

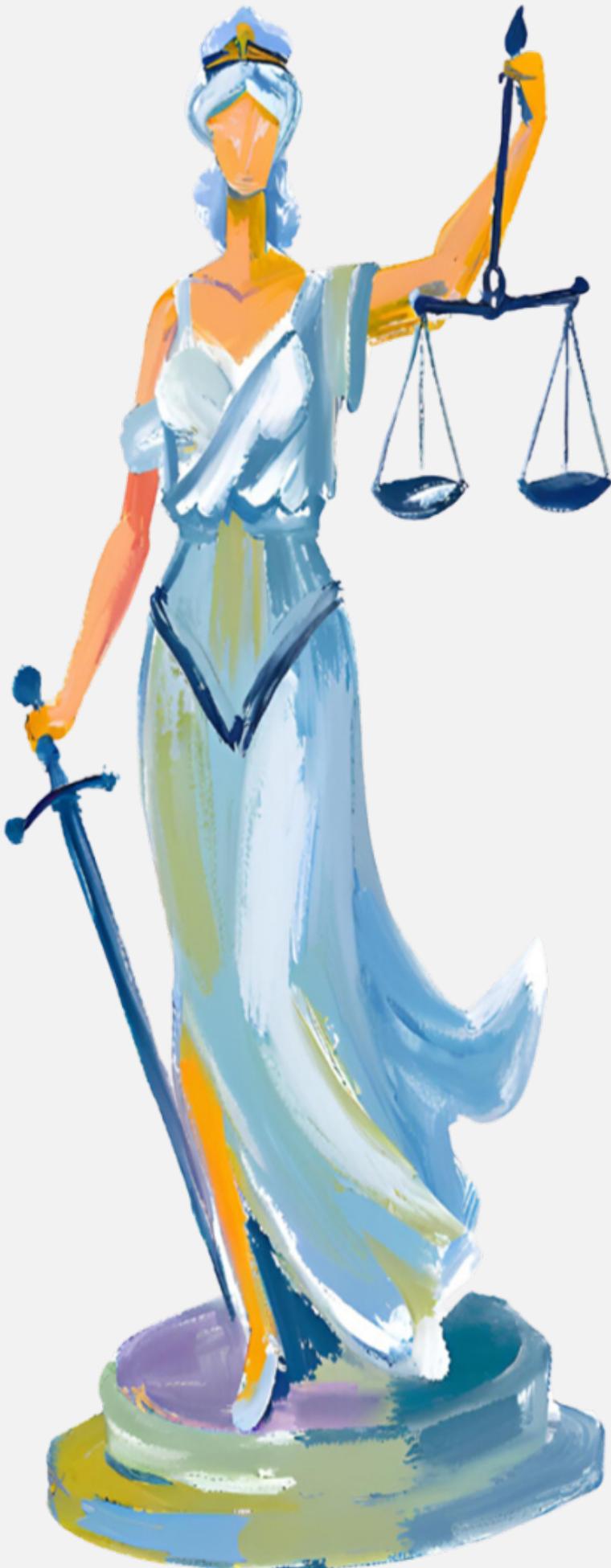


# Dispute Resolution & ADR

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# Enforceability and currency conversion of foreign arbitral awards

## DLF Ltd & Anr v. Koncar Generators and Motors Ltd

Supreme Court of India | August 8, 2024  
2024 SCC OnLine SC 1907

In this judgment, the Supreme Court clarifies the enforceability of foreign arbitral awards expressed in foreign currency by deliberating on issues pertaining to the appropriate date to determine the foreign exchange rate for converting the award amount into INR and the date for currency conversion for the portion of the award that may have been deposited by the award debtor during Court proceedings. Upholding the view that an arbitral award becomes enforceable when all objections against it are dismissed, the judgement effectively balances the rights of both the award debtor and the award holder by ensuring that foreign creditors are not disadvantaged by exchange rate fluctuations caused by prolonged legal proceedings in India. By aligning with earlier judgments like *Forasol* and *Renusagar*, the Supreme Court has reaffirmed the principle that the deposit made by an award debtor during legal challenges should be valued according to the date of deposit. This ensures that award holder is adequately compensated for delays without unfairly penalizing award debtor due to fluctuating exchange rates.

