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**Court : Delhi**

**Decided On : Aug-23-2006**

**Reported in : 138(2007)DLT329; 2007(94)DRJ89**

**Judge : Gita Mittal, J.**

**Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 92 - Order 1, Rule 10 - Order 4, Rules 1 and 2 - Order 6, Rule 1 - Order 22, Rule 3 - Order 47, Rule 1; [Religious Endowments Act, 1863](#); [Partnership Act, 1932](#) - Sections 69**

**Appeal No. : IA 3947/2004 in CS(OS) No. 512/2004**

**Appellant : Rahul Jain and anr.**

**Respondent : Shri Pradeep Kumar and ors.**

**Advocate for Def. : Atul Kumar, Adv. for Defendant No. 1 and ; G.S. Raghav and ;**

**Advocate for Pet/Ap. : Reetesh Singh, Adv**

**Disposition : Application allowed**

**Judgement :**

**Gita Mittal, J.**

1. This application raises an interesting issue on first principles of adjudication on a application under Section 92 of the Code of Civil Procedure, 1908. The question raised relates to the maintainability of an application under Section 92 of the Code of Civil Procedure, 1908. One of two applicants who have sought leave to sue a trust under Section 92 of the Code of Civil Procedure, 1908 expired. Thus, the moot which requires to be answered is whether the two persons who have submitted the application have to be alive and in existence on the date when the petition is filed or whether the relevant date of their existence is the date on which the application is actually taken up for consideration by the court.

2. The facts which give rise to the present petition to the extent necessary for adjudication of the present petition are noticed hereafter.

Shri Rahul Jain and Shri Surender Kumar filed an application being is No. 9572/1999 under Section 92 of the Code of Civil Procedure, 1908 (which is hereafter referred to as the CPC). It was averred that late Bhola Nath had created a charitable trust in respect of property bearing municipal No. 1042 - 1046 Bazar Sita Ram, Delhi. It is contended that his sons late Shri Triloki Nath, late Amar Nath and Late Bishambhar Nath were the first three founder trustees. The plaintiff No. 2 Shri Surender Kumar claimed that his appointment as a trustee upon the death of his father late Amar Nath on 10th February, 1991 was communicated by the other two trustees that is Shri Triloki Nath and Shri Bishambhar Nath vide a communication dated 16th September, 1991. Shri Surender Kumar claims that he assumed the duties and responsibilities as a trustee vide a communication dated 6th October, 1991. It has been contended that after assuming his duties and responsibilities, Shri Surender Kumar found out that the properties of the trust were being mismanaged and were not being kept properly by the defendants and further that defendant No. 1 was neither a trustee nor had any authority to deal with the trust properties. Various other averments have been made challenging the authority of the defendant No. 1 to function as a trustee and purported acts of mismanagement on the part of the defendants have been set out in the proposed plaint which was filed with the is No. 9572/1999.

3. This application under Section 92 of the Code of Civil Procedure, 1908 was filed Along with the proposed plaint on 15th September, 1999 and remained pending for several dates. Unfortunately, plaintiff No. 2 Shri Surender Kumar expired on 16th September, 2002 before adjudication in is No. 9572/1999. After the death of Shri Surender Kumar, the applicant No. 2, an application was filed under Order 22 Rule 3 of the Code of Civil Procedure, 1908 for substitution on 11th December, 2002. By this application filed by the defendant No. 2 Shri Rahul Jain, leave was sought to substitute Shri Narender Kumar, brother of the deceased Surender Kumar as a plaintiff No. 2 . This application was taken up for hearing on 5th March, 2003. It was held by this Court that since the suit was filed by two trustees against the other trustees who are alleged to be mismanaging the affairs of the trust, the provisions of Order 22 Rule 3 of the Code of Civil Procedure, 1908 are not applicable unless and until some other trustee wants to be imp leaded as a trustee. The application was thereforee dismissed.

