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Court : Chennai

Decided On : Feb-16-1996

Reported in : (1996)1MLJ588

Appellant : Janardhana Mishra Alias Janardhana Prasad

Judgement :

Srinivasan, J.

1. This revision petition is directed against an order passed by the Principal District Judge, Madurai on 15.12.1995 removing the petitioner herein from the post of Life Trustee of Lala Sri Renga Chatram Charities, Madurai. The proceeding was initiated by the District Judge in a show cause notice dated 16.11.1989 issued on the audit report dated 10.10.1989.

2. The administration of the Trust is governed by a scheme decree in O.S. No. 4 of 1915 on the file of the District Court, Madurai dated November 3, 1919. Clause 2 of the Scheme provides that the charities shall be administered by three trustees, of whom two shall be appointed by the Court and the second defendant therein shall continue to be a trustee in her own right for her life and shall be entitled to the customary honours enjoyed by the founder's family. Clause 2(a) provides that the day today routine administration and management shall vest in the life-trustee, for the time being. Clause 5 reads as follows:

Upon the demises of the 2nd defendant or upon her ceasing to hold her office as trustee the Court shall as far as possible appoint as her successor a member of the family of the founder Suklal Subedar, after giving due consideration to the wishes of the 2nd defendant. Each member shall hold office for life, provided that the court may remove him or her from office for just cause.

3. The petitioner herein is a Life Trustee, having succeeded under Clause 5 as he belongs to the family of the founder. In Clause 9, the accounts maintained by the trustees shall be audited once a year by an Auditor appointed by the court and an abstract of the accounts shall be published in such manner as the court may direct. Clause 10 provides for preparation of budget before the beginning of each fasli by the trustees for the ensuing fasli year showing the proper income and expenditure and filing of the same in court. The said clause requires approval of the court for the budget and provides for modification by the court in such manner as the court considers proper. Clause 11 prohibits alienation of any kind by the trustees without previous permission of court. Clause 12 restricts the maximum amount to be kept in the hands of the trustees at one time to Rs. 350 and any amount in excess thereof is directed to be deposited in the bank. Clause 14 provides for application to the court to vary or modify any of the provisions of the scheme either by two or more of the trustees acting together or the Advocate General or with his sanction any two persons interested in the process.

4. On the 15th of February, 1989, the Principal District Judge, Madurai passed an order that the Auditor A.N. Sankaran appointed earlier had filed an audit report and no objection was filed thereto. The order refers to the publication of the balance sheet in the Auditor's report in 'Dhinamalar' and after hearing the Advocate for the trustees, the court directed the trustees to follow strictly the instructions given in the Audit report. In the said Audit report, while referring to the expenditure incurred by the Trustees, it was stated that the life trustees 'boarding' lodging and local conveyance expenses were paid by the Trust though there had been no specific provision for the payment of the same. It is also stated in the report that it was being paid for past few years. The report said that the trustees should get proper sanction from the court for the expenditure. Thereafter, the trustees passed a resolution in a meeting held on 13.10.1989 referring to the

report of the Auditor and the fact that the petitioner herein had for his personal expenses taken money on giving a voucher from out of the Trust funds, Rs. 2,070 during the year 1985-86, Rs. 3,800 in 1986-87, Rs. 4,625 in 1987-88, Rs. 8,095 in 1988-89, and Rs. 1,500 in 1989-90. Thus, the total sum of Rs. 20,890 had been drawn by the petitioner herein. The resolution said that the same was being communicated to the court for appropriate action as indicated in the report of the Auditor. It is added therein that it was permitted because it was usual expenditure.