### SUMMARY OF FACTS

DLF Ltd (**DLF**), an Indian company, entered into a contract with Koncar Generators and Motors Ltd (**KGML**), a Croatian company, for the supply of generators. Disputes arose between the parties, leading to arbitration before the International Chamber of Commerce in Paris.

On May 12, 2004, the Arbitral Tribunal awarded KGML with Euro 1,093,989 including interest (award). KGML then sought enforcement of the award under Section 48 of the Arbitration and Conciliation Act, 1996 (**Act**), while DLF challenged it under Section 34 of the Act. This challenge was dismissed on April 28, 2010, leading DLF to file an appeal under Section 37 of the Act and object to the award's enforcement under Section 48 of the Act. The Appeal was dismissed as withdrawn, and a consensus was reached that DLF would deposit INR 7.5 crore before the Executing Court, which it did in October 2010.

In April 2011, the Executing Court dismissed DLF's objections. DLF filed a Revision Petition, and the High Court, on June 3, 2011, stayed the operation of the order and directed DLF to deposit an additional INR 50 lakh, which DLF deposited on July 15, 2011. The Revision Petition was dismissed on July 1, 2014, confirming the award.

On August 24, 2016, KGML was allowed to withdraw the entire deposit of INR 8 crore, which it received from DLF on October 10, 2016.

On February 3, 2017, the Executing Court allowed the execution of the award and determined that the date for conversion of foreign currency from Euro to INR under the award would be July 1, 2014, i.e., the date when all objections were rejected, and the award was confirmed.

DLF challenged this decision before the Delhi High Court, which was dismissed, prompting DLF to file a Special Leave Petition (**SLP**) before the Supreme Court.

### DECISION OF THE COURT

On the issue of enforceability of the award and date of conversion, the Supreme Court relied upon the law laid down in *Forasol v. Oil and Natural Gas Commission*<sup>1</sup> to hold that an arbitral award becomes enforceable when all objections against it are dismissed. Under Indian law, this is the date the award attains finality and becomes enforceable as a decree of the Court. In the present matter, this date was July 1, 2014, when the Revision Petition was dismissed, and the award was confirmed.

On partial deposits, the Court relied upon the law laid down in *Renusagar Power Co Ltd v. General Electric Co*<sup>2</sup> to hold that if the award debtor deposits any amount before the award becomes enforceable, the conversion rate for that amount is to be based on the date of deposit, provided the award holder is allowed to withdraw the same. While this would be applicable for the INR 7.5 crore deposited by DLF before the Executing Court, the same reasoning would not apply to the balance of INR 50 lakh deposited by DLF since the amount could not have been withdrawn by KGML before the award became enforceable.

<sup>1</sup> 1984 Supp (1) SCC 263

<sup>2</sup> 1994 Supp (1) SCC 644

# Right of third parties to file appeal against interim orders passed by Arbitral Tribunal under Section 17 of the Arbitration & Conciliation Act, 1996

## Assets Care & Reconstruction Enterprise Ltd v. Domus Greens Pvt Ltd & Ors

Delhi High Court | July 1, 2024  
2024 SCC OnLine Del 4455

The Delhi High Court recently examined the issue of whether an interim order passed by the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996 can bind a secured third-party creditor who was not party to the arbitration proceedings. While upholding the maintainability of the appeal against the interim order filed by the third party, the Court set aside the order to the extent it affected the right of the third party. The Court's judgment strikes a balance between the rights of secured creditors and the principles of arbitration law. It reinforces the primacy of statutory procedures like charge registration under the Companies Act, protecting creditors who comply with these formalities, while curtailing the impact of orders passed in arbitration proceedings affecting third-party rights when those parties have not been involved in the arbitration proceedings.

