as thus:

> "*32. A constructive trust arises by operation of law, without regard to the intention of the parties to create a trust. It does not require a deed signifying the institution of trust. Under a constructive trust, the trust arises by operation of law as from the date of the circumstances which give rise to it. The function of the court is only to declare that such a trust has arisen in the past.*
>
> *33. Constructive trust can arise over a wide range of situations. To quote Cardozo, J., "a constructive trust is a formula through which the conscience of equity finds expression".*
>
> *34. Story on Equity Jurisprudence has explained "Constructive Trust" as:*
>
> *"One of the most common cases in which a Court of equity acts upon the ground of implied trusts in invitum, is where a party has received money which he cannot conscientiously withhold from another party. It has been well remarked, that the receiving of money which consistently with conscience cannot be retained is, in equity, sufficient to raise a trust in favour of the party for whom or on whose account it was received. This is the governing principle in all such cases. And therefore, whenever any controversy arises, the true question is, not whether money has been received by a party of which he could not have compelled the payment, but whether he can now, with a safe conscience, ex aequo et bono, retain it. Illustrations of this doctrine are familiar in cases of money paid by accident, or mistake, or fraud. And the difference between the payment of money under a mistake of fact, and a payment under a mistake of law, in its operation upon the conscience of the party, presents the equitable qualifications of the doctrine in a striking manner. It is true that Courts of Law now entertain jurisdiction in many cases of this sort where formerly the remedy was solely in Equity; as for example, in an action of*

assumption for money had and received, where the money cannot conscientiously be withheld by the party; following out the rule of the Civil Law; Quod condition in debiti non datur uitra, quam locupletior factus est, qui accepit. But this does not oust the general jurisdiction of Courts of Equity over the subject-matter, which had for many ages before been in full exercise, although it renders a resort to them for relief less common, as well as less necessary, than it formerly was. Still, however, there are many cases of this sort where it is indispensable to resort to Courts of Equity for adequate relief and especially where the transactions are complicated, and a discovery from the defendant is requisite.

35. Section 90 (sic) of the Trusts Act states that if there is a person in a fiduciary relation to another, he cannot take advantage of that position so as to gain something exclusively for himself, which he otherwise would not have obtained, but for the position which he held.

36. Section 94 of the Trusts Act, 1882 has allowed the creation of a constructive trust when situations went beyond the confines of the Act. Section 94 has later been repealed by the Benami Transactions Prohibition Act, 1988. Section 94 of the Trusts Act read:

*"**94. Constructive trusts in cases not expressly provided for**.—In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands."*

37. In Gopal L. Raheja v. Vijay B. Raheja [Gopal L. Raheja v. Vijay B. Raheja, 2007 SCC OnLine Bom 399 : (2007) 4 Bom CR 288] , the Bombay High Court restrained itself from exercising its equitable jurisdiction to apply the English doctrine of constructive trust when the legislature had specifically deleted it from the Trusts Act.

38. In our view, the repeal of Section 94 of the Act does not put any fetter in declaring a trust, even if the situation falls outside the purview of the Act. Its jurisdiction can be derived from Section 151 CPC and Section 88 of the Trusts Act.

(Emphasis supplied)

108. In ***Janardan Dagdu Khomane*** *(supra)*, this Court also noted that Section 88 of the Indian Trusts Act, 1882 provides that if a person is in a fiduciary relation to another, he cannot take advantage of that position so as to gain something exclusively for himself, which he otherwise would not have obtained but for the position he held. Although the decision of the Bombay High Court in ***Gopal L. Raheja v. Vijay B. Raheja*** reported in **2007 SCC OnLine Bom 399** had refrained from exercising its equitable jurisdiction to apply the English doctrine of 'constructive trust' citing the repeal of Section 94 in the Indian Trusts Act, 1882 by the Prohibition of Benami Property Transactions Act, 1988, this Court disagreed with the said view and remarked that such a repeal does not put any fetter in declaring a trust "*even if the situation falls outside the purview of the Act*". It was opined that the jurisdiction to invoke the said doctrine can always be derived from Section 151 of the CPC and Section 88 of the Indian Trusts Act, 1882.

109. However, it must be noted that an institutional constructive trust would arise the very moment any fiduciary removes or diverts the property from its intended beneficiaries for his exclusive benefit or for the benefit of those who are not the intended beneficiaries. This need not necessarily be due to an intention to defraud but may also arise due to a mistake. In other words, the moment the fiduciary receives money which he cannot conscientiously retain for himself, a constructive trust would be raised in favour of the beneficiaries on whose account the money was originally received. To put it simply, the factum that the fiduciary 'withheld' the property from

its rightful beneficiaries must be established. This would constitute a breach of his/her fiduciary duty and this benefit which has accrued to him would be held in constructive trust. The breach of his fiduciary duty i.e., his duty towards the society and its intended beneficiaries, must exist.

110. Coming back to the facts of the present case, the main aim and objective of the appellant Society is of a public and charitable nature. It is also limpid from the MoA, that all the incomes, earnings, movable or immovable properties are to be solely dedicated and applied towards to the promotion of the society's aims. The MoA also lays down a strict "no profit rule" to the members of the Board, in any manner whatsoever. Article 11.2.1 of the AoA vests all the properties, both movable and immovable and all other kinds of assets in the Executive Committee of the appellant Society. Article 11.2.3.4 provides for a fundraising mechanism by way of gifts, donations, grants-in-aid or otherwise, both within and outside India. Article 11.2.3.5 allows for the Executive Committee to raise loans for the purpose of furthering the objects of the appellant Society. Article 11.2.3.6 allows the receiving of monies, securities, instruments, investments or any other assets for and on behalf of the appellant Society. Article 13, in the most unambiguous manner states that funds will be raised by way of grants-in-aid, donations, gifts, subscription fees and income from investments, loans and other means available to the Society and that they will be used to carry out the aims and objectives of the Society.

111. A perusal of the MoA and AoA of the appellant society reveals that it is a society of a charitable nature, having its properties vested in the governing body, who act as its fiduciaries. As elaborated previously, any conduct by the fiduciary which deprived the intended beneficiaries of their beneficial interest in the property, in such a manner that is in contravention to the covenants that bind him and confers an advantage to him to the detriment of the intended beneficiaries, must be taken into consideration to see if a constructive trust can be raised in law. All those diverted properties would then be held in a constructive trust by those fiduciaries who diverted it, in the capacity of 'constructive trustees'. The respondent nos. 1 and 2 respectively have levelled several allegations of siphoning of funds by the respondent nos. 3 and 4 respectively. The same would have to be conclusively proved for a constructive trust to have been created in equity. Obviously, at the stage of this present litigation, it is not possible for this Court to enter into an extensive factual inquiry in this regard. That is for the High Court to satisfy after the suit is allowed to progress. However, the allegations in the plaint may be said to *prima facie* satisfy the condition required to apply the doctrine of constructive trust to the present facts. Not to mention that, if these allegations are found to have no substance or plainly false, the entire suit would fail. But, in the peculiar circumstance in which the present matter rests, that would happen also for the reason that the circumstances which required the imposition of a constructive trust do not exist.

112. Thus, yet another ingredient under Section 92 of the CPC which requires to be satisfied, has been fulfilled. The counsel for the appellant society has also submitted

that the plaint is not entirely convincing on the whether the appellant society can be considered to be a constructive trust for the purposes of Section 92 and that there is only one paragraph in the plaint devoted to the aforesaid question. However, it is our view that the plaint cannot be scrutinised in such a mechanical manner. It is the substance of the claim which must be looked into and not merely the wording. Read in the right context, the plaint is sufficiently forthcoming about the facts and circumstances which evidence the existence of a constructive trust, at least at present, under the eyes of law.