5. The District Judge passed an order on 16.11.1989 directing the petitioner herein to re-deposit the said amounts, within a week of receipt of the said order. The matter was directed to be called on 27.11.1989. By a separate order passed on the same day, the petitioner was required to show cause as to why he should not be removed from life trusteeship as per the provision of Clause 5 of the Scheme decree for the said act of appropriating the funds of the Trust for his own use. That was also directed to be posted on 27.11.1989. The petitioner submitted the explanation on 17.11.1989. He has stated therein that the Trust itself is a family Trust governed by the Indian Trust Act and under Clause 2 of the Scheme, he entitled to customary honours which implies that he is entitled to customary honours which implies that he is entitled to reimburse amounts spent on maintenance as usual and as in vogue for several decades from the inception of the Trust itself. It is added that it is only the trustees of the Trust or the family members of the founder of the Trust who can question such an expenditure if found against usage and the learned District Judge has no power to act suo motu and harass the life trustee. [Italics mine]. It is also stated in the explanation that the petitioner is a native of Madras and he has been allowed to administer the Trust as a member of the founder's family. Therefore incidental expenditure of the life trustee has to be borne by the Trust only as per usage. It is stated that the power of appointment is a judicial function and it cannot be misconstrued for administrative control over the Trust and in any event, the petitioner is acting in the best interest of the Trust and no lapses can be shown against him. Finally it is said that the show cause notice is not in order and not maintainable in law as it reflects preconceived decision.

6. The petitioner filed C.R.P. No. 3108 of 1989 in this Court challenging the order, directing re-deposit by the District Judge dated 16.11.1989 referred to above. I dismissed the same by my order dated 25.7.1990 with a direction contained therein. The following portions in the said order are relevant here:

According to learned Counsel for the petitioner so long as there is no prohibition in the order of appointment or by any subsequent orders of court against utilizing the trust funds for travelling the petitioner is entitled to use the said funds for his travel expenses. According to him his travelling from Vandalur to Madurai and other places is only for the purpose of attending to the needs of the trust and managing the trust properties. He submits that the expenditure incurred by him is only to the minimum. He has not been extravagant in the matter of claiming travelling expenses.

3. I do not agree with the said contention of learned Counsel for the petitioner/trustee. A trustee cannot claim any amount from the trust funds for personal expenses unless there is a specific order by a court permitting him to make such a claim. When the petitioner was appointed as a Trustee, he ought to have prayed for a direction of court that he may be permitted to take from out of the Trust funds his travelling expenditure for going to Madurai and other places from Vandalur his place of residence. He did not do so. The petitioner know very well that the properties were situated in Madurai and places nearby and he would be required to go to Madurai and other places very often for the purpose of attending to its affairs as a life and Managing trustee. Since he did not obtain any order from court, he is not entitled to claim the travelling expenses.

4. The fact that small amount is claimed by way of travelling expenses is irrelevant. A trustee is not entitled to claim even a pie for his personal expenditure from and out of the trust fund. The trust is for the specific objects set out in the trust deed and the income from the trust properties shall be utilized. Only for the purpose of trust, trustees personal expenditure will not form part of the objects of the trust.

5. In the circumstances, there is no error in the order of the District Judge directing the petitioner to deposit the funds already appropriated by him.

I directed the petitioner to deposit the amount as fixed by the District Court on or before 31.8.1990 and gave liberty to the petitioner to file an affidavit before the District Court setting out the actual amounts for which he will be liable to reimburse the Trust. I observed that the District Court will consider the records and pass appropriate orders fixing the actual amounts for which the petitioner is liable to reimburse the Trust.

7. The petitioner also filed another revision petition in C.R.P. No. 53 of 1990 against the order of the District Judge dated 16.11.1989 directing the petitioner to show cause why he should not be removed from the life trusteeship. I dismissed that revision petition on the same day as not maintainable as there was no case decided by the District Judge. I pointed out that the petitioner has ample opportunity to appear before the District Judge and contend that there was no case for removing him from life trusteeship and it was open to him to place all the relevant facts before the court.

8. On 14.3.1991, the petitioner deposited the amounts withdrawn by him as stated in the report of the Auditor. He filed an additional statement before the District Judge on 19.1.1993. The District Judge, after considering the records and hearing the petitioner, passed a detailed order on 15.12.1995 holding that there was a case for removal of the petitioner from life trusteeship and accordingly removed him from the said post. One of the contentions raised before the District Judge was that only a suit could be filed in accordance with the provisions of Section 92 of the Code of Civil Procedure to remove the trustee and he could not be removed by a suo motu action. It was also argued that there was no occasion for removing him and in particular, he having repaid the amount to the Trust, all further proceedings should be dropped. The quantum of the amount mentioned in the report of the Auditor was not challenged. It was also argued that it was customary usage in the Trust for maintaining the life-trustee and the expenditure was incurred by him only on that footing. That contention was found against by the District Judge as contrary to the facts. The District Judge has observed that no such power is given to the trustee under the scheme decree.

