
NO LIS, NO INTERIM PROTECTION. LEAVE, INSTITUTION AND URGENCY UNDER SECTION 92 CPC IN S. PANCHALINGU & ORS. V. PEOPLE'S EDUCATION TRUST (R) & ORS., 2026 INSC 1010

Anindita Sarkar, Kazi Nazrul University

I. INTRODUCTION

A Bench comprising Manoj Misra and Manmohan JJ., on 18th September 2026, held that a Civil Court seized with a plaint under Section 92 of the Code of Civil Procedure, 1908¹ (CPC) and an application for leave, cannot grant protective or preservatory interim relief pending the determination of the leave application.² This judgment, authored by Manmohan J., brings an end to a divergence between the High Courts (HC), which goes back to 1945.³ Whereas the Allahabad (*Muhammad Ali Khan*)⁴, Bombay (*Bai Sakri*)⁵, Kerala (*Sulaiman*)⁶ and Madras (*N. Anandan*⁷ and *R. Shanmugam*⁸) HCs recognised a limited protective jurisdiction before leave was granted, the Orissa (*Kintali China Jaganadham*)⁹ and Karnataka (*Shree Beereshwara Swamy Devaru Temple*)¹⁰ HCs had taken the view that it did not exist. The Supreme Court (SC) took the view of the latter HCs, but added that when there is a compelling urgency, leave may be granted without notice.¹¹

This comment contends that the result found in the judgment is firmly rooted in the language and structure of Section 92. The difficulty with the judgment, however, lies in the reasoning that it adopts. In making the absence of leave a complete bar to interim jurisdiction, the judgment makes the time of leave determinative of the court's power to protect the trust.¹² The

¹ Code of Civil Procedure 1908, s 92.

² *S Panchalingu v People's Education Trust (R)* [2026] INSC 1010 [2], [60].

³ *S Panchalingu* (n 2) [3].

⁴ *Muhammad Ali Khan v Ahmad Ali Khan* (1945) 47 ILR All 818.

⁵ *Bai Sakri v Bai Dhani* (1947) 72 ILR Bom 784.

⁶ *Sulaiman v Chunakara SM Jama Ath* [1982] SCC OnLine Ker 145.

⁷ *N Anandan v Ayyanna Gounder* [1993] SCC OnLine Mad 165.

⁸ *R Shanmugam v M Ganesa Mudaliar* [2009] SCC OnLine Mad 917.

⁹ *Kintali China Jaganadham v K Laxmi Naidu* [1987] SCC OnLine Ori 44.

¹⁰ *Shree Beereshwara Swamy Devaru Temple v GN Sathya Writ Pet No 9267 of 2022* (Kar HC, 30 September 2022).

¹¹ *S Panchalingu* (n 2) [57]-[60].

¹² *S Panchalingu* (n 2) [38]-[39], [60].

importance of this distinction is accentuated by the fact that the Court is quite willing to consider ex parte applications for leave, but does not make it clear what the "compelling urgency" that would warrant the dispensation with the requirement for prior notice entails.¹³

II. FACTS AND PROCEDURAL HISTORY

The appellants filed a plaint under Section 92 against the respondent, People's Education Trust, and also moved an application for leave to institute the suit. By an order dated 2 May 2025, the Principal District and Sessions Judge, Mandya, called upon the leave application and, being of the view that the Section 92 suit can proceed only with the Court's leave, decided to constitute an ad hoc committee consisting of the existing trustees to manage the Trust's day-to-day affairs pending further orders in the case.¹⁴

However, by the order dated 25 June 2025, the Karnataka HC set aside the aforesaid order of the District Judge, observing that a suit filed under Section 92 is 'stillborn', because it lacks legal existence and jurisdictional validity until prior leave granted by the court to institute the suit. It also held that the summer vacation is not an appropriate time to take such action and, therefore, the order of the District Judge was vacated.¹⁵ The appellants preferred a special leave petition (SLP) in SLP(C) Nos 25577-25579 of 2025 before the SC. The court grants SPL to appeal and then dismissed the appeals with a clarification on the law, but issued a direction regarding the leave which could be granted to any future applications.¹⁶

III. ISSUES BEFORE THE COURT

The Court considered whether a Civil Court seized of a Section 92 plaint and an application for leave can grant protective or preservatory interim relief while the leave application is pending (para. 2)?¹⁷

IV. DECISION AND REASONING

The Court answered the question in the negative (para. 60), for six reasons.¹⁸

¹³ *S Panchalingu* (n 2) [57], [60].