4. So far as is No. 9572/1999 seeking leave to sue is concerned, the same came up for hearing on 20th February, 2004. It is an admitted position that on this date, only one of the two persons who had filed the application was surviving. The court took the view that since at the time of filing of the suit, two applicants were there, it could not be said that leave to sue should be declined on account of death of one of the applicants. The application was allowed. However, it was specifically directed thus:

However, this question will remain open to be decided in case the defendants raise an objection against the maintainability of the suit on this ground in their written statements

So far as the main petition was concerned, it was directed that the same be registered as a suit and the defendants were given time to file fresh written statements within four weeks.

5. Immediately, thereafter the defendant Nos. 3 and 4 have filed the present application under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 seeking review of the order dated 20th April, 2004. It is contended that the civil rule which was filed by Shri Rahul Jain and Shri Surender

Kumar, though validly filed was rendered incompetent on account of the death of Shri Surender Kumar and as such the application filed by them under Section 92 of the Code of Civil Procedure, 1908 deserve to be turned down. It has been contended that the condition of the suit being instituted by two or more persons under Section 92 of the Code of Civil Procedure, 1908 was mandatory which in the instant case was not fulfilled. The relevant time of consideration of this condition being satisfied was the date on which the application seeking leave to sue was taken up, which was on 20th April, 2004. Consequently, the leave granted to only one proposed plaintiff was in apparent and clear violation of the provisions of Section 92 of the Code of Civil Procedure, 1908. The applicants have contended that the issue with regard to the maintainability of the action could not have been postponed till objection was taken in the written statement inasmuch as this illegality was glaring on the face of the record.

6. Mr. G.S. Raghav, learned counsel appearing for the defendants has further submitted that the law recognises a difference between 'filing and institution' as two different and distinct stages of a suit. Till such time leave is granted under Section 92 of the Code of Civil Procedure, 1908, there is no institution of the suit in the eyes of law. Merely filing a proposed plaint Along with the application under Section 92, does not mean that the suit has been instituted when it was filed. Institution relates to the date on which leave is granted and the suit is registered in accordance with Order 4 Rule 2 of the Code of Civil Procedure, 1908. The institution of a suit is effected under the provisions of Order 6 Rule 1 of the Code of Civil Procedure, 1908. On these submissions, it has been contended that the order dated 20th April, 2004 is contrary to law and requires to be reviewed.

7. On the other hand, Mr. Reetesh Singh learned counsel for the plaintiff has contended that the requirement of two persons joining to file the application under Section 92 is merely a technical requirement. Placing reliance on the pronouncement of the Apex Court in : AIR 2006 SC269 Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr. it is contended that non-compliance with the procedural requirement would not defeat the ends of substantial justice. Reliance is also placed on the application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 filed by the plaintiff on 18th August, 2004 which application being

is No. 6040/2004 is pending even on date. This application seeks leave to substitute the plaintiff No. 2 the name of the applicant. The application has been filed by one Jeet Jain. It is contended that if this application is allowed, there will be no defect in the suit inasmuch as the same would have been filed and maintained on behalf of two defendants. Placing reliance on 110 (2004) DLT 649 Shipping Corporation of India Ltd. v. Machado Brothers and Ors., it is contended that it is the duty of the court to take such action as is necessary in the interest of justice and to make orders to prevent the abuse of process of the court. It is contended that the court has inherent powers which are in addition to and complementary to the powers expressly conferred under the Code of Civil Procedure and therefore this Court has inherent power to permit impleadment of another applicant so as to render the present suit maintainable.

8. Having heard learned counsel for the parties and having gone through the record, it is to be noted that Section 92 of the Code of Civil Procedure, 1908 provides the conditions in which a suit may be filed in the case of any alleged breach of an express or constructive trust created for public purposes. The law provides that such suit can be filed either by the Advocate General or two or more persons having an interest in the trust. The suit can be instituted only with the leave of the court. It would be useful to notice the requirement of the statute in extenso which reads thus:

Section 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 a new trustee;

(b) appointing a new trustee;

(c) 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;

(e) 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.

