

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : Code of Civil Procedure**

OMP 416/2003

DATE OF DECISION: December 1, 2008

BROOKE HOSPITAL FOR ANIMALS and ORS. .... Petitioners  
Through: Mr.T.K.Ganju, Sr. Advocate with  
Ms.Bharti, Advocate.

versus

BROOK HOSPITAL FOR ANIMALS (INDIA)  
and ORS. EC .....Respondents  
Through: Ms.Shivani Lal and Mr.S.B.Sharma,  
Advocates for R-1 and 2.

**JUDGMENT**

REVA KHETRAPAL, J.

1. By this petition, leave is sought by the petitioners 1 to 3 to institute a suit under Section 92 of the Code of Civil Procedure as per the draft plaint enclosed, in respect of the respondent No.1, which is a public charitable trust set up in India on the 25th day of February, 1992 by a trust deed of the same date.

2. The petitioner No.1 is an organization established under the laws of England and is registered as a Charity bearing No.1085760, set up with the object of improving the condition and welfare of animals, particularly equine animals. The petitioner No.2 is the erstwhile Chairman of the Animal Welfare Board constituted under the provisions of the Prevention of Cruelty to Animals Act, 1960 by the Government of India from the years 1992 to 1996. The petitioner No.3 is an educationist by profession and was head of

the Academic Department in the Indian Military Academy, Dehradun and is interested in the welfare of animals, and thus interested in the respondent No.1 trust.

3. The petitioner No.1 claims to be the guiding force behind the respondent No.1 trust and to have lent its name and goodwill to the respondent No.1 trust. Apart from this, during the years March, 1992 to January, 1997, the petitioner No.1 claims to have remitted a sum of Rs.1,80,00,000/- (Rupees One Crore Eighty Lacs only) to the respondent No.1 trust, as per the particulars given in the petition, through bank Remittances. The petitioner No.1, as a part of its activities, was desirous of setting up a hospital for animals in the Region of Delhi and made known its said intention to the respondent No.1 through the respondent No.2, who was entrusted with the duty of purchasing real estate in and around Delhi for the aforesaid purpose. The respondent No.2 informed the petitioner No.1 that he had acquired land in Village Bhondsi in District Gurgaon (Haryana). The respondent No.2, however, did not furnish any account of the money spent in the acquisition of the same and also did not give any account of the other steps, if any, taken by him or by the respondent No.1 for setting up of a hospital for the animals on the said land.

4. According to the petitioners, the factual position is that despite huge funds having been provided by the petitioner No.1 and so many years having elapsed, there is no hospital in existence as yet. The petitioners, on making inquiries, have now learnt that the respondent No.1 has acquired about 6.5 acres of land in Gurgaon, by sale deeds, copies of which have been obtained by the petitioners, for a total consideration of Rs.41,27,971/- (Rupees Forty One Lacs Twenty Seven Thousand Nine Hundred Seventy One only). The said land has been found by the petitioners to be lying unutilized. The selection of the said land is also alleged to have been made without taking into consideration the fact that the said land is land-locked and further money will have to be spent to make the said land accessible for use as a hospital for animals. Not only this, it is at a distance of 50 km from Delhi where there is a large deployment of equine animals. According to the petitioners, the respondents appear to have purchased the land without taking into consideration the fact that animals are not brought to hospital at far-flung places and a hospital has to be provided near a place frequented by animals.

5. Thus, the grievance of the petitioners is that the respondents have rendered no account to the petitioners, though the petitioner No.1 alone has transferred funds of over Rs.1.8 crore during the period March, 1992 to January, 1997 to the respondent No.1, out of which there is record of only Rs.41,26,971/- having been spent and there is no proper account of the remaining Rs.1.40 crore. It is also alleged by the petitioners that the respondent No.2, though was forwarding to the petitioner No.1 the minutes of the meetings of the trustees of the respondent No.1 and the balance sheets till the year 1997, has stopped sending the aforesaid documents to hide the mal-functioning in the respondent No.1 trust. Then again, as per the trust deed, the term of the trustees was to be of three years only, but no steps have been taken by the respondents to hold elections for the post of trustees or to allow the professionals or people having love for animals to become involved in the affairs of the respondent No.1.