¹⁴ *S Panchalingu v People's Education Trust (R) Writ Pet No 16971 of 2025 (Kar HC, 25 June 2025)* [3], [10].

¹⁵ *S Panchalingu* (Kar HC) (n 14) [10], [15]-[16].

¹⁶ *S Panchalingu* (n 2) [1], [60]-[61].

¹⁷ *S Panchalingu* (n 2) [2].

¹⁸ *Code of Civil Procedure* 1908, ss 92, 94, 141 and 151, and Sch 1, O XL, r 1(a).

First, institution. Section 92(1) permits two or more persons to institute a suit only after obtaining leave of the court. The 1976 amendment changed the requirement from the Advocate General's consent to prior permission (leave) from the court.¹⁹ Leave is therefore a mandatory precondition to institution, and a suit instituted without it, is not maintainable (paras. 30, 31, 38, 43).

Second, the nature of the leave stage. The application for leave is a threshold proceeding and does not become a substantive suit merely because Rule 16-A of the Karnataka Civil Rules of Practice requires its separate registration (para. 35).²⁰ The Court viewed Section 92 as a safeguard against vexatious suits concerning public trusts while preserving a mechanism through which beneficiaries can seek remedies for breach of trust (para. 34).

Third, supplemental powers. Section 94 provides supplemental powers in aid of an underlying proceeding, while Order XL Rule 1(a), which permits the appointment of a receiver before or after decree, presupposes a validly instituted suit. These provisions therefore cannot supply interim jurisdiction before a Section 92 suit comes into existence (paras. 39-41, 45). Section 141 extends procedural rules to other proceedings but cannot create substantive rights or override the safeguards imposed by Section 92 (paras. 42-47).

Fourth, inherent powers. Section 151 cannot be invoked to bypass the statutory requirement of prior leave. The presumption favouring jurisdiction operates only where jurisdiction otherwise exists, and inherent powers cannot be exercised in a manner that defeats a special statutory provision (paras. 48-52).

Fifth, appointment of a receiver. The Court treated the appointment of a receiver over a public trust as an intrusive measure because it may displace the existing management. Describing such an order as merely preservatory cannot create jurisdiction where none exists (paras. 53-54). The Court therefore rejected the appellants' argument that the power to appoint a receiver should be treated differently and exercised before leave (para. 55).

Sixth, urgency. Notice should ordinarily precede the grant of leave. However, where the facts disclose compelling urgency, the court may dispense with prior notice, provided that reasons are recorded in writing and the power is exercised with utmost care. Relying on *R.M. Narayana*

¹⁹ *Code of Civil Procedure (Amendment) Act 1976* (Act 104 of 1976) (India).

²⁰ *Karnataka Civil Rules of Practice 1967*, r 16A.

Chettiar v. N. Lakshmanan Chettiar (1991), the Court further held that an ex parte grant of leave does not invalidate the suit and that the defendants may seek revocation of the leave (paras. 57-60).²¹

V. CRITICAL ANALYSIS

A. Interpretation of the Relevant Law

The text supports the result. Section 92(1) speaks of persons who have obtained leave, and Section 92(2) bars any suit claiming the listed reliefs unless instituted in conformity with subsection (1). The Court quotes the second provision (para 30) but never uses it (it is the best answer to the appellants). A bar to institution cannot be circumvented by inherent power, however general Section 151 may be.

The Court's inherent power reasoning is weaker than its text. It says the presumption favouring jurisdiction applies only where jurisdiction exists (para 48), which begs the question since whether jurisdiction exists is the very issue. The appellants relied on *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, a Constitution Bench decision treating inherent power as not confined by the Code (para 12). *Chopra* involved an injunction in a pending suit, so it is distinguishable on the ground the Court needed but the judgment never says so.

The judgment also uses distinct ideas interchangeably. Institution concerns whether a suit has validly begun. Leave is a condition of institution and remains open to revocation. Maintainability requires three cumulative conditions (para 32, following *Operation Asha*). Jurisdiction is not truly absent since the court can decide the leave application. What it lacks is competence to entertain interlocutory applications in non-instituted suit.

Finally, Rule 16A, as set out in the appellants' submissions (para 7), deems the suit instituted on the date the leave petition was filed once leave is granted. This is no real inconsistency with the *no lis* reasoning. A retrospective fiction that only applies on grant fixes the date of institution (chiefly for limitation) and creates *no lis* in the interim. If leave is refused, no suit ever existed, as para 54 assumes. The Court should have said so.