B. A breach of trust or the directions of the court being necessary for the administration of the trust

113. A suit under Section 92 can be maintainable for two broad reasons – *one,* that there has been a breach of any express or constructive trust created for a charitable or religious purpose or, *two,* that the directions of the court are necessary for the administration of such an express or constructive trust. The same was also emphasized by the decision of this Court in ***Syed Mohd. Salie Labbai v. Mohd. Hanifa*** reported in **(1976) 4 SCC 780**. Therein, it was held that a suit against persons exercising *de facto* control over property which has been dedicated for public use, would be maintainable, specifically when such properties are alleged to have been mismanaged and not maintained. The relevant observations are thus:

> "*64. […] It is true that Section 92 of the Code of Civil Procedure applies only when there is any alleged breach of any express or constructive trust created for a public, charitable or religious purpose. It also applies where the direction of the court is necessary for the administration of any such public trust. In the*

instant case the defendants have no doubt been looking after the properties in one capacity or the other and had been enjoying the usufruct thereof. They are, therefore, trustees de son tort and the mere fact that they put forward their own title to the properties would not make them trespassers […] We, therefore, hold that Section 92 of the Code of Civil Procedure is clearly applicable to the case.

65. *Counsel for the appellants lastly argued that there is no evidence to show that the appellants have committed any negligence in managing the trust properties. Even the trial court which had dismissed the plaintiffs' suit had returned a clear finding of fact that the defendants were guilty of gross negligence in managing the properties. In this connection the trial court found as follows:*

> *"It was pointed out that there was mismanagement. That there is mismanagement cannot be disputed. For one thing, in spite of the decree of the court for removal of certain superstructures on the burial ground the Labbais evaded the issues for a period of over twenty years. The plaintiffs have proved that Plaint B schedule property has been dedicated to the durga. But this property has been alienated by the predecessors-in-interest of the defendants. In exchange, they have obtained C Schedule property.... The next contention was that the defendants have not maintained accounts. It is true that the evidence does not disclose that any accounts were maintained or being maintained by the Labbais defendants."*

The learned Judge, however, tried to explain away these acts of misfeasance on the ground that as the Rowthers undertook not to interfere with the management or ask for the account, the negligence committed by the defendants, if any, was not actionable. In view of our findings, however, that the mosque, its adjuncts and the burial ground are public wakfs the question of negligence assumes a new complexion. Apart from the acts of mismanagement, there is definite oral evidence of the plaintiffs to show that the graveyard is not properly managed and maintained. The boundary wall has broken and cattle enter the graveyard leading to its desecration. The evidence of the plaintiffs also shows that even the mosque is in a state of disrepair and no attempt is made to repair or maintain it properly. Further-more, the defendants have constructed shops on a part of the graveyard and in spite of several decrees of the courts to demolish those shops

they have not yet obeyed the orders of the court to demolish the same. In these circumstances, therefore, there is overwhelming evidence on the record to show that the defendants were guilty of grave mismanagement, and therefore a clear case for formulating a scheme under Section 92 of the Code of Civil Procedure by a suit has been made out by the plaintiffs. The scheme, however, will be confined only to the mosque, its adjuncts and the burial ground and not to the durgah which has been held to be the private property of the defendants."

(Emphasis supplied)

114. In ***Ramji Tripathi*** *(supra),* this Court while holding that a suit for the vindication of personal or individual rights was not maintainable, observed that:

i. **First,** the facts and particulars as regards the defect in the machinery for administration which plagued the trust and which required rectification, must be specifically pleaded. A bald and standalone prayer that the direction of the court may be necessary would not be enough and would be a mere pretence for the purpose of bringing the suit under Section 92. In simpler words, it must be shown that the directions of the court are 'necessary' in the facts and circumstances of the matter and such a statement must not be made in vacuum without any basis in reason or facts.

ii. ***Secondly***, that it is only the allegations in the plaint that need to be looked into in the first instance to determine whether a suit would fall within the contours of Section 92. However, once the evidence is taken, if the court is of the opinion that the alleged breach of trust has not been made out and the prayer seeking directions from the court is vague and/or rests on a flimsy foundation, then the suit may be dismissed. The relevant observations are thus:

"*13. The trial court as well as the High Court found that there was no evidence to substantiate the allegations regarding the breach of trust said to have been committed by Respondent 1. In para 20 of the plaint, there was an allegation that the direction of the Court was necessary for the administration of the Trust. But no reasons were given in the plaint why the plaintiffs were seeking the direction of the Court. There were no clear allegations of maladministration viz. that Respondent 1 was diverting the Trust properties for his personal benefit or that he was committing any devastavit. The High Court was of the view that since the plaintiffs did not plead facts and particulars as regards the defect in the machinery for administration which had crept in under custom or rules which required rectification, the prayer for direction was a mere pretence to bring the suit under Section 92. A direction cannot be given by the Court unless it is shown that it is necessary for the proper administration of the Trust. We do not think it necessary to decide for the purpose of this case whether the words "where the direction of the court is deemed necessary for the administration of any such Trust" must be interpreted as meaning that where the court has to give directions in the nature of framing a scheme or otherwise for the administration of the Trust or whether those words can refer only to directions given to existing trustee when there is one or to new trustee when one is to be appointed or to directions when there are allegations of maladministration amounting to breach of trust. It is sufficient for the purpose of this case to say that the prayer for direction was a prayer in vacuum without any basis in reason or facts.*

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 [AIR 1972 Raj 263 : 1972 WLN 157 : 1972 Raj LW 182] , Sohan Singh v. Achhar Singh [AIR 1968 P&H 463 : ILR 1968 Punj 359 : 1968 Cur LJ 480] and Radha Krishna v. Lachhmi Narain [AIR 1948 Oudh 203 : 1948 OWN 179] . 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 under Section 92 must be dismissed. This was one of the grounds relied on by the High Court for holding that the suit was not maintainable under Section 92."

(Emphasis supplied)

115. In ***Vidyodaya Trust*** *(supra)*, this Court had explained that in order to constitute a breach of trust, there must be an element of dishonest intention and lack of probity. If a mistaken action has been undertaken but with all *bona fides,* the same would not amount to a breach of trust. The Court also employed the test of a 'prudent man' to see whether the required standards of care, caution, rectitude and accuracy, without any reckless indifference has been exhibited by the trust and its trustees. In the first instance, the court is required to only look into the allegations in the plaint to see whether a suit under this provision lies. Once the suit commences and after the evidence is taken, if it is revealed that the breach of trust which has been alleged is not made out or, that the prayer for direction of the court is vague and not based on any solid factual or reasonable foundation, the court would be free to dismiss the suit for the said reasons. The relevant observations are reproduced hereinbelow:

> "*12. […] Only if the preconditions are satisfied then only leave can be granted as provided in Section 92. There must be an element of dishonest 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.*
>
> *-xxx-*
>
> *14. 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 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.*
>
> *-xxx-*

20. In Swami Paramatmanand case [R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1991) 1 SCC 48] 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 under Section 92 must be dismissed."