9. Undoubtedly and admittedly the present suit is a suit wherein it has been alleged that the defendants are deliberately violating the conditions of the trust which was created for public purpose and is of charitable nature and a direction has been sought for administration of such trust. thereforee the suit clearly falls within the purview of Section 92 of the CPC. The statute has provided the conditions required to be fulfilled for the purpose of institution of the suit. Rule 1 of Order 4 of the CPC mandates that every suit shall be instituted by presenting a plaint in duplicate to the court or such officer as is appointed in this behalf. Under Rule 2 of Order 4, the particulars of every suit are required to be entered in a book to be kept for the purpose which is called the register of civil suits.

10. Section 92 of the Code of Civil Procedure, 1908 contains a prohibition that in order to maintain a suit against the public charity, no suit can be instituted without

leave of the court. therefore, merely filing a proposed plaint accompanied by an application under Section 92 seeking leave to institute a suit would not amount to institution of the suit within the meaning of the expression as laid under Rule 1 of Order 4.

11. In 110 (2004) DLT 649 Shipping Corporation of India Ltd. v. Machado Brothers and Ors., the Apex Court held that the courts have all necessary powers under Section 151 of the Code of Civil Procedure, 1908 to make orders to prevent the abuse of the process of the court. In this matter, the court was considering an order whereby a suit was dismissed on the ground that it had been rendered infructuous by disappearance of the cause of action. The court held that continuance of the suit which had become infructuous by disappearance of the cause of action would amount to abuse of process of court and interest of justice required that the suit should be disposed of as having becoming infructuous. For this purpose, it was held that the court would exercise inherent powers under Section 151 of the Code of Civil Procedure, 1908 to make such an order to prevent the abuse of the the process of the court. The principles noticed above were laid down by the Apex Court in a factual situation which was clearly distinct from the issue which has been raised before this Court and consequently would have no application to the matter which is being considered herein.

12. To the same effect are the principles laid down by the Apex Court in : AIR 2006 SC269 Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr. In this judicial pronouncement, the court held that the requirements relating to a pleading, memorandum of appeal or application or petition for relief were procedural and non-compliance thereof should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure which is hand maiden to justice, should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use.

The Apex Court in this judicial pronouncement also laid down the well recognised exceptions to this principle which were enumerated thus:

- (i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
- (iii) where the non-compliance of violation is proved to be deliberate or mischievous;
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court; and
- (v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.

13. So far as the requirement of the suit under Section 92 being instituted by two or more persons is concerned, the prohibition is to be found in the statute itself. The object and reason for stipulating that a suit against the public trust would lie at the instance of the Advocate General or two persons or more who must seek leave of the court is to be found in public policy that a trust should not be unnecessarily dragged into litigation at the instance of any disgruntled trustee or person. The proposed suit must be at the instance of at least two persons and therefore application to seek leave has to be filed by two such persons. The two persons who are desirous of instituting the suit must therefore exist on the date when the application under Section 92 seeking leave to sue is to be heard.

14. This statutory mandate finds consideration in several authoritative and binding judicial precedents. It has been conclusively and repeatedly held that the suit under Section 92 must be brought by all the persons to whom the sanction of the Advocate General has been given and a suit instituted by some of them only is not maintainable. In these circumstances, in *Narain Lal and Ors. v. Sunder Lal (Dead) and Ors.* : [1967]3SCR916 , the court had occasion to consider a case where four persons obtained the consent of the Advocate General of Rajasthan to institute a suit against the respondents under Section 92 of the Code of Civil Procedure,

1908. Shortly thereafter, one of the said four persons died and the suit was instituted by three survivors. A preliminary issue was taken by the defendants as to whether the suit filed by three persons, while permission to sue has been given to four, is maintainable? It was held by the Supreme Court that an authority to sue given to several persons is joint authority and must be exercised by all jointly. A suit by some of them is not competent. When sanction in the present case was given to four persons and one of them died before the institution of the suit, a suit by the remaining three was incompetent. thereforee sanction must be obtained afresh by the survivors for the institution of the suit.