9. In this revision petition, the first contention raised by the petitioner is that Clause 5 of the scheme decree providing for removal of life trustee by the court is ultra vires the provisions of Section 92 of the Code of Civil Procedure. Secondly, it is contended that the factum of expenditure of certain amounts, belonging to the Trust by the petitioner for personal expenses, does not warrant his removal from trusteeship. According to learned Counsel, in any event the court should only imposed certain conditions on the petitioner and not removed him from trusteeship.

10. When the matter came up for arguments in the first instance on 25.1.1996, I thought fit to appoint Mr. R. Subramaniam, Advocate as amicus curiae in view of the importance of the question raised by the petitioner's counsel. In the order dated 25.1.1996, I had made a reference to all the rulings cited by the petitioner's counsel and pointed out the necessity for appointment of an amicus curiae, particularly because there is no opposite party in this Court to contend for the opposite view.

11. Even here, I would place on record my appreciation and deep sense of gratitude to Mr. R. Subramaniam, Advocate who has spared no effort to investigate the position in law and culled out all the relevant cases on the subject. He has left no stone unturned and helped this Court to a great extent by placing the relevant rulings on the subject, but, for which, it would have been very difficult for this Court to ascertain the correct position in law and decide the matter.

12. This Court had been consistently taking a view in the early years that a provision for removal of trustee in a scheme decree would tantamount to keeping the administrative control of the Trust with the court and such an onerous responsibility should not be undertaken by a court. In that view, this Court had been expressing the opinion that such a clause in the scheme decree would be ultra vires the provisions of Section 92 of the Code of Civil Procedure. It was also the opinion of this Court that Section 92 of the Code of Civil Procedure provided for a special procedure in the matter of Trust for setting a scheme and granting of reliefs set out in the section. As removal of a trustee is one of the reliefs contemplated under Section 92 of the Code of Civil Procedure, the court opined

that the procedure prescribed in the section should be strictly followed before any attempt was made to remove a trustee. There was also another line of thinking by this Court that such a clause for removal of trustee would also amount to a provision for alteration or modification of the scheme and the same could not be obtained by an application and there could not be any provision therefor in the scheme decree. The reason given for taking such an opinion was that once a scheme is framed in a suit, it cannot be deemed to be pending and unless a suit is pending in the eye of law, there cannot be an application for modification or alteration of the scheme. Again, it would require the sanction of the Advocate General under Section 92 of the Code of Civil Procedure and compliance with the formalities mentioned in the section.

13. In *Narayanamurthi v. Achayya Sastrulu* 47 M.L.J. 714 : 85 I.C. 188 : A.I.R. 1925 Mad. 411, a Division Bench of this Court held that a scheme providing for continued supervision of the scheme property is objectionable both in principle and in practice, and that court should not assume to themselves the continued supervision of institutions for the management of which they are called upon to frame schemes. Thus, a scheme providing for vacancies of trusteeship to be filled up by the court or appointment of an auditor by the court annually and for the court sanctioning mortgages or leases of temple properties and generally providing for applications to the court regarding any matter arising out of the scheme or modifications thereof as held to be contrary to principle and objectionable in practice. But, however, on the facts of the case, the court refused to interfere with the provisions of the scheme framed by the District Court as the court expected the legislature to pass a comprehensive legislation within a short time thereafter dealing with all religious institutions and endowments.

14. In *Abdul Hakim v. Md. Burrammudin* A.I.R. 1926 Mad. 559. I.L.R. 49 Mad. 580 : 95 I.C. 720, a Division Bench held that where in a scheme suit a scheme is settled, the suit comes to an end and there is no decree to be executed thereafter and no application can be made as if it were in execution of the decree. It is observed that the parties cannot give power to a court to treat the matter in a particular way. But, in the course of the judgment Justice Devadoss observed that in order to give jurisdiction to the court, the proper procedure for the purpose

should be adopted with the necessary preliminaries and a scheme cannot be altered by a mere application to the court simply by reason of the existence of a clause in the scheme to that effect. The learned Judge said,

Even if such a provision is valid, the proper course would be to apply to the Advocate-General for permission to obtain a specific relief and if the Advocate-General gives permission an application may be made.