(Emphasis supplied)

116. In the present case, the respondent nos. 1 and 2 respectively have alleged that the respondent nos. 3 and 4 respectively, were indulging in gross financial impropriety, misconduct and siphoning off of funds/donations received by the appellant Society for personal gains. As discussed in the previous section of this judgment, having arrived at the conclusion that the present situation pertains to a 'constructive' and not an 'express' trust, the question remains how the aforesaid allegations are to be considered, particularly in light of the condition *vis-à-vis* Section 92 CPC presently discussed in this section. As elaborated, the aforesaid allegations would have to be proven to serve a dual purpose i.e., to *first*, attract the doctrine of 'constructive trust' to be imposed in equity and *second,* to proceed to prove that there has been a subsequent breach of that constructive trust or at least, that the directions of the court would be necessary for the administration of that constructive trust. To assert that there has been a breach of the constructive trust which was imposed upon an fiduciary who became a constructive trustee by virtue of his/her actions, it must be proven that the funds or property of the society that were allegedly diverted or

siphoned by the respondent nos. 3 and 4 respectively were further 'divested' by them for purposes which do not align with the aims and objectives of the appellant Society, similar to that which occurred in ***Stevens*** *(supra).* In other words, the duties which bound the respondent nos. 3 and 4 respectively upon being designated as 'constructive trustees' must have also been breached. Even if a further divestment of those diverted/siphoned funds had not occurred and they still remained intact but in the possession of the constructive trustees (respondent nos. 3 and 4 respectively) in their individual and not their fiduciary capacity, the plaintiffs can assert that directions pertaining to that constructive trust would still be needed from the court. Presently, we are convinced that directions, at the very least, are indeed necessary.

117. The respondent nos. 3 and 4 respectively have vehemently assailed the credibility of the Interim Forensic Audit Report and the Final Forensic Audit Report as being riddled with inconsistencies, unsubstantiated findings and categorical bias. However, at this stage of the proceeding, it would not be appropriate for the court to assess the veracity and legitimacy of all those observations/findings arrived at in the aforesaid reports with a view to verify the allegations made by the respondent nos. 3 and 4 respectively.

118. This Court in ***Ramji Tripathi*** *(supra)* had observed that at the stage of grant of leave, it is only the allegations in the plaint which must be looked into in the first instance with a view to ascertain if the alleged breach of trust or the fact that the directions of the Court may be necessary, is evident or palpable and if the suit can

be brought within the ambit of Section 92. Even keeping aside the several forensic and audit reports which suggest that the affairs of the appellant Society must be scrutinised, a reading of the averments of the plaint fairly reveals the questionable conduct on behalf of respondent nos. 3 and 4 respectively. The allegations made therein are serious and cannot be ignored. Ultimately, as explained by us in the preceding paragraphs, if those allegations are proven to be false, *mala fide* and unfounded in the course of the suit proceedings, the entire case of the plaintiffs may fall and the suit be dismissed. However, to force a halt and sever the suit at its root, on the aforesaid contentions of the respondent nos. 3 and 4 respectively, which require an extensive factual inquiry, would not be proper at this stage.

C. **The institution of the suit must be made by two or more persons "*having an interest in the trust*"**

119. The phrase "*persons having an interest in the trust*" must neither be construed too narrowly or too widely. It must not be narrow for the reason that the word used is "*interest*" instead of "*direct interest*". However, it must also be remembered that while no direct interest is required, the interest must denote a present and substantial interest and not a sentimental, remote, fictitious or purely illusory interest. It must be clear and direct. The reason behind the incorporation of this phrase under Section 92 of the CPC again boils down to the object of preventing frivolous and

mischievous applications being filed by busy bodies, unconnected members of the public, and persons who do not possess a specific interest in the trust.

120. In ***T. Varghese George v. Kora K. George*** reported in **(2012) 1 SCC 369**, this Court considered the *locus standi* of the plaintiffs to institute the suit under Section 92 concerning a secular public educational trust. Therein, of the three plaintiffs, one was a member of the Board of Trustees nominated by the founder himself, the second plaintiff was the brother-in-law of the founder who had raised funds for buying lands for the institution and for the construction of its school buildings and the third plaintiff was a parent of a student attending the institution. Considering the above, this Court had opined that none of these persons could be criticised as persons who lacked any good intention for the Trust and that they were persons interested in the functioning of the Trust. The relevant observations are reproduced hereinbelow:

> "*31. As can be seen from this section two or more persons having interest in the trust may institute a suit in the Principal Civil Court of Original Jurisdiction to obtain a decree concerning a public charity for various purposes mentioned therein. Such suit will lie where these persons make out a case of alleged breach of any trust created for public purposes or for directions of the court for administration of the trust. One of the purposes set out in sub-section (1)(g) is settling a scheme, sub-section (1)(b) speaks about a new trustee being appointed, and sub-section (1)(a) speaks about removing a trustee. Out of the three persons who filed Civil Suit No. 601 of 1987, Shri D.V.D. Monte was a member of the Board of Trustees nominated by the founder Shri T. Thomas himself. Shri Kora K. George is brother-in-law of Shri T. Thomas. He has raised funds for buying lands for the Institution, and for constructing the buildings of the School. Therefore, although the Single Judge held that he could not be said to be a person having interest in the Trust, that finding was reversed by the Division Bench in OSA No. 49 of 1995. Dr. Natrajan is a parent of a student of the Institution. None*

of these persons can be criticised as persons lacking good intention for the Trust."

(Emphasis supplied)

121. Coming back to the facts of the present case, it can be seen that the respondent no. 1 (original plaintiff no. 1) was the co-founder-cum-President of the board of the appellant Society who had devoted around 15 years in service of the appellant Society and the public at large. The respondent no. 2 (original plaintiff no. 2) *albeit* being the mother of the respondent no. 1, is a current board member of the appellant Society. Both of them can be said to have been closely associated with the functioning of the appellant Society. Therefore, they can also be said to have a genuine, clear and direct interest in the preservation and proper management of the appellant Society and the properties which may be subject to a constructive trust, especially since they have devoted time and energy into the establishing and running of the appellant Society.

122. While scrutinising whether the respondent nos. 1 and 2 respectively are persons interested in the trust and whether they are bringing the suit in a representative capacity, it is not just their designation or position which must be given importance to. They might be seen members of a society (former and current), who happen to be agitating a suit against other members, however, due regard must be given to whether they're representing themselves solely as members in seeking certain remedies or if they have also brought the suit in the interest of the public at large, especially the beneficiaries. It must also be seen whether it is a vested interest in the matter which is the pure and sole reason for bringing the suit or if public interest is

also brought to the notice of the court. We are not convinced that the respondent nos. 1 and 2 respectively are merely bringing forward some issues pertaining to disputes between members. While they have sought some remedies related to personal grievances and the wrongful dismissal of the respondent no. 1 which could be seen as unduly magnifying an election dispute, there are several other allegations in the plaint which cannot simply be ignored and which give the respondent nos. 1 and 2 respectively, a dual role/capacity, whilst they're agitating the matter under Section 92 of the CPC. The larger background in which the suit is brought alludes to the existence of public interest also at play.

123. The respondent nos. 3 and 4 respectively have primarily objected to the inclusion of the respondent no. 2 as one of the original plaintiffs since they contend that she has been roped in merely to fulfil the mandatory condition of having a minimum of two plaintiffs under Section 92. They have also alleged that there might be some discrepancies in the signatures of the respondent no. 2 and that there is a possibility of them being forged. However, it is not for a court at this stage of the suit to assess the validity of these allegations, especially when the respondent nos. 3 and 4 have not been able to categorically assert that the respondent no. 2 is not a board member of the appellant Society or is in no manner associated with the organisation or is a person not having a direct interest in the functioning of the appellant Society. Such being the case, the impugned decision was right in so far as taking the view that the respondent nos. 1 and 2 respectively are "*persons having an interest in the trust*".

D. The reliefs falling within the scope of those enumerated under Section 92(1) of the CPC along with the object, purpose and capacity in which the suit is brought.