15. A different situation arose for consideration before the High Court of Judicature at Chennai. In the judicial pronouncement reported at : AIR2003 Mad241 L.M. Menezes and Ors. v. Most Rev. Arul Das Jamas and Ors., leave to institute a suit against the trust under Section 92 of the Code of Civil Procedure, 1908 was granted to the plaintiffs. However the trust had not been imp leaded as a party to the proceedings and other persons were added as defendants in their private capacities. The plaintiffs filed an application submitting that they had made all parties connected to the trust as defendants to the suit. However, on account of legal advice received, they were required to make the trust as a defendant which was a necessary and proper party to the suit and they sought impleadment of the trust as a party/defendant. Even though, it was pleaded that there were clear averments in the plaint relating to the interest of the plaintiffs qua the trust, the court held thus:

24. The plaintiffs filed application No. 3668 of 2002 to implead the Trust as the 10th defendant on the ground that it is a necessary and proper party. there is no dispute that the Trust is necessary and proper party, but the only question is whether the Trust can now be imp leaded after getting the leave without making the Trust as a party to the suit. The learned counsel for the plaintiffs contended that, by mistake the Trust is not made as a party previously and now,t he defect can be curred by impleading the Trust. This is mainly opposed by the contesting defendants alleging that the ex parte order of leave was obtained without impleading the Trust. Once leave of the Court has been obtained for institution of a particular plaint, no new party can be imp leaded in that plaint. the only remedy is

to obtain leave of the Court afresh and then file a suit making the Trust as a party. The non-impleading of the Trust goes to the root of the matter. Under the circumstance, I am of the view that although the Trust is a necessary and proper party, the impleading should have been done even in the inception before getting leave. Now, after getting leave, the plaintiffs want to cure the defect and this cannot be accepted and it is nothing but putting the cart before the horse. It is always open to the plaintiffs, if they are really interested persons in the Trust, to implead all necessary parties and file a fresh suit. If the Trust was already made a party even in the original plaint, then it is quite possible that ex parte leave also could not have been granted to the plaintiffs. Now, having obtained an ex parte leave, the plaintiffs cannot be allowed to cure the material defect by allowing the impleading application. I am of the view that the plaintiffs cannot take advantage of their own mistake and claim to implead the Trust on the ground that it is a necessary and proper party. Although the Trust is a necessary and proper party, considering the fact that the plaintiffs failed to implead the Trust at the earliest point of time, now cannot be permitted to implead the Trust to cure the illegality. Hence, the points are answered accordingly.

16. therefore, in the light of the principles laid down in these judgments, it is apparent that defect in the application for leave to sue in the nature of the number of persons or parties cannot be permitted to be cured or changed in the proposed suit by way of an application seeking impleadment of the applicant as a proposed plaintiff or by adding defendants. Such a defect goes to the root of the matter.

17. The prohibition in the instant case deserves to be looked at from another angle. Law mandates that the application seeking leave to institute a suit has to be filed by two or more persons 'having an interest in the suit'. therefore, at the time of consideration of the application under Section 92 of the Code of Civil Procedure, 1908 the court has to satisfy that such persons have an interest in the affairs of the trust. In AIR 1919 Mad 384 entitled T.R. Ramachandra Iyer and Anr. v. P.A. Parameswaran Munbu and Ors., the court held that the right to worship in a temple is not such an 'interest' as will give the worshipper a right to sue under Section 92 of the Code of Civil Procedure, 1908. The interest required in the realtor/applicant must be a clear or a present and a substantial, not merely a

remote, fictitious or purely illusory interest. It must be an existing interest and not merely a contingency. The question whether any given person has or has not an interest as so defined is a pure question of fact which the court should decide on a consideration of the particular circumstances of each case. The 'interest' which is required of a person wishing to sue under Section 92 must be a substantial and not a sentimental or a remote interest.