6. Accordingly, the petitioner No.1 was forced to send a letter dated 3rd July, 1997 to the respondent No.2, with copy marked to the respondents No.3 and 4, informing them that the trustees of the petitioner No.1 had decided to cease to support the operation of the respondent No.1. Subsequently, in November, 1997, the Finance Director of the petitioner No.1, Mr.David J.Nash visited India to look into the financial dealings undertaken by the respondent No.2 in the respondent No.1, and submitted report that all the properties of the trust, (particulars whereof have been mentioned in Para-17 of the petition), including the land, bank account and the eight vehicles of the trust are in the possession of the respondent No.2, which instead of being used for the purpose of the respondent No.1, are being used by the respondent No.2 for his personal gain. The respondents No.3 and 4, the petitioners believe, have been name sake trustees, and the personnel employed by the respondent No.2, though paid salaries and other emoluments by the respondent No.1 trust, are not being utilized for the benefit of the respondent No.1 trust.

7. The petitioners claim to have no personal interest save a dedication to the object for which the respondent No.1 trust has been set up and accordingly seek leave of this Court to institute a suit under Section 92 of the Code in respect of the respondent No.1 trust and for removing the persons claiming to be its existing trustees and for appointing new trustees, and for directing the respondent No.2 to hand over the properties of the respondent No.1 trust to such persons as may be directed by this Court and/or for permitting merger of the respondent No.1 trust with the respondent No.5 trust, which

was incorporated on 07.06.2001 as a Section 25 Charitable Company by the petitioner No.1.

8. The prayer for grant of leave is vehemently contested by the respondents on the ground that it is actuated by persons having vested interests, who are determined to take over the functioning of the respondent No.1 trust for serving their ulterior objectives and achieving their hidden agenda. According to the respondents No.1 and 2, a bare reading of the petition demonstrates that there is no public interest involved of the petitioners seeking leave to institute the suit and, on the contrary, the so-called interest is merely illusory and the object appears to be to settle personal scores and grab the assets of the respondent trust through the respondent No.5 trust.

9. I have heard the learned counsel for the petitioner and the learned counsel for the respondents No.1 and 2. In the course of their arguments, both the counsel reiterated the pleas taken up by them in their respective pleadings.

10. The learned counsel for the petitioners contended, relying upon the decisions reported in 1925 MADRAS 1110 A.V.M.Ramaswami Chettiar Vs. V.M.Muthukaruppan Chettiar and Others, AIR 1932 Allahabad 708 (DB) Sahdeo Das Vs. Raja Ram and others, AIR 1920 Madras 238 Gopalakrishnier Vs. Ganapathy Aiyar and Others, AIR 1968 RAJASTHAN 314 Mangilal Vs. Smt. Durga Devi and others, AIR 1989 ALLAHABAD 194 Ambrish Kumar Singh Vs. Raja Abhushan Bran Bramhshah and others, that at the stage of granting leave to institute a suit under Section 92 of the Code, the Court has merely to see whether there is a prima facie case made out for the grant of leave to file the suit. While granting the leave, the Court does not decide the rights of the parties in the sense of adjudicating upon the same and the order passed by the Court at this stage does not, in any way, affect the final decision to be given on merit after the parties have led their respective evidence in the suit. So much so, that Section 92 of the Code does not contemplate even giving any notice to the proposed defendants before grant of leave, though, it is now well-settled that the Court should normally and as a rule of caution, unless it is impractical or inconvenient to do so, give notice to the proposed defendants before granting leave [See AIR 1991 SC 221 R.M.Narayana Chettiar Vs. N.Lakshmanan Chettiar]

11. The learned senior counsel for the petitioner, Mr.T.K.Ganju also submitted that the respondent No.1 trust is a public trust, and the persons who want to institute the suit, are indubitably interested in the affairs of the

trust, which are being mismanaged, financially as well as otherwise. Per se, this is sufficient for the grant of leave to institute the suit for the reliefs mentioned in Section 92 of the Code.