124. Section 92(1) of the CPC provides for a list of reliefs which can be obtained by the plaintiffs through a decree from the court. They relate to removing a trustee, appointing a new trustee, vesting any property in a trustee, directing accounts and inquiries, declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust, authorising the whole or any part of the trust property to be let, sold, mortgaged, or exchanged, settling a scheme, or granting such further or other reliefs as the nature of the case may require. As has been indicated by us in the preceding paragraphs, a suit under Section 92 is a special suit of a representative nature which must essentially be brought by plaintiffs in their capacity as representatives of the public and for the vindication of public rights.

125. In ***Mahant Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai*** reported in **(1952) 1 SCC 323**, this Court had held that the plaintiffs must pray for one or the other of the reliefs that are specifically mentioned under Section 92(1). Therein, the courts had concurrently found, after examining the evidence on record that was adduced by the parties, that the allegations of breach of trust were not made out. The plaintiffs therein, had not sought for any direction from the court for the proper administration of the trust either. Therefore, the very foundation of the suit under Section 92 became wanting and there remained no cause of action for the

institution of the suit. In such circumstances, while dismissing the suit, the High Court had, however, recorded a conclusive finding about the existence of a public trust and made a declaration to that effect. This Court was of the view that such a finding was wholly inconsequential and could not be made a part of the decree or the final order in the shape of a declaratory relief for the reason that it cannot fall under those reliefs mentioned under Section 92(1). The relevant observations are thus:

> "*9. […]Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the court are necessary for the administration thereof, and it must pray for one or other of the reliefs that are specifically mentioned in the section. It is only when these conditions are fulfilled that the suit has got to be brought in conformity with the provision of Section 92CPC. As was observed by the Privy Council in Abdur Rahim v. Mohd. Barkat Ali [Abdur Rahim v. Mohd. Barkat Ali, (1927-28) 55 IA 96 : 1927 SCC OnLine PC 98] , a suit for a declaration that certain property appertains to a religious trust may lie under the general law but is outside the scope of Section 92CPC.*
>
> *10. In the case before us, the prayers made in the plaint are undoubtedly appropriate to the terms of Section 92CPC and the suit proceeded on the footing that the defendant, who was alleged to be the trustee in respect of a public trust, was guilty of breach of trust. The defendant denied the existence of the trust and denied further that he was guilty of misconduct or breach of trust. The denial could not certainly oust the jurisdiction of the court, but when the courts found concurrently, on the evidence adduced by the parties, that the allegations of breach of trust were not made out, and as it was not the case of the plaintiffs, that any direction of the court was necessary for proper administration of the trust, the very foundation of a suit under Section 92CPC, became wanting and the plaintiffs had absolutely no cause of action for the suit they instituted. In these circumstances, the finding of the High Court about the existence of a public trust was wholly inconsequential and as it was unconnected with the grounds upon which the case was actually disposed of, it could not be made a part of the decree or the final order in the shape of a declaratory relief in favour of the plaintiffs.*

11. It has been argued by the learned counsel for the respondents that even if the plaintiffs failed to prove the other allegations made in the plaint, they did succeed in proving that the properties were public and charitable trust properties—a fact which the defendant denied. In these circumstances, there was nothing wrong for the court to give the plaintiffs a lesser relief than what they actually claimed. The reply to this is, that in a suit framed under Section 92CPC the only reliefs which the plaintiff can claim and the court can grant are those enumerated specifically in the different clauses of the section. A relief praying for a declaration that the properties in suit are trust properties does not come under any of these clauses. When the defendant denies the existence of a trust, a declaration that the trust does exist might be made as ancillary to the main relief claimed under the section if the plaintiff is held entitled to it; but when the case of the plaintiff fails for want of a cause of action, there is no warrant for giving him a declaratory relief under the provision of Section 92CPC. The finding as to the existence of a public trust in such circumstances would be no more than an obiter dictum and cannot constitute the final decision in the suit.

12. The result is that in our opinion the decision of the High Court should stand, but the decree and the concluding portion of the judgment passed by the trial court and affirmed by the High Court on appeal shall direct a dismissal of the plaintiff's suit merely without it being made subject to any declaration as to the character of the properties. To this extent the appeal is allowed and the final decree modified. The order for costs made by the courts below will stand. Each party will bear his own costs in this appeal."

(Emphasis supplied)

126. In ***Mahant Pragdasji*** *(supra)*, it was argued that even though the plaintiffs failed to prove the other allegations in the plaint, they had indeed succeeded in proving that the properties in question were public and charitable trust properties and that, therefore, the High Court had merely granted a 'lesser' relief than what was claimed under the suit, which relief did not offend Section 92. However, this Court had categorically held that in such a suit, the only reliefs which the plaintiff(s) can claim

and the court can grant, are those enumerated specifically under the different clauses under section 92(1). Therefore, the relief granted by the High Court in the form of a declaration that the properties in suit are in fact trust properties does not come under any of the clauses under Section 92(1). Had the situation been different i.e., if the plaintiff had succeeded in bringing an action under Section 92 and where the defendant had denied the existence of a trust, a declaratory relief that the trust does exist may be made as ancillary to the main relief under Section 92(1) claimed by the plaintiff(s). However, if the suit fails for want of cause of action, it would not be appropriate for the court to grant a declaratory relief purportedly under Section 92(1).

127. The aforesaid decision has been discussed only with a view to emphasise that the reliefs claimed by the plaintiffs, must fall within those reliefs outlined under Section 92(1). In this context, the nature of relief(s) which could be claimed or granted under the residual clause (h) under Section 92(1) was discussed by the three-judge bench decision of this Court in ***Charan Singh v. Darshan Singh*** reported in **(1975) 1 SCC 298**. This Court elaborated on whether clause (h) providing for "*further or other relief*" must be taken in connection with or considered as akin to clauses (a) to (g) or, whether any relief other than those outlined under clauses (a) to (g) would in all circumstances be covered by clause (h) in case of an alleged breach of an express or constructive trust. Attention was drawn to the fact that the word used after clause (g) and before clause (h) was "***or***". In a given context, it was stated that it may be construed as "***and***" conjunctively and in others, it would remain as "***or***" in the

disjunctive sense. Further elaborating on the aforesaid, it was stated that if any "*further relief*" was asked for in addition to any of the reliefs already mentioned under clauses (a) to (g), then the word "or" must be construed as "and". However, if the relief prayed for is an "*other relief*" which is not in any way consequential to or in addition of the reliefs already mentioned under clauses (a) to (g), then the word "or" must be construed in the literal sense as an "or". It is in the latter scenario, where an "*other relief*" is claimed that the relief must be akin to or of the same nature as any of the reliefs enumerated under clauses (a) to (g). The relevant observations are thus:

> *"1. […]The plaintiffs respondents in this appeal filed by the defendants-appellants by special leave of this Court from the decision of the High Court of Judicature of Punjab and Haryana filed a suit in the year 1963 against Appellant 1 alone (for the sake of brevity described as the appellant hereinafter in this judgment) praying for a decree for permanent injunction against him to restrain him.*
>
> > *"from interfering with the maintaining of the Guru Granth Sahib for religious recitals in the Darbar Sahib in the Dharamsala also known as Dharamsala Dera Baba Jaimal Singh situated in Village Balsarai Tehsil and District Amritsar as also restraining him from interfering with the plaintiffs and other satsangis' rights of reciting the Guru Granth Sahib and holding and joining the religious congregations and Satsang in the abovementioned Gurdwara Baba Jaimal Singh."*
>
> *-xxx-*
>
> *6. […] Out of the three conditions which are necessary to be fulfilled for the application of Section 92, two are indisputably present in this case viz. (1) the suit relates to a public charitable or religious trust; (2) it is founded on an allegation of a breach of trust and the direction of the Court is required for administration of the trust. The debate and dispute between the parties centered round the requirement of the fulfilment of the third condition,*

namely, whether the reliefs claimed are those which are mentioned in sub-section (1) of Section 92 of the Code. […]

7. The High Court in the letters patent appeal has taken the view that the relief sought for in the suit does not fall under any of the clauses (a) to (h) of Section 92 of the Code. Learned counsel for the appellant has assailed this view and submitted that the relief sought for falls under clause (e) or (g) or in any event under clause (h). In our judgment the relief sought for in this case does not strictly or squarely fall within clause (e) or (g) but is very much akin to either and hence is covered by the residuary clause (h).