The Court's reasoning is consistent with established precedents, particularly the judgement passed by the Supreme Court in *State Bank of India v. Ericsson India Pvt Ltd* and the judgment passed by the Delhi High Court in *Edelweiss Asset Reconstruction Co Ltd v. GTL Infrastructure Ltd*, wherein appeals filed by third parties who are not a party to the arbitration proceedings were held to be maintainable when orders passed by the Arbitral Tribunal affected their legal rights. The judgment strengthens the position of third-party creditors, ensuring that their rights are not infringed without due process.

### SUMMARY OF FACTS

The case revolves around a financial dispute between Assets Care & Reconstruction Enterprise Ltd (**ACRE**) and Domus Greens Pvt Ltd (**Domus**), involving two major real estate projects. The ATS Group had availed financial facilities aggregating to INR 1100 crore from ACRE and secured these loans by creating an equitable mortgage over the two projects and registering this charge with the Registrar of Companies.

A prior arrangement existed between the ATS Group and the Dalmia Group (**Respondents**) where the latter had invested INR 113 crore in these projects. The Dalmia Group claimed a secured interest over the projects based on an Investment Agreement, though they did not register this charge.

During the arbitration proceedings between the Dalmia Group and ATS Group, the Arbitral Tribunal in exercise of its power under Section 17 of the Arbitration and Conciliation Act, 1996 (**Act**) passed interim measures on October 12, 2021, and November 5, 2021, restraining the ATS Group from alienating, transferring, or selling any flats in the projects without furnishing security, pending further directions (**Impugned Orders**).

However, ACRE, whose loan was secured by registered charges on the projects and was not a party to these arbitration proceedings, filed an appeal under Section 37 of the Act contending that its interests were being adversely affected.

### DECISION OF THE COURT

The High Court reaffirmed that while an Arbitral Tribunal has wide powers to issue interim measures of protection under Section 17 of the Act, these powers cannot infringe upon the rights of third parties who were not parties to the arbitration proceedings. ACRE's registered charge created a superior legal interest, and the Impugned Orders passed by the Arbitral Tribunal, which restrained the sale of the secured assets, directly interfered with ACRE's contractual rights without giving them a chance to object. Further, whilst holding the Appeal to be maintainable, the Delhi High Court allowed the appeal filed by ACRE and set aside the Impugned Orders passed by the Arbitral Tribunal to the extent that they impacted the registered charge of the ACRE over the projects.

## Power of the Arbitral Tribunal to award pre-reference interest

### Pam Developments Pvt Ltd v. State of West Bengal

Supreme Court of India | August 23, 2024  
2024 SCC OnLine SC 2247

In this matter, the Supreme Court analysed Section 31(7) of the Arbitration and Conciliation Act, 1996 and upheld the power of the Arbitrator to grant pre-reference interest in the absence of any contractual bar on the same. The Judgment highlights the legislative intent underlying the use of the phrase ‘unless otherwise agreed by the parties’ in the provision necessarily requiring a positive contractual bargain of the parties to prohibit grant of interest. This Judgment diminishes the possibility of Arbitrators and Courts adopting an alternative interpretation requiring an enabling provision empowering the Arbitrator to grant interest. The decision also marks an important step in upholding the core tenets of arbitration law, i.e. party autonomy and minimal court interference with arbitral awards.

#### SUMMARY OF FACTS

In a dispute arising out of a Work Order, the Arbitrator whilst allowing certain claims of the contractor, also awarded pre-reference and *pendente lite* interest @12% per annum (from the date when the contractor claimed breach of contract till the date of the Award) and post-award interest @9.25% per annum on the sum awarded under the Award.

In a challenge to the Award under Section 34 of the Arbitration and Conciliation Act, 1996 (**Act**) the District Judge partly confirmed the Award including the award on interest. However, in the appeal under Section 37 of the Act, the Calcutta High Court *inter alia* modified the Award on interest allowing only *pendente lite* and post-Award interest while setting aside the interest awarded for the pre-reference period on the ground that the agreement between the parties prohibited grant of pre-reference interest.