²¹ *RM Narayana Chettiar v N Lakshmanan Chettiar* (1991) 1 SCC 48 [17].

B. Application of the Legal Test

The Court applied a categorical rule and not a balancing test. That is administratively attractive because a rule keyed to whether leave has been granted avoids satellite disputes over which orders are truly preservatory.

The application to the impugned order is less convincing. The *Mandya* order constituted a committee of the existing trustees (para 4), yet the intrusiveness reasoning assumes a receivership that dislodges management (para 54). Order XL Rule 1(a) speaks of appointing a receiver of property, and the Supreme Court does not ask whether a committee of incumbent trustees is a receiver at all. If it was not, the Order XL analysis (paras 45 and 46) attaches to a mischaracterised order. An ad hoc committee under court direction may still displace autonomous governance, but the Court needed to say so.

Paras 53 to 55 also pull in different directions. Para 53 makes absence of jurisdiction decisive whatever the relief is called - what makes the intrusiveness of receivers unnecessary to the outcome. Para 54 nonetheless singles out receivers, while para 55 rejects a rule confined to them. Since para 60 covers all protective or preservatory orders, para 54 is best read as supplementary reasoning and not as the ratio.

C. Significance and Implications

The judgment provides a uniformity throughout the land as contemplated by Article 141. The plaintiffs are now required to aver urgency in their application for leave to the trial court and such trial courts are now required to record in writing their reasons for dispensing with notice.

The urgency mechanism is the most consequential part of the ruling and the least examined. In *R.M. Narayana Chettiar* the trial court granted leave without notice to the defendants. That decision treated notice as a rule of caution and not a requirement and held that an ex parte grant does not make the suit bad in law. It was a decision of a bench of two judges, the same strength as this one. Ex parte leave was therefore never a new exception. What *Panchalingu* adds is the requirement of compelling reasons recorded in writing (para 60), which tightens the earlier rule without saying whether it modifies or merely glosses it.

The deeper difficulty is internal. The Court's central worry is that a receiver appointed before leave harms the trust if leave is later refused (para 54). The same harm follows where leave is

granted ex parte, a receiver or injunction is ordered, and leave is later revoked, since revocation restores neither management nor the status quo. The shield therefore depends almost wholly on the standard for ex parte leave, which the judgment leaves at care, caution and circumspection (para 57). The *no lis* reasoning becomes a rule about the order in which one judge signs two orders, possibly on the same day.

VI. UNRESOLVED ISSUES / LIMITATIONS

Para 59 confirms that following leave, the Court may make other kinds of interim orders in addition to the 'mere appointment of a receiver'. A question, which remains unresolved in the judgment, is whether the concern about intrusive orders in paragraph 54 will go to restricting the scope of orders appointing a receiver following ex parte leave. Para 57 alludes merely to the sorts of urgent measures to which ex parte temporary injunctions belong, but does not clarify that a receiver can be appointed immediately following ex parte leave on similar grounds.

'Compelling urgency' is left undefined in the judgment and the Court does not express whether or not, post leave, the threshold test for interim relief should be higher or what are the consequences for the revocation of leave on outstanding orders. Para 32 involves a cumulative test of three conditions whereas para 59 demands "prima facie cogent reasons," but fails to elaborate whether the averments made by the plaintiff can suffice at the ex parte stage.

Finally, para 60 contains the fatal observation that no order of protection or preservation can be granted pending leave. The observations contained in para 57-59 are primarily in the nature of observations relating to post leave procedure and ought to be considered as guidelines. Their connection with the case of *R.M. Narayana Chettiar* remains inadequately explained since *Panchalingu* introduces a requirement of reasons in writing without specifying whether it is to clarify or to reinforce the test laid down earlier.

VII. CONCLUSION

Panchalingu holds that a Section 92 suit is not possible until leave is granted and that no protective or preservative order may be granted while the leave application is still pending. The main outcome is in line with the statutory scheme. The rationale is less convincing with regard to the inherent power, the interpretation of the Mandya order, and, particularly, the

approach to urgency, where reliance on *R.M. Narayana Chettiar* is difficult to square with the need for written reasons for dispensing with notice. This observation therefore provides grounds for restricting ex parte leave to a well-defined exception and for applying a high test to interim remedies granted on such leave. Further guidance should be provided by subsequent cases as to the scope of paragraph 59 and the meaning of compelling urgency.