8. Lord Sinha delivering the judgment of the Judicial Committee of the Privy Council in Abdur Rahim v. Syed Abu Mahomed Barkat Ali Shah [AIR 1928 PC 16 : 55 IA 96 : 108 IC 361] rejected the argument that the words "such further or other relief as the nature of the case may require" occurring in clause (h) must be taken, not in connection with the previous clauses (a) to (g) but in connection with the nature of the suit. The argument was that any relief other than (a) to (g) in the case of an alleged breach of an express or constructive trust as may be required in the circumstances of any particular case was covered by clause (h). It was repelled on the ground that the words "further or other relief" must on general principles of construction be taken to mean relief of the same nature as clauses (a) to (g). It would be noticed that the word used after clause (g) and before clause (h) is "or". It may mean "and" in the context, or remain "or" in the disjunctive sense in a given case. If any further relief is asked for in addition to any of the reliefs mentioned in clauses (a) to (g) as the nature of the case may require, then the word "or" would mean "and". But if the relief asked for is other relief which is not by way of a consequential or additional relief to any of the reliefs in terms of clauses (a) to (g), then the word "or" will mean "or". The other relief however, cannot be of a nature which is not akin to or of the same nature as any of the reliefs mentioned in clauses (a) to (g). According to the plaintiffs case one of the objects of the religious trust was the worship of Granth Sahib and its recital in congregations of the public. In the suit a decree declaring what portion of the trust property should be allocated to the said object could be asked for under clause (e). The plaintiffs could also ask for the settling of a scheme under clause (g) alleging mismanagement of the religious trust on the part of the trustees. In the settlement of the scheme could be included the worship and recital of Granth Sahib — the holy Granth. The plaintiffs in their plaint did not in terms ask for the one or the other. They, however,

alleged acts of breach of trust, mismanagement, undue interference with the right of the public in the worship of Granth Sahib. They wanted a decree of the Court against the appellant to force him to carry out the objects of the trust and to perform his duties as a trustee. Reading the plaint as a whole it is not a suit where the plaintiffs wanted a declaration of their right in the religious institution in respect of the Granth Sahib. But it was a suit where they wanted enforcement of due performance of the duties of the trustee in relation to a particular object of the trust. It is well-settled that the maintainability of the suit under Section 92 of the Code depends upon the allegations in the plaint and does not fall for decision with reference to the averments in the written statement.

-xxx-

11. […] In our judgment therefore the courts below were right in taking the view that the present suit was a suit for a decree under Section 92 of the Code and since it was not filed in conformity with the requirement of the said provision of law it was not maintainable. The contrary view taken by the Division Bench of the High Court in the letters patent appeal is not correct."

(Emphasis supplied)

128. In ***Charan Singh*** *(supra)*, the contentious relief prayed for was not a "*further relief*" under clause (h) i.e., there were not multiple prayers of which some already fell under the reliefs contemplated under clauses (a) to (g) and the prayer in question fell outside the scope of clauses (a) to (g). It was a solitary relief which solely and completely fell under the ambit of "*other relief*" mentioned under clause (h). Therefore, this Court had to delve into whether the "*other relief*" claimed could be said to be akin to or of the same nature as those already enumerated under clauses (a) to (g). In conducting such an examination, it was opined that the relief prayed for was in the background of allegations of breach of trust, mismanagement and undue interference with the right of the public in the worship of the Granth Sahib. In essence, what the plaintiffs wanted was a decree of the Court against the defendant

in order to force him to carry out the objects of the trust and to perform his duties as a trustee. It was further held that, upon reading the plaint as a whole, what was claimed was not a declaration of the rights of the plaintiffs in the religious institution in respect of the Granth Sahib, but an enforcement of due performance of the duties of the trustee in relation to a particular object of the trust. Therefore, this solitary "*other relief*" was akin to those already mentioned under clauses (a) to (g) and was held to fall within the clause (h) and consequentially, under Section 92 of the CPC.

129. It has been sufficiently explained that the special nature of the suit under Section 92 requires it to be filed fundamentally on behalf of the public for the vindication of public rights. In ***Sugra Bibi v. Hazi Kummu Mia*** reported in **1968 SCC OnLine SC 99**, this Court had placed reliance on the reasoning given by Woodroffe, J., in ***Budreedas v. Choonilal*** reported in **ILR 33 Cal 789** and the opinion of Leach, C.J. in ***Tirumalai-Tirupati Devasthanams Committee v. Udiayar Krishnayya Shanbhaga*** reported in **1943 SCC OnLine Mad 48**, to state that, the fact that a suit relates to a public trust of a religious or charitable nature and that the reliefs claimed fall within clauses (a) to (h) of Section 92(1) 'would not by themselves attract the operation of the section'. It must be shown that the suit is of a representative character which is instituted in the interests of the public and not merely for the vindication of the individual or personal rights of the plaintiff(s). In other words, the Court must go beyond the reliefs and also give due regard to the capacity in which the plaintiffs are suing along with the purpose for which the suit is brought. The relevant observations are reproduced hereinbelow:

8. […] It is true that the facts that a suit relates to public trust of a religious or charitable nature and the reliefs claimed fall within clauses (a) to (h) of sub-section (1) of Section 92 of the Civil Procedure Code would not by themselves attract the operation of the section, unless the suit is of a representative character instituted in the interests of the public and not merely for vindication of the individual or personal rights of the plaintiff. As was stated by Woodroffe, J. in Budreedas v. Choonilal [ILR 33 Cal 789 at p 807] :

> *"It is obvious that the Advocate-General, Collector or other public officer can and do sue only as representing the public, and if, instead of these officers, two or more persons having an interest in the trust sue with their consent, they sue under a warrant to represent the public as the objects of the trust. It follows from this, that when a person or persons sue not to establish the general rights of the public, of which they are a member or members, but to remedy a particular infringement of their own individual right, the suit is not within or need not be brought under the section."*

9. This principle was accepted as sound by a Full Bench of the Madras High Court in Appanna v. Narasigna [ILR 45 Mad 113] . In that case, a suit was instituted by a trustee of a public religious trust against a co-trustee for accounts and the Full Bench decided that it did not come within Section 92 of the Civil Procedure Code, the claim being to enforce a purely personal right of the plaintiff as a trustee against his co-trustees. The same view was taken by the Madras High Court in The Tirumalai-Tirupati Devasthanams Committee v. Udiayar Krishnayya Shanbhaga [ILR 1943 Mad 619] . In this case the general trustees of a public temple filed a suit against the trustees for the recovery of moneys which the latter had collected on behalf of the former praying for a decree directing accounts and inquiries. It was held that the right to collect moneys was entirely independent of Section 92 of the Civil Procedure Code and no sanction of the Advocate-General was necessary for the institution of the suit. Leach, C.J. who delivered the judgment of the Court observed as follows:

> *"After hearing the arguments of learned Counsel in the present case we can see no reason for disagreeing with anything said in Shanmukham Chetty v. Govinda Chetty [ILR 1938 Mad 39] . On the order hand we find ourselves in full agreement with the opinion of Varadachariar, J. that, 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 is brought. The judgment of the Privy Council in Abdur Rahim v. Mahomed Barkat Ali [(1927) ILR 55 Cal 519 (PC)] lends no support for the opinion expressed by the Full Bench in Janki Bai v. Thiruchitrambala Vinayakar [(1935) ILR 58 Mad 988 (FB)] ".