#### DECISION OF THE COURT

The Supreme Court observed that Section 31(7) of the Act empowers the Arbitrator to grant interest on the sum awarded or part thereof, for any duration within the period from the date on which the cause of action arose till the date on which the award is made.

The only bar on the power of the Arbitrator to grant such interest during the period prior to the passing of the Award is if the agreement prohibits the same.

While holding as above, the Supreme Court summarized the legal position *qua* the power of the Arbitrator to grant pre-reference, *pendente lite* and post-award interest *inter alia* as under:

- Under the erstwhile Arbitration Act, 1940, the Courts had adopted a strict construction of the contractual clauses prohibiting grant of interest and held that the Arbitrator had the power to grant pre-reference, *pendente lite* and post-award interest if the agreement did not specifically prohibit the same.
- Under Section 31(7)(a) of the Act of 1996, the Arbitrator can award interest for the period between the date of cause of action to the date of the award, *unless otherwise agreed by the parties*. Such power is not restricted if the agreement is merely silent on this aspect. The provision, *firstly*, does not explicitly distinguish between pre – reference and *pendente lite* periods and, *secondly*, sanctifies of party autonomy in restricting the power of the Arbitrator to grant interest if so, agreed by the parties.

## Right of third parties to seek case pleadings under the RTI Act

Central Public Information Officer v. AK Jain

Delhi High Court | July 26, 2024  
2024 SCC OnLine Del 5708

In this case, the issue before the Delhi High Court was whether a third party is entitled to documents of case proceedings under the RTI Act. Observing that such right cannot be denied in the absence of an express legislative bar, the Court held that an RTI Application by a third party seeking case documents must be decided with application of mind, giving proper reasons for accepting or rejecting the same. The additional requirement upon an RTI Applicant to file a detailed affidavit demonstrates a commitment to a reasoned approach, ensuring that information disclosure is context-specific and proportional to its public requirement. The Court's emphasis on harmonious interpretation allows for transparency without disregarding the need to protect sensitive judicial information.

However, we believe that while addressing the 'legislative gap' in the Regulations, it is important to draft a framework/guidelines for deciding such RTI Applications which seek personal information to ensure uniformity in approach and prevent arbitrariness. It may be added that while adjudicating such RTI Applications, the parties to the court proceeding, whose pleadings are sought, may be heard as well in compliance with the principle of *audi alteram partem*.

### SUMMARY OF FACTS

The Respondent filed an RTI Application seeking copies of all pleadings and applications in a consumer case pending before the National Consumer Disputes Redressal Commission (**NCDRC**), simultaneously filing an Intervention Application therein.

The RTI Application was rejected in terms of Regulation 21 of the Consumer Protection Regulations, 2005 (**Regulations**) by the CPIO, NCDRC (**Petitioner**) on the ground that the Respondent was a third party.

In appeal, the First Appellate Authority (**FAA**) under the Right to Information Act, 2005 (**RTI Act**) upheld the rejection order holding that Regulation 21 implicitly bars furnishing of pleadings to third parties.

In an appeal against this Order, the Central Information Commission (**CIC**) allowed the RTI Application holding the Petitioner legally obligated to respond to the RTI Application in terms of the provisions of the RTI Act by virtue of the overriding effect of Section 22 of the RTI Act. Additionally, the CIC observed that the Petitioner's and the FAA's delay in responding to the RTI Application had deprived the Respondent of the benefits of the RTI Act and defeated the purpose thereof. The appeal was allowed *in toto*, with a direction to furnish all information to the Respondent.

The Petitioner assailed the CIC Order by way of a Writ Petition before the Delhi High Court.

### DECISION OF THE COURT

Applying a literal interpretation of the Regulations, the Court noted that Regulations 21 & 22 provide a structured mechanism to access Court records facilitating parties' active participation in their cases.

Further, observing the requirement to harmoniously interpret the Regulations with the provisions of the RTI Act, the Court held the absence of express prohibition on the rights of third parties to be a 'gap' in the regulatory framework for which the RTI Act serves as a 'legislative bridge'.