18. On these principles, in 1997 AIHCC 471 Shollapuramman Temple Trust v. Arul Migu Shollapuri Amman Temple Association (R) and Ors., it was held that the suit filed by plaintiffs on the ground that the trust was being mismanaged by trustees and for a declaration that the plaintiffs were entitled to vesting of trust property and consequential relief. The plaintiffs were neither members nor persons having interest in the trust and it was held that they have no locus standi to institute the suit and hence the order granting leave to institute the suit under Section 92 is not proper.

In : [1967]2SCR739 Mahant Harnam Singh v. Gurdial Singh and Anr., it was held that mere residence in a village where free kitchen is being run for providing food to visitors does not create any interest in the residents of the village of such a nature as to claim that they can institute a suit for removal of the mahant.

19. The judicial pronouncement of the High court of Judicature at Calcutta in : AIR1952 Cal343 Benoy Shankar Dhandania and Ors. v. Choteylal Dhandania and Ors. also has a bearing on the issue before this Court. In this case it was held that even if leave had been obtained when the suit was originally filed, when a defendant is added, fresh leave to sue must be obtained. The court rejected the contention on behalf of the plaintiff that there was no change in the cause of action even when the defendant was added and therefore no fresh leave was necessary. The principle laid down was that obtaining of the leave was imperative because it is the foundation of the jurisdiction of the court. The court has the jurisdiction to decide the suit against the parties only if it grants leave which is a condition precedent. No leave was obtained by the plaintiff to proceed against the newly added defendants and it follows that the court never got any jurisdiction to make any decree or order in the suit.

20. therefore, so far as an application seeking leave to institute the suit under Section 92 is concerned, the applicant has to satisfy the court at the time of consideration that they have substantial interest in the management of the trust and this satisfaction has to be recorded by the court at the time of adjudicating upon the application seeking the leave to institute the suit. In the event that one of the two applicants has expired before the application is considered, it is evident that the court has occasion only to consider the interest of the one surviving applicant before it in the affairs of the trust. therefore, the basic condition precedent in order to institute the suit against the trust is not satisfied. Such a single person cannot be given leave to sue and the same is contrary to the specific mandate of the statute. The effect in the permission, if granted to the sole applicant cannot be cured by way of an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 which comes into play, only after institution of the suit. This is also for the reason that there has been no consideration of the interest of the proposed plaintiff who seeks to be added as a plaintiff in the suit which stands registered.

21. The principles which would apply to the prohibition contained in Section 92 so far as institution of a suit against the trust by less than two persons is concerned, is akin to the prohibition contained in Section 69 of the [Partnership Act, 1932](#). This section prohibits an unregistered partnership firm from filing a suit. So far as the prohibition contained in Section 69 is concerned, the same has fallen for consideration in several judicial pronouncements which can be usefully adverted to here.

22. In (1994) 1 Arb LR 385 *Kelson Construction v. Versha Spinning Mills Ltd. and Anr.*, the court held thus:

6. In *Loonkaran Sethia etc. v. Mr. Ivan E. John and Ors. etc.* : [1977]1SCR853 the Hon'ble Supreme Court has held that the provisions of Section 69 are mandatory in character and its effect is to tender suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an unregistered firm, whether existing or dissolved, void. What is material is that on the date of institution of the suit the partnership should have been registered failing

that the suit would fail. In *Shankar Housing Corporation v. Smt. Mohan Devi and Ors.* : AIR1978 Delhi255 , a Division Bench of this Court had also taken the following view:

The point of time contemplated in Section 69(2) is at the time of the institution of the suit. That is to say, the firm must be a registered firm by the date of the institution of the suit and the person suing (i.e., all the partners) must have been shown in the Register of Firms as partners of the firm by the date of the institution of the suit.

Sub-section (1) and (2) of Section 69 are substantive provisions intended to discourage the non-registration of firms. The provision in Section 69(2) is mandatory and makes the registration of a firm a condition precedent to the institution of a suit of the nature mentioned in it.