10. Applying the principle laid down in these authorities, we are of opinion that in the present case the suit brought by the appellant must be treated as a suit brought by her in a representative capacity on behalf of all the beneficiaries of the Wakf. As we have already stated, the Wakf created by Haji Elahi Bux was a Wakf created for a public purpose of charitable or religious nature. The reliefs claimed by the appellant in the suit are not reliefs for enforcing any private rights but reliefs for the removal of the defendant as trustee and for appointment of a new trustee in his place. The reliefs asked for by the appellant fall within clauses (a) and (b) of Section 92(1) of the Civil Procedure Code and these reliefs claimed by the appellant indicate that the suit was brought by the appellant not in an individual capacity but as representing all the beneficiaries of the Wakf estate. We are accordingly of the opinion that the suit falls within the purview of the provisions of Section 92, Civil Procedure Code and in the absence of the consent in writing of the Advocate-General the suit is not maintainable."

(Emphasis supplied)

130. In ***Sugra Bibi*** *(supra),* the suit was brought by the plaintiff-appellant who was the wife of a deceased joint-Mutwalli praying that the defendant-respondent who was the other joint-Mutwalli, be removed from his office and that her minor son be instead appointed as Mutwalli of the Wakf Estate. Still, this Court had held that the suit brought by the appellant must be treated as one instituted in a representative capacity on behalf of all the beneficiaries of the Wakf. It was stated that the reliefs were not for enforcing any private rights but for the removal of the defendant as a trustee and for the appointment of a new trustee in his place. Therefore, what follows is that the true nature of the suit must be determined on a comprehensive

understanding of the facts of the matter and not merely on a superficial consideration of who is bringing the suit.

131. The aforesaid principle was reiterated in ***Ramji Tripathi*** *(supra)* wherein this Court endeavoured to ascertain the 'real nature of the suit' to assess whether it was for the vindication of personal or public rights. It was stated that it is the object or purpose of the suit and not the reliefs that must decide whether the suit is one for agitating personal or public rights. Further, it was opined that taking into account the dominant purpose of the suit in light of the allegations made in the plaint would also aid is assessing the true nature of the suit. Applying the said principle, the suit was ultimately said to not fall within the contours of Section 92 of the CPC since the issue centred around the succession to the headship of a Math and was concerned with the right to the office of a trustee. The Court also observed that if the real purpose in bringing the suit was to vindicate the general right of the public i.e., to have the rightful person appointed to the office, then there was no reason for the plaintiffs to have omitted to implead or at least refer to the other persons who were nominated by the predecessor in his Will, in the plaint. The relevant observations are reproduced hereinbelow:

> "*10. A suit under Section 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 under Section 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 [AIR 1938 Mad 92 : 176 IC 26 : 1937 MWN 849] , Tirumalai Devasthanams v. Udiavar Krishnayya Shanbhaga [AIR 1943 Mad 466 : (1943) 56 LW 260] , Sugra Bibi v. Hazi Kummu Mia [AIR 1969 SC 884 : (1969) 3 SCR 83 : (1969) 2 SCJ 365] and Mulla: Civil Procedure Code (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 under Section 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 under Section 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 or the individual right of the plaintiffs or third persons.

12. The trial court, after reading the allegations in the plaint and after looking into the entire evidence in the case, came to the conclusion that the suit was primarily one for declaration that Krishnabodhashram was duly installed as the Shankaracharya of the Math on June 25, 1953 and that Respondent 1 had no right to be nominated as the Head of the Math by Brahmanand as he did not possess the requisite qualification and that his possession of the Trust property was only in the capacity of a trustee de son tort, and so he must be removed from the headship of the Math. The High Court saw no reason to differ from the finding. We would be slow to disturb a finding of this nature especially when we see that the allegations in the plaint are reasonably susceptible of being so read. We think that the purpose of the suit was to settle the controversy as to whether Krishnabodhashram or Respondent 1 had the better claim to the headship of the Math and to the possession and management of its properties by obtaining a declaration of the Court. If the real purpose in bringing the suit was to vindicate the general right of the public to have the rightful claimant appointed to the office, there was no reason why the plaintiffs omitted to implead or at least refer in the plaint to the three persons nominated by Brahmanand in his Will to succeed him in the order indicated therein especially when it is seen that the plaintiffs accepted the custom of the Math to have the successor nominated by the incumbent for the time being of the office of Shankaracharya."

(Emphasis supplied)

132. The same was reiterated in by this Court in ***Vidyodaya Trust*** *(supra).* It was cemented that the court must go beyond what is literally stated in the reliefs and focus also on the purpose and object for which the suit was filed. On a comprehensive analysis of the averments in the plaint, if it is revealed that the primary object was the vindication of individual or personal rights of some person,

then such a suit must fall. That a hard-and-fast rule cannot be made for ascertaining what the real purpose of the suit is was also emphasized. The same was elaborated as follows:

> ***13.*** *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 under Section 92.*
>
> *-xxx-*
>
> ***19.*** *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 Paramatmanand case [R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1991) 1 SCC 48] a suit under Section 92 CPC is a suit of special nature, which presupposes 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.*
>
> *-xxx-*
>
> ***23.*** *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 Swami Paramatmanand case [R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1991) 1 SCC 48] , 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.

24. *On a close reading of the plaint averments, it is clear that though the colour 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.*"

(Emphasis supplied)

133. On a comprehensive reading of the averments of the plaint in the instant case, what comes across is that the plaintiffs have made serious allegations as regards the misadministration of the appellant Society along with levelling accusations of gross financial impropriety, misconduct and siphoning off of funds by the respondent nos. 3 and 4 respectively. This, they contend, has ultimately affected the public at large who are the beneficiaries of the activities of the appellant society. However, having said the above, it cannot be ignored that the respondent nos. 1 and 2 respectively have also vehemently made averments regarding the wrongful dismissal of the respondent no. 1 from the post of the President and also as a board member of the appellant Society, and seek her reinstatement in one of the prayers. Additionally, they seek a declaration that all the decisions made by the board of the appellant Society after the date of dismissal of the respondent no. 1 be termed as illegal and void. The impugned decision is right in so far as observing that the respondent no. 1 has also sought to agitate personal/private grievances through this suit. It must be kept in mind that a suit under Section 92 is one of a 'special nature'. Therefore, issues involving the day-to-day management of the institution and grievances regarding election of members or certain board decisions pertaining to the

reshuffling of the elected/board members, must not be made in a suit of this nature, especially when such grievances can be redressed through other mechanisms or under a regular suit not falling within Section 92. Such issues must not be deviously magnified or amplified as if there is a breach of trust warranting intervention under this provision.

134. However, the fact that certain private rights are being agitated must not be reason enough to ignore the other allegations made in the suit regarding the functioning of the appellant Society and dismiss the suit outrightly, provided the suit is instituted in a representative capacity. It would always be open for the High Court, during the course of the suit proceedings, to grant not all but only some of the reliefs claimed by the respondent nos. 1 and 2 respectively, for the reason that the others are clearly beyond the scope of what is contemplated under Section 92 of the CPC. The reliefs in the present plaint, insofar as they agitate private rights, cannot be granted under a suit of this nature.