As such, Regulation 21 could not be inferred to create an implied bar or an obstruction on the right of third parties to access information. Such a (mis)interpretation would also be against the overarching mandate of Section 22 of the RTI Act.

In the absence of any express bar, the Court rejected the applicability of Section 8(1)(b) of the RTI Act, which only exempted the furnishing of information that has been '**expressly forbidden** to be published by any court of law or tribunal or the disclosure of which may constitute contempt of Court' (emphasis supplied).

The Court further held that the exemption under Section 8(1)(j) of the RTI Act cannot be used to deny information to a third-party *ipso facto* without providing a substantial evaluation of potential privacy concerns after weighing the competing interests of individual privacy and public disclosure in respect of the information sought. As such, the Court modified the CIC's Order, directing the Respondent to file a detailed Affidavit before the Petitioner, and remanding the matter to the Petitioner for re-assessing the Respondent's request.

# Power of States to create sub-classification within the Scheduled Castes and application of the Creamy Layer concept

## State of Punjab v. Davinder Singh

Supreme Court of India | August 1, 2024  
2024 SCC OnLine SC 1860

The Supreme Court observed that the Scheduled Castes under Article 341 of the Constitution do not constitute a homogenous class and upheld the power of the States to create further sub-classification within the list of Scheduled Castes. The Supreme Court also observed the creamy layer principle to be applicable to Scheduled Castes. Applying the creamy layer concept to Scheduled Castes aligns with the original intent of reservation as a temporary measure to uplift the backward sections of society, ensuring that those who have already benefited do not receive further advantages, and thereby targeting affirmative action to those who remain truly disadvantaged. By recognizing the State's power to create sub-classification, the judgment recognizes the existence of inequalities amongst the SCs and ensures that the most backward groups will be able to avail the benefits of affirmative action in priority to the groups that are comparatively less backward.

### SUMMARY OF FACTS

The case arises out of a challenge to the constitutionality of Section 4(5) of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 (**Punjab Act**). Section 4(5) provided a preference to Balmikis and Mazhabi Sikhs for filling up 50% of the direct recruitment vacancies reserved for the Scheduled Caste (**SC**), thereby creating a sub-class within the SC category. Section 4(5) was declared unconstitutional by the Punjab & Haryana High Court, relying on *EV Chinnaiiah v. State of AP*.<sup>3</sup>

Against such order, the issue was referred to a 7-judge bench of the Supreme Court to consider the correctness of *Chinnaiiah* and decide similar cases challenging statutory provisions that create a sub-class within the SCs. In *Chinnaiiah*, a 5-judge bench of the Supreme Court held that it was impermissible for States to create a sub-classification within the SCs, on the following reasoning:

- Article 341 exclusively empowers the Parliament to amend the Presidential List of SCs, and the States cannot claim legislative competence under Articles 15(4) or 16(4), or Entry 41 of List II or Entry 25 of List III of the Seventh Schedule to do so irrespective of the purpose of classification.
- The Presidential Notification under Article 341(1) constitutes a homogenous group of Scheduled Castes that are 'deemed to be' one class incapable of further division *inter se*.
- The rationale of *Indra Sawhney v. Union of India*,<sup>4</sup> which permitted further sub-classification of OBCs, does not apply to SCs.

### DECISION OF THE COURT

The Supreme Court overruled *Chinnaiiah*, upholding the States' power to sub-classify SCs when providing reservations since sub-classification does not lead to inclusion/exclusion of groups in the Presidential List. As such, sub-classification of SCs by the States was not violative of Article 341(2).

It was further observed that while SCs constituted a 'distinct class' demarcated from other castes not included in the category, it did not lead to the creation of a uniform/homogenous class since inclusion in the list of SCs did not itself mean the existence or non-existence of internal differences. The Court re-iterated the applicability of principles of reasonable classification holding that the existence of historical inequalities within the SCs forms an intelligible basis for differentiating within the sub-classes. Further, for creating sub-classification, the State must prove that the inadequacy of effective representation of a caste is because of its social backwardness.