12. Per contra, the learned counsel for the respondents contended that it is not open to this Court to grant leave to institute the suit under Section 92 CPC in the present case, as on the petitioners' own showing, they ceased to have any interest in the respondent No.1 trust after the year 1997. Section 92(1) CPC stipulates that a suit under the aforesaid section can be filed by persons having 'real interest' in the affairs of the trust. The said 'interest' has to be genuine and cannot be vague, general or illusory. Reliance is placed in this regard on the judgments of the Madras High Court and Delhi High Court reported in AIR 1919 Madras 384 T.R. Ramachandra Iyer and another Vs. P.A. Parameswaran Munbu and others and 138(2007) Delhi Law Times 329 Rahul Jain and Anr. Vs. Pradeep Kumar and Ors., to emphasize that the interest must be an existing interest and a substantial one, and not a sentimental or a remote interest, or a contingent one. Learned counsel also contended that the object of the provisions of Section 92(1) CPC is to mitigate harassment to the trustees at the behest of motivated persons out to vindicate personal scores. It was submitted that the respondent trust has not violated any law, that the allegations of financial mismanagement are belied by the record, that the new trustees have been appointed and that the trust is functional with its limited resources. Finally, it was submitted that the land was purchased in the name of the respondent No.1 trust on 21.02.1995 with the approval of the petitioner No.1 and after the visit of UK based trustees, who were specifically consulted about it when they visited India.

13. Having heard the learned counsel for the parties, in my opinion, the instant case is a clear cut case where leave to institute the suit must be granted. As held by the Hon'ble Supreme Court in Swami Parmatmanand Saraswati Vs. Ramjee Tripathi (1975) 1 SCR 790 at page 796: AIR 1974 SC 2141 at page 2145, to see whether a suit falls within the ambit of Section 92 of the Code, only the allegations made in the plaint should be looked into in the first instance. But, if after the 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 of fact or reason, but is made only with a view to bring the suit under the aforesaid section, then such a suit must be dismissed.

14. Indubitably, the whole object of enacting Section 92 of the Code was 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 the leave of the Court to be obtained before the suit was instituted. The main purpose of the section is thus to afford protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. It provides that the suits can either be filed by the Advocates General or by two persons having interest in the trust with the written consent of the Advocate General (now with the leave of the Court) [See: Mulla Code of Civil Procedure 16th Edition at page 970-971].

15. It is also well recognized that the Court while granting leave has to assess from the plaint and see not only whether the persons suing were persons who had an interest in the trust, but also whether the trust was a public trust of the nature defined in the section and whether there were prima facie grounds for thinking that there had been a breach of trust. In other words, the litmus test is for the applicability of section 92 is to see whether the suit is fundamentally on behalf of the public and for the vindication of a public right. The defendants are issued notice so as to enable them to bring to the notice of the Court that the allegations made in the plaint are frivolous or reckless and/or in a given case the persons who are applying for leave under Section 92 of the Code are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. Thus, though the issuance of notice to the defendant is not a statutory requirement, the desirability of doing so is beyond the pale of controversy.

16. In the above context, reference may be made to the dicta laid down by the Hon'ble Supreme Court in Chettiar's case (supra). In paragraph-17 of its judgment, the Supreme Court observed as follows:- "17.....the defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under Section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave under Section 92 can be granted.....?"

17. In the present case, it is not in dispute that the respondent No.1 is a public trust, set up primarily with the funds of the petitioner No.1, who remitted a sum of Rs.1.80 crores through bank remittances for the setting up of a hospital for animals. It also does not appear to be inserious dispute that only a sum of about Rs.43.75 lacs was invested for the purchase of land for the building of the hospital. It is also not disputed from the side of the respondents that no hospital is in existence, despite the funds having been remitted to the respondent No.2 during the period March, 1992 to January, 1997. The allegation made in the plaint is that the respondent No.2 is running the respondent No.1 trust as his personal fiefdom. By no stretch of imagination it can be said that the petitioners have no personal interest in the matter, as the petitioner No.1 is the founding spirit of the trust and the petitioners No.2 and 3 are the trustees of the respondent No.1 trust. It is for the respondents to establish by leading cogent evidence that there has been no breach of trust on their part and the respondent No.1 trust, which was set up for the welfare of the animals, particularly equine animals. This, the respondents can only do if leave to institute a suit is first granted to the petitioners.

18. To conclude, I have no hesitation in holding that the petitioners have made out a prima facie case for the grant of leave under Section 92 of the Code. Leave to institute the suit is accordingly granted to the petitioners. The draft plaint submitted with the petition shall now be registered as a suit. OMP 416/2003 stands disposed of in the above terms.

Sd/-  
REVA KHETRAPAL,J