135. Additionally, as opined in ***Charan Singh (****supra)*, when there exist some reliefs which clearly fall under clauses (a) to (g), the other prayers must be seen as constituting "*further relief*" and be interpreted with a conjunctive "and". The non-conformity of those "*further reliefs*" with the reliefs enumerated under clauses (a) to (g) would not necessarily affect the maintainability of the suit itself. Herein, it is limpid that prayers (c), (d) and (e) of the plaint respectively, fall within clauses (a), (d) and (g) respectively of Section 92(1) for the removal of trustee(s), directing

accounts and inquiries, and settling a scheme respectively for the appellant Society. In other words, there exist prayers which clearly bring the scope of the suit within that of Section 92. In such a scenario, the prayers in the plaint which are specific to the vindication of personal rights of the respondent no. 1 would fall under "*further relief(s)*" and not "*other relief(s)*" and not have the consequence of affecting the maintainability of the suit, by themselves. For the sake of argument, had they been the only reliefs prayed for by the respondent nos. 1 and 2, they would have instead fell under the ambit of "*other relief(s)*", and the word "or" under clause (h) would have literally been construed as a disjunctive "or". We would have then examined whether those "*other relief(s)*" were akin to or of the same nature as those already enumerated under clauses (a) to (g) of Section 92(1). Those prayers clearly being for vindication of personal rights would have revealed that the suit's sole and unequivocal purpose was not for any public purpose and have resulted the application for grant of leave to be dismissed. However, that not being the case presently, the prayers made by the respondent nos. 1 and 2 respectively largely fall under the ambit of Section 92(1).

136. As expounded by us in the preceding paragraphs and rightly pointed out in ***Sugra Bibi*** *(supra),* ***Ramji Tripathi*** *(supra)* and ***Vidyodaya Trust*** *(supra)*, what must be looked at, is not only whether the reliefs prayed for fall within clauses (a) to (h) of Section 92(1) but also the predominant object or purpose for which the suit has been filed on a holistic reading of the entire plaint. The question as to whether the suit has been filed by the plaintiffs, as representatives of the public for the

vindication of public rights must assume paramount importance. The capacity in which the plaintiffs are suing must be given due consideration. As elaborated by us above, some prayers i.e., prayers (a) and (b) of the plaint fall outside the scope of Section 92(1) and some i.e., prayers (c), (d) and (e) of the plaint fall within the scope of Section 92(1). A reading of the contents of the plaint reveal several averments regarding the circumstances which led to the dismissal of the respondent no. 1 as also circumstances and events indicating the questionable conduct on part of respondent nos. 3 and 4 respectively in their capacity as fiduciaries. Therefore, the allegations in the plaint by themselves are also not clearly indicative of a single object/purpose for which the suit has been instituted i.e., whether it has been instituted by the respondent nos. 1 and 2 for the vindication of public rights in a representative capacity or for the purpose of canvassing personal grievances alone. No doubt, the respondent nos. 1 and 2 respectively may also have a personal axe to grind with the appellant Society and also respondent nos. 3 and 4 respectively, however, insofar as the background in which prayers (c), (d) and (e) have been made, it cannot be said with certainty that these prayers are also made with an absence of bona fides and a with vested interests. It cannot be said that the appellant Society is being needlessly entangled in a frivolous litigation or in a dispute which only pertains to the election/day-to-day management of the appellant Society.

F. CONCLUSION

137. For the sake of convenience, a conspectus of the legal and factual discussion in the preceding paragraphs is as follows:

i. A suit under Section 92 of the CPC is a representative suit of a special nature since the action is instituted on behalf of the public beneficiaries and in public interest. Obtaining a 'grant of leave' from the court before the suit can be proceeded with, acts as a procedural and legislative safeguard in order to prevent public trusts from being subjected to undue harassment through frivolous suits being filed against them and also to obviate a situation that would cause a further wastage of resources which can otherwise be put towards public charitable or religious aims. However, at the stage of grant of leave, the court neither adjudicates upon the merits of the dispute nor confers any substantive rights upon the parties.

ii. Several decisions of this Court have outlined certain conditions or essential pre-requisites that need to be fulfilled for a suit to be maintainable under this provision. This Court in ***Ashok Kumar Gupta*** *(supra)* delineated them as follows – (a) the trust in question must be created for public purposes of a charitable or religious nature; (b) there must exist a breach of trust or a direction of the court must be necessary for the administration of the trust; and (c) the relief claimed must be one or other of the reliefs as enumerated under Section 92(1) of the CPC. In order to successfully establish that a suit is not maintainable under Section 92, it would be sufficient to prove that any one of the conditions enumerated above has not been met, however, in order to assert its maintainability, all the aforesaid conditions need to be satisfied.

iii. A trust can be said to have been created for a 'public purpose' when the beneficiaries are the general public who are incapable of exact ascertainment. Even if the beneficiaries are not necessarily the public at large, they must at least be a classified section of it and not a pre-ascertained group of specific individuals.

iv. A crucial condition that needs satisfaction is whether the institution/organisation in relation to which certain reliefs are sought can in fact be considered to be a 'trust' or a 'constructive trust'.

v. When no formal recognition has been given to the institution, the creation of a public trust can be inferred from the relevant circumstances surrounding the coming into existence of and functioning of the institution/entity in question. Although it is not possible to provide an exhaustive list of the same, yet they may include – (a) the method of devolution of the property to the institution or its acquisition and the circumstances along with the intention behind the grant of property i.e. whether it was for the benefit of the organization/public beneficiaries or for the personal benefit of any particular individual/family; (b) whether the grant is accompanied with any fetter/obligation or qualified with a condition, either express or implied, regarding its use by the grantee; (c) whether the 'dedication' was complete i.e., whether there was an absolute cessation or complete relinquishment of ownership of the property on the part of the grantor and a subsequent vesting of the property in another individual (trustee) for the said object; (d) whether the public user or an unascertained class of individuals could exercise any 'right' over the organization and its

properties; (e) the manner of use of the profits accrued, more particularly, whether it is applied/re-applied towards the benefit of the organization and its objectives, etc.

vi. If the aforementioned circumstances exist and the entity has been, much later in time, registered as a society under the Societies Registration Act, 1860, it would still be treated as a 'public trust' as per the dictum of the Full Bench of the Kerala High Court in ***Kesava Panicker*** *(supra)* wherein it was observed that the mere factum of registration of a society under the Societies Registration Act, 1860, after it attained the characteristics of a public trust, could not change the character of the properties which had already been constituted as trust properties.

vii. However, if the institution has been registered, from its inception, as a society under the Societies Registration Act, 1860, it is true that whenever a society acquires property, it cannot be said that it declares itself a trustee in respect of said property. In other words, the effect of registration under the Societies Registration Act, 1860 would not be to automatically invest the properties of the society with the character of trust property. This has been consistently laid down by the decisions of several High Courts.

viii. Having said so, one must examine what effect the mechanism of vesting provided under Section 5 of the Societies Registration Act, 1860 has on the society. It reads that – "*The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society[…]*". What

follows is that the property belonging to the society can either be vested in 'trustees' or in the governing body of the society. This vesting has been envisaged because a society registered under the aforesaid Act is not a juristic person or a body corporate capable of holding property by itself.