The Bench held that the clause in the scheme providing for alteration of the scheme was made without jurisdiction and set aside the scheme.

15. A Full Bench of this Court had occasion to deal with the matter at length. In *Veeraraghavachariar v. Advocate-General of Madras* 53 M.L.J. 491 : A.I.R. 1927 Mad. 1073, the Full Bench opined that in a temple schemes settled by the court the reservation by the court to a person or persons to apply for a relief, which will come within Section 92 of the Code of Civil Procedure, is ultra vires; but, if such reservation does not offend in that way, or against any other provision of law, it may be useful or advisable for carrying out the provisions of the scheme already framed. As stated earlier, the reasoning of the Full Bench for arriving at that conclusion was two fold. (1) The suit was not pending after the framing of the scheme; and (2) The provision for amendment would violate the procedure prescribed under Section 92 of the Code of Civil Procedure.

16. The view expressed by this Court in the decisions referred to above was not accepted by the Bombay High Court. In *Chandraprasad Ramprasad v. Jinabharthi Narayanabharthi* A.I.R. 1931 Bom. 391, a Division Bench of that court held that if liberty is given in a scheme to apply for amending and modifying the same as occasion would demand, it would not be ultra vires the provisions of Section 92 of the Code of Civil Procedure. Referring to the decision of this Court and the reasoning on which they were rendered, the Division Bench said that where a scheme is once settled, it precludes a suit to establish a private right to manage the property which if established would interfere with the scheme settled by the court and the proper remedy in such cases would be by an application under the leave to apply reserved under the scheme. The Bench proceeded to point out that unless liberty is reserved, a second suit may probably be barred by the principle of

res judicata under Section 11 of the Code. Justice Patkar, J., said,

I think therefore that even though a suit under Section 92 is decided and is at an end for all practical purposes, liberty to apply for modification or alteration of the scheme can be given in order to avoid multiplicity of suits.

Ultimately, the court held that the rules in the scheme giving liberty to apply are not ultra vires. The other learned Judge who was a party to the Bench viz., Justice Broomfield observed,

For those reasons with the greatest deference to the Judges who decided the Madras cases, I am unable to agree that there is anything in Section 92 to prevent the court from framing schemes which contain within themselves complete machinery for carrying them into effect and modifying them as occasion demands.

17. It should be mentioned here that there was divergence of views among the High Courts. While the High Courts of Bombay, Patna and Calcutta took one view, the view expressed by the Madras High Court was accepted by the Allahabad High Court in *Shera Khan v. Bhure Shah* : AIR1935 All273 . But, in *Sri Swatni Rangacharya v. Gangaram* : AIR1936 All97 , that view was not followed.

18. In any event, the controversy was settled by the Supreme Court in *Raje Anandrao v. Shamrao and Ors.* : [1961]3SCR930 . The Supreme Court accepted the view expressed by the Bombay High Court in *Chandraprasad Ramprasad v. Jinabharthi Narayanabharthi* A.I.R. 1931 Bom. 391 and overruled the view expressed by the Madras Full Bench in *Veeraraghavachariar v. Advocate General of Madras* 53 M.L.J. 791 : A.I.R. 1927 Mad. 1073. The court said,

We cannot agree that if the scheme is amended in pursuance of such a clause in the scheme it will amount to amending the decree. The decree stands as it was, and all that happens is that a part of the decree which provides for management under the scheme is being given effect to. It seems to us both appropriate and convenient that a scheme should contain a provision for its modification, as that would provide a speedier remedy for modification of the manner of administration when circumstances arise calling for such modification than through the cumbrous

procedure of a suit.....