Pertinently, following the judgment in *Indra Sawhney*, the Court also held that the creamy layer principle applies to SCs as well. The Court referred to the observation in *Jarnail Singh v. Lachhmi Narain Gupta*<sup>5</sup> and noted that exclusion of creamy layer would not have the effect of tinkering with the Presidential List because a caste as a whole is not excluded and that the State must evolve a policy for identifying the creamy layer from SCs and STs to exclude them from the benefit of affirmative action.

<sup>3</sup> (2005) 1 SCC 394

<sup>4</sup> 1992 Supp (3) SCC 217

<sup>5</sup> (2018) 10 SCC 396

# Charitable society as a constructive trust for the purpose of Section 92 of the Code of Civil Procedure, 1908

## Operation Asha, a Registered Society through its President Mr Rakesh K Khurana v. Shelly Batra & Ors

Delhi High Court | August 21, 2024  
2024 SCC OnLine Del 5936

The Delhi High Court has held that a registered Society created for a charitable or religious public purpose acquires the character of a constructive trust. As such, a suit can be instituted against such a registered Society after leave is granted in terms of Section 92 of the CPC. By recognizing a registered society as a constructive trust under Section 92 CPC, this judgment has broadened the scope for legal accountability by applying judicial oversight to charitable societies similar to those applicable to traditional trusts, enhancing the protection of charitable assets from mismanagement and ensuring they are used for intended purposes. It also implies that societies of such public nature-charitable/religious must adhere to rigorous governance practices and compliance standards, thereby promoting more effective internal controls. Additionally, this decision provides beneficiaries and other interested parties with clearer access to legal remedies for addressing grievances related to alleged breaches of trust. Finally, it sets a potential precedent that could influence the treatment of other non-profit entities under similar legal frameworks.

### SUMMARY OF FACTS

The Respondents were the former President and Board Member of the Appellant, a not-for-profit Society registered under the Societies Registration Act, 1860 that is involved with treatment, education and prevention of tuberculosis and other diseases primarily for the under-privileged sections of the society. The Respondents filed a Suit alleging mismanagement and defalcation of funds of the Appellant-Society before the Trial Court, along with an application under Section 92 of the Code of Civil Procedure, 1908 (CPC) seeking leave to institute the Suit against the Appellant-Society (**Section 92 Application**).

Section 92 CPC *inter alia* provides that any two or more persons interested in an express or constructive trust may institute a Suit alleging breach of trust seeking necessary directions against the trust, after having obtained the leave of the Court.

*Vide* Order dated May 3, 2024, the Section 92 Application was allowed by the Trial Court. Aggrieved by the Trial Court's order, the Appellant-Society filed the present Appeal before the Delhi High Court contending that the Appellant is neither an express trust nor an implied trust.

### DECISION OF THE COURT

At the outset, the Court culled out the following pre-conditions for invoking Section 92 CPC per the decision in *Ashok Kumar Gupta v. Sitalaxmi Sahuwala Medical Trust*:<sup>6</sup>

- The trust in question is created for public purposes of a charitable or religious nature
- There is a breach of trust or a direction of Court is necessary in the administration of such a trust
- The relief claimed is one or other of the reliefs as enumerated under Section 92 CPC

Having regard to the Aims and Objectives in the Memorandum of Association of the Appellant-Society, the Court observed that the Appellant-Society is of a charitable nature since it had been formed 'primarily for serving the under-privileged sections of the society, in particular, patients suffering from tuberculosis', that incomes and properties of the Appellant-Society were to be solely utilized towards its charitable Aims and Objectives, and that no such amount was to be paid to its members either directly or indirectly in any manner whatsoever.

The Court even took note of Articles of Association of the Appellant-Society which provided that all moveable and immoveable properties shall stand vested in the Committee. Having regard to the aforesaid, the Court concluded that since all donations, gifts, etc. in favour of the Appellant-Society are properties 'entrusted' to it, the Appellant-Society acquires the character of a 'constructive trust'. Finally, although certain prayers of the Suit agitate a personal grievance, the Court upheld the Trial Court's order since other prayers fell within the purview of reliefs available under Section