ix. The phrase, "*if not vested in trustees*" must be read to mean that a trust can be created, either expressly or impliedly, before or after the registration of a society, for the purpose of holding its properties. A public trust would be created prior to the registration of a society if the broad circumstances enumerated under point (v) are met. In such a case, all the properties of the society which had been imbued with the character of 'trust property' would be subject to Section 92. However, if it is argued that a trust has instead separately been created for holding the property of the society after its registration as a society, the same must be clearly and sufficiently proven. Here, the separate trust which has been created and the properties which has been vested in said trust would be subject to scrutiny under Section 92. In both these scenarios, an 'express trust' would be created and in a suit under Section 92 CPC, the first criteria i.e., the existence of an express or constructive trust, would be met.

x. In the absence of such a separate vesting in trustees as aforesaid, the property belonging to the society would be automatically vested, through a deeming fiction, in the governing body of the society. Such a governing body is duty bound to ensure that the property is put towards and utilised for the purposes/aims of the society as laid out in its Memorandum of Association or any Rules and Regulations governing the said matter. In the event of the

society's dissolution, the members would not derive any right to distribute the assets belonging to the society between themselves. Both during the subsistence and dissolution of the society, the members or the governing body cannot be said to possess any beneficial or individual interest over the property vested in them. They would also safeguard the society's property for the future members of the society or the future governing body such that perpetuity is assigned to both the society and its property, unless expressly dissolved. All these factors evidence that the governing body must also act within the contours of a strict fiduciary relationship.

xi. Legislative creativity was employed to ensure that the incapability of the society to hold the property by itself does not have any practical effect on its ability to use and administer those properties while also ensuring that the property of the society may not be squandered or the object and purpose for which the society was formed may not be defeated by persons having control of the properties. Therefore, Section 5 can be seen as providing two options, or mechanisms through which a society can hold the property belonging to itself – *One,* in trustee(s) or, *two,* in the governing body of the society. Both these mechanisms/options belong to the same genus (fiduciaries), albeit they don't fall in the same species (the former is a trustee *stricto sensu* and the latter is not).

xii. Therefore, while the society cannot be considered as an 'express trust', what must also be noted, at this crucial juncture, is that, for an entity to be brought within the rigours of Section 92, the plaintiff has the option of also contending

that a 'constructive trust' exists in the circumstances and a breach of such a constructive trust has occurred or that the directions of the Court are necessary for the administration of such a constructive trust.

xiii. A constructive trust, arises by operation of law, without regard to or irrespective of the intention of the parties to create a trust. It is imposed predominantly because the person(s) holding the title to the property would profit by a wrong or would be unjustly enriched if they were permitted to keep the property. The American and English models of 'constructive trust' although similar in nomenclature, bears a doctrinal difference, the former is remedial while the latter is institutional. In other words, in implying the existence of a constructive trust, the English Courts recognise or give legal efficacy to a fiduciary/confidential relationship or 'institution' that already exists. It would arise, by operation of law, but when one person is under an existent obligation to hold a certain property for another. This constructive trust would come into existence from the date of the circumstances which give rise to it and the function of the court would only be to declare that such a trust has arisen in the past.

xiv. What must, however, be noted is that, for this equitable doctrine to be applied, the fiduciary must receive property or money which he cannot conscientiously retain. It is only thereafter that a constructive trust would be raised in favour of the beneficiaries on whose account the money was originally received. To put it simply, the factum that the fiduciary 'withheld' the property from its rightful beneficiaries must be established. That such a fiduciary sought to misapply the

property in contravention to the covenants that bound him, or sought to gain an advantage for himself, must be proved for a constructive trust to come into existence by the operation of law. That he further divested the said siphoned property/funds, would have to be proved in order to assert that the 'constructive trust' has additionally been breached. Even in the absence of such a further divestment, the directions of the court may still be necessary for the administration of the constructive trust.

xv. The respondent nos. 1 and 2 respectively, having made several allegations of siphoning of funds by the respondent nos. 3 and 4 respectively, for their own personal use, could be said to have *prima facie* satisfied the condition required to apply the doctrine of constructive trust to the present facts. Not to mention that, if these allegations are found to have no substance or plainly false, the entire suit would fail. But, in the peculiar circumstance in which the present matter rests, that would happen also for the reason that the circumstances which required the imposition of a constructive trust do not exist/have not been proven. However, if found true, all the property diverted for the purpose of obtaining a pecuniary advantage would be subject to a constructive trust, the administration of which can be sought in a suit under Section 92 of the CPC and the respondent nos. 3 and 4 respectively would be considered to be 'constructive trustees'.

xvi. The phrase "*persons having an interest in the trust*" must neither be construed too narrowly nor too widely. It must not be narrow for the reason that the word used is "*interest*" instead of "*direct interest*". However, it must also be

remembered that while no direct interest is required, the interest must denote a present and substantial interest and not a sentimental, remote, fictitious or purely illusory interest.

xvii. While scrutinising whether the respondent nos. 1 and 2 respectively are persons interested in the trust and whether they are bringing the suit in a representative capacity, it is not just their designation or position which must be looked into or given importance to. While recognising that they have also sought some remedies related to personal grievances and the wrongful dismissal of the respondent no. 1 which could be seen as unduly magnifying an election dispute, there are several other allegations in the plaint which cannot simply be ignored and which give the respondent nos. 1 and 2 respectively, a dual role/capacity, whilst they're agitating the matter under Section 92 of the CPC. The larger background in which the suit is brought alludes to the existence of public interest also at play.

xviii. The reliefs claimed by the plaintiffs, must fall within those reliefs outlined under Section 92(1). As regards the question when a relief can be considered to fall under the residual clause (h) providing for "*further or other relief*" under Section 92(1), this Court in ***Charan Singh*** *(supra)* elaborated that if the relief prayed for is not a "*further relief*" but an "*other relief*" which is not in any way consequential to or in addition of the certain other reliefs already mentioned under clauses (a) to (g) and prayed for, then the "*other relief*" must be akin to or of the same nature as any of the reliefs enumerated under clauses (a) to (g).

xix. Furthermore, the special nature of the suit under Section 92 requires it to be filed fundamentally on behalf of the public for the vindication of public rights. Therefore, courts must go beyond the reliefs and also give due regard to the object and purpose for which the suit is brought. The true nature of the suit must be determined on a comprehensive understanding of the facts of the matter and a hard-and-fast rule cannot be made for the same. The fact that certain private rights are being agitated must not be reason enough to ignore the other allegations made in the suit and dismiss it outrightly, provided the suit is instituted in a representative capacity. The reliefs in the present plaint, insofar as they agitate private rights, cannot be granted under a suit of this nature.

xx. It is clarified that the issues involving the day-to-day management of the institution and grievances by members *qua* other members as regards the election of members or certain board decisions pertaining to the reshuffling of the elected/board members, must not be made in a suit of this nature, especially when such grievances can be redressed through other mechanisms or under a regular suit not falling within Section 92. Such issues must not be deviously magnified or amplified as if there is a breach of trust warranting intervention under this provision. Therefore, the reliefs insofar as the removal of the respondent no. 1 from the post of President and board member respectively are concerned along with the grievances which the respondent nos. 1 and 2 respectively may have with the other board members, would have to be agitated in a separate suit not being falling under Section 92 of the CPC.

138. For all the foregoing reasons, this appeal fails and is hereby dismissed. The underlying suit bearing CS (OS) No. 153 of 2020 filed before the Single Judge of the High Court must be commenced at the earliest and the High Court must pay careful attention to whether the circumstances necessitating the imposition of a 'constructive trust' is made out. If yes, it must delineate the properties which would be subjected to the constructive trust and assess whether the reliefs prayed for under prayers (c), (d) and (e) respectively of the present plaint may be granted.

139. The Registry shall circulate one copy each of this judgment to all the High Courts.

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

……..J.

(J.B. Pardiwala)

……..J.

(R. Mahadevan)

New Delhi.
5th August, 2025.