We, therefore, accept the view of the Bombay, Calcutta, Allahabad and Patna High Courts in this matter and hold that it is open in a suit under Section 92 where a scheme is to be settled to provide in the scheme for modifying it as and when necessity arises, by inserting a clause to that effect. Such a suit for a clause to that effect. Such a suit for the settlement of a scheme is analogous to an administration suit and so long as the modification in the scheme is for the purposes of administration, such modification can be made by application under the relevant clause of the scheme, without the necessity of a suit under Section 92 of the Code of Civil Procedure. Such a procedure does not violate any provision of Section 92. The view taken by the Madras High Court that insertion of such a clause for the modification of the scheme is ultra vires is incorrect. It was therefore, open to the District Judge in the present case to modify the scheme.

But, at the beginning of the discussion, the Supreme

Court said:

In the present appeal we are concerned only with the modification of a scheme, we are not concerned with appointment or removal of trustees or any other matter enumerated in Sub-section (1) of Section 92. We do not therefore propose to consider whether it would be open to appoint or remove trustees etc. on the ground of breach of trust without recourse to a suit under Section 92.

19. That judgment of the Supreme Court was followed in Ahmad Adam Sait and Ors. v. M.E. Makhri and Ors. A.I.R. 1964 S.C. 107 : (1965) 1 S.C.J. 31. The view was reiterated in Chairman Madappa v. M.N. Mahanthadevaru and Ors. : [1966]2SCR151 .

20. But, in the meanwhile, the question arose before this Court in Syed Khaja Gulam Rasool (died) and others v. Janab K.M. Bijili Sahib and Ors. : AIR1965 Mad404 was to whether a provision in the scheme decree for the removal of a trustee and appointment of a new trustee is valid and an application for such relief is not competent. A single Judge of this Court considered the earlier judgment of

this Court and the judgment of the Bombay of the Supreme Court in Anandarao's case : [1961]3SCR930 . The learned Judge also referred to the judgment of the Supreme Court in B.V.J. Ramarao v. Board of Commissioners for H.R.C., Andhra Pradesh, C.A. Nos. 531 and 532 of 1961, which was not reported. The learned Judge rejected the contention that such a provision in the scheme is invalid. It was contended before the learned Judge that the ruling of the Supreme Court would apply only to cases of provisions for alteration and modification of the scheme and not to clauses in which provision is made for removal of a trustee and appointment of new trustee. Rejecting the said contention, the learned Judge said:

The contention of the learned Counsel, therefore, in effect is that even if in a scheme decree there is provision for modification of the scheme by application, no application is maintainable for removal or for appointment of a trustee, unless by way of suit under Section 92, C.P.C. I am unable to read the Supreme Court's decision in the manner the learned Counsel would read it. Section 92 provides for Advocate General or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General to institute a suit for such reliefs as enumerated in Clause (a) to (h) of the section. Clauses (a) and (b) relate to removing and appointing a trustee, and Clause (g) relates to settling a scheme. It is possible that a suit under Section 92 is laid only for the purpose of removing a trustee or for appointing a new trustee. In a suit for settling a scheme, it may be that provision is made in the scheme decree for removing a trustee as in this case.

If in a suit for settling a scheme provision is made in the scheme decree for the removal of a trustee and appointing a new trustee, there can be no warrant for the contention of the learned Counsel for the respondents that, though such provision is provided for in the scheme decree itself, an application is not competent and the only remedy is by way of a separate suit under Section 92. The clause relating to the removal of trustees in the scheme decree would amount only to modification of the scheme I do not see any reason why the modification cannot be obtained by means of an application. If the relief is asked for without the scheme having been settled for removal of a trustee, the only course would be by filing a separate suit under Section 92. That is not so in the present case. Even though the

observations of the Supreme Court deal with the modification of the scheme, the decision of the Supreme Court does not in terms exclude its application to the clause for removal of a trustee, if it formed part of the scheme decree itself.

21. The same learned Judge, who decided the above case, was a party to a Division Bench which decided Rangaswami Raju v. Rajapalayam Municipality : AIR1977 Mad287 . A reference was made to the judgment of the Supreme Court in Anandrao's case : [1961]3SCR930 and also the judgment of the learned Judge in Syed Khaja Gulam Rasool v. Bijili Sahib : AIR1965 Mad404 .