Similarly another single Bench of this Court in the case of *Kavita Trehan and Ors. v. Balsara Hygienic Products Ltd.* : AIR1992 Delhi92 , had held that a suit filed by a partner of a firm which is not registered on the date of the filing of the suit would be hit by the provisions of Section 69(2) of the Indian Partnership Act and as such it is not maintainable and is liable to be dismissed. In the case of *Shreeram Finance Corporation v. Yasin Khan and Ors.* : [1989]3SCR484 , the Hon'ble Supreme Court had gone to the extent of laying down that even if the suit is instituted by a registered firm, but change in the constitution of the firm had taken place whereby one new partner had been added and two had retired and a minor being admitted to the benefits of the firm, the suit was filed by the firm after such change in the constitution but the change was not notified to the Registrar of Firms, the suit was not maintainable as the current partners were not shown in the Register of Firms.

23. In the pronouncement of this Court in 1994 1 Arb LR 385 *Kelson Construction v. Versha Spinning Mills Ltd. and Anr.*, the court held that if a suit on the date of its institution is not maintainable, there was nothing in the language of the section which by any implication has the effect of validating the same plaint with effect from the date of the registration of the partnership. It was further laid down that while it is the duty of the court to administer justice according to the principles of

equity and good conscience, the courts are not supposed to circumvent or overlook the mandatory provisions of statute. When a statute does not permit any suit to be brought, contrary to its specific provisions, the courts cannot by the device of interpretation overcome such legal bar.

24. In the instant case, a requirement under Section 92 of the Code of Civil Procedure cannot be held to be a merely technical bar, non-compliance whereof is only an irregularity. In my view, the prohibition goes to the root of the jurisdiction of the court and finds its basis in the spirit, intendment and purpose for which Section 92 was enacted. Failure to bring the application by two persons who have an interest in the affairs of the trust on the date the application is taken up for consideration is a sine qua non for the maintainability of the application and the institution of the suit. The requirement of Section 92 of the Code of Civil Procedure, 1908 cannot be compared to the omission to sign or verify the plaint which is considered irregularity and technical defect inasmuch as the same entails satisfaction of the court on factual matters. In the instant case, the applicants have to satisfy the court that they have a valid and substantial interest in the affairs of the trust when the application under Section 92 is taken up for consideration or is allowed.

25. For this reason, the omission cannot be supplied by making an application under Order 1, Rule 10 of the Code of Civil Procedure, 1908. Undoubtedly, the two persons who make the application must have a substantial interest in the affairs of the trust when the application is filed and continue to do so when the application is taken up for consideration. This court had held that the provisions of Order 22 of the Code of Civil Procedure, 1908 were not applicable to the application under Section 92 of the Code of Civil Procedure, 1908. The proposed plaintiff on whose behalf the application being is 6040/2004 has been filed was not before the court on 20th April, 2004 when is 9572/1999 was taken up for hearing and was allowed. Secondly, no leave to institute the suit has been granted in favor of the proposed plaintiff and consequently it cannot be added as a party.

26. Learned Counsel for the applicant has pointed out that so far as an application under Section 92 is concerned, when it is filed, the plaint is registered as a civil

rule in accordance with the applicable rules. The filing of the application with the proposed plaint does not amount to institution of the suit. It is only after permission and leave to institute the suit is granted that the same is registered as a suit. In this behalf, the pronouncement of this Court in : AIR1987 Delhi74 entitled V. Bhagat v. Ms. Usha Bhagat has been relied upon.

27. In view of the afore noticed judicial pronouncements and the principles of law, it is apparent that the order dated 20th April, 2004 deserves to be reviewed as it suffers from an error which is apparent in the face of the record in the light of the position in law noticed above. Even otherwise, the court gave the right to the defendant to take such an objection in the written statement and permitted fresh consideration thereof. Consequently, this application is allowed. The order dated 20th April, 2004 granting leave to institute the suit in favor of the plaintiff is hereby revoked.

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