22. With respect, I agree with the view expressed by Justice P.S. Kailasam (as he then was) in Gulam Raasool's case : AIR1965 Mad404 , I would like to add that the judgment of the Supreme Court in Ananda Rao's case : [1961]3SCR930 took care to exclude from its consideration cases which related to appointment or removal of trustees for the simple reason that such cases would a fortiori fall within the jurisdiction of the court and the removal or appointment could be made by an application at the instance of interested party without there being any necessity to file a suit for framing a scheme under Section 92 of the Code of Civil Procedure. In cases where provision is made for alteration or modification of a scheme, it could be contended that it would amount to framing of a scheme in one sense as some provisions of the scheme are being altered and the court is considering the framing of such a scheme. But, in the case of removal or appointment of a trustee within the framework of the scheme and as provided by the scheme, there is no question of alteration or modification of the scheme itself. For such a purpose, there is no necessity to adopt once again the procedure prescribed in Section 92 of the Code of Civil Procedure. It will be proposterous to think that a court will be powerless to remove a trustee even in cases of gross misbehaviour and misconduct on his part. It cannot also be said that the trustee who was appointed initially under the scheme could continue for ever in spite of all his misfeasance and malfeasance and the court will not have any power unless and until of fresh suit is filed under Section 92 of the Code of Civil Procedure for his removal. Section 92 of the Code of Civil Procedure prescribes the procedure for filing a suit for settling a scheme. While settling such a scheme, the Court could remove a trustee which will be one of the reliefs forming part of the decree settling the

scheme. That does not mean that whenever a trustee who is appointed under a scheme, is sought to be removed, again there should be resort to the procedure prescribed under Section 92 of the Code of Civil Procedure. In my opinion, a trustee who is found to be unfit by a court, which framed the scheme can always be removed by an application after proper consideration of the materials placed before it. There was no need in such a case to obtain sanction or the Advocate General under the old Section 92 of the Code of Civil Procedure it existed till the amendment of 1976. It was only in that sense the Supreme Court excluded from its consideration the cases of removal of trustees and appointment of new trustees.

23. In any event, the reasoning of the Supreme Court for approving the decision of the Bombay High Court is sufficient to enable the Court to come to a conclusion that the rulings of this Court rendered prior to the judgment of the Supreme Court taking a difference will no longer be good law.

24. In any event, the position has been altered by amendment of Section 92 of the Code of Civil Procedure under Act 104 of 1976. Under that section as amended, it is not necessary to seek the permission of the Advocate General to institute a suit. Under the present section, sanction for instituting the suit has to be given only by the court. Hence, when an application is filed for modification or alteration of the Scheme or for removal of a trustee, the court can consider the same and grant leave therefor. Thus, the procedure having been altered, the reasoning of this Court in the early decisions will no longer hold good.

25. Consequently, I hold that there is no merit in the contention urged by the petitioner. It should also be pointed out that Clause 5 of the scheme decree only provides that the life trustee may be removed by the Court for just cause. Such removal could be ordered by a procedure contemplated under Section 92 of the Code of Civil Procedure. After the amendment of 1976, the only requirement is the leave of the Court and in this case, it is the Court which has taken suo motu action. Hence, the requirement of Section 92 of the Code of Civil Procedure is fully satisfied in this case. Therefore, there is no merit whatever in the preliminary objection raised by the petitioner that the present proceeding taken by the Court

for his removal is not maintainable.

26. The next question is whether the order of removal of the petitioner is justified on the fact and circumstances of the case. Learned Counsel for the petitioner has invited my attention to a passage in Ganapathi Iyer's 'The law relating to Hindu and Mahomedan Endowments' (II Edition), at page 634. It is stated that where there is no willful default but merely a misunderstanding, the court will not necessarily visit the trustee with removal. Some English cases are cited in the foot-note. Again at page 635, it is stated that some degree of latitude is also allowed by the courts which do not order accounts against managers where there is no fraud or dishonesty but only mere error of judgment. At page 636, it is stated that in some cases it may be that the Court instead of dismissing the managers will put him on terms. Reliance is also placed on the judgment of this Court in *Sivasankara v. Vadagiri* I.L.R. 13 Mad. 6. A Division Bench of this Court held that in the absence of any proved and deliberate dishonesty on the part of the trustee he need not be removed though he is held to have been guilty of misconduct in the discharge of his duties. In *Azizor Rahman Choudhury v. Ahidennessa Choudharani and Ors.* : AIR1928 Cal225 , it was held that there must be such gross negligence or misconduct as to evidence a want either of capacity or of fidelity which is calculated to put the trust in jeopardy, and failure in the discharge of duty on account of mistake or misunderstanding is not a ground for removal unless such failure shows want of capacity to manage the trust. In *Managing Committee of S.S. Endowment v. Mohd. Ahsan* , the court held that the test which must be applied is whether the acts or omissions complained of disclose conditions which render intervention necessary in order to save the trust property. The court also said that it is to be seen whether such state of affairs was brought about deliberately or wilfully and whether the trustees were actuated by dishonest and corrupt motives.

27. In *T.R. Ramanathan and Ors. v. The State of Madras and Anr.* : (1973)1MLJ325 , in a matter arising under the Tamil Nadu Co-operative Societies Act, Justice T. Ramaprasada Rao as he then was) observed that once the loss has been secured and contribution has been made and money restored and the Bank fully compensated, Section 71 of the Tamil Nadu Co-operative Societies Act

can no more be pressed into service as the section does not contemplate punitive measure and its intention is only purely compensatory in scope.

28. On the other hand, Mr. R. Subramaniam, amicus curiae invited my attention to the following rulings. In *Srinivas Chariar and Anr. v. C.N. Evalappa Mudaliar* A.I.R. 1922 P.C. 325, the judicial committee held that the onus is heavily upon the trustee to show unimpeachable evidence the legitimacy of his personal acquisition and an assertion to private ownership is enough ground for his removal. It was also said that it is not open to the court on any sound principles, either of administration or of law, to permit the continuance of the trustee in the office in such a case.

29. In *S. Veeraraghava Achariar and Ors. v. V. Parthasarathy Iyengar and Ors.* : AIR1925 Mad1070 , a Full Bench of this Court held that once a person accepts an office of trusteeship the ruling motive for all actions, the one principle by reference to which all his acts should be determined, is the interest of the institution and that alone. The court said that if persons holding their fiduciary position allow their actions to be prompted by any other considerations, motives or principles are as much guilty of breach of trust as persons who may be found actually guilty of misappropriating property belonging to the trust and even though the evidence in a case against the trustees may not be sufficient to warrant, generally speaking, their removal from office on the ground of misconduct or negligence, still their removal may be ordered, if, in the opinion of the court, such removal is necessary in the interests of the trust to be administered.

30. In *Bapugouda Yadagouda Patil and Ors. v. Vinayak Sadashiv Kulkarni and Ors.* : AIR1941 Bom317 , it was held that proof of breach of trust or mismanagement is not essential for the removal of a trustee of a charitable institution and the court has a wide discretion under Section 92 to take such action as it thinks necessary or desirable for the good of the charity.

31. I am of the view that in the present case, the rulings referred to by the amicus curiae would apply and based on these principles, the matter should be approached. I have already referred to the fact that the petitioner herein filed an explanation in the reply to the show cause notice before the District Judge

contending that the trust is a family trust and he is entitled to reimburse himself for maintenance from the trust funds. He has also contended that the District Judge had no power to act suo motu and harass the life trustee. The petitioner's conduct is not bona fide at all without depositing the money in spite of the court calling upon him to do so on giving time, he filed two revision petitions and attempted to stifle the entire proceedings by raising hyper-technical questions of jurisdiction. In spite of this Court rejecting his contentions and directing him to appear before the District Judge and put forward his case, the petitioner once again raised the question of jurisdiction before the District Judge by additional statement. Ultimately, the petitioner made a deposit only on 14.3.1991 as pointed out already. I have referred to the resolution passed by the trustees which discloses that money was being taken by the petitioner from 1985-86 onwards. Even before the District Judge, the petitioner engaged a counsel to argue and contest the matter tooth and nail. In such circumstances, I am of the opinion that the District Judge has exercised his discretion properly and that the interest of the trust requires the removal of the petitioner from trusteeship. I do not find any justification whatever to interfere with the order passed by the District Judge. It is seen that the petitioner is already 65 years old and the interest of the trust would suffer if he is continued in the post of life trustee.

32. In the result, the civil revision petition is dismissed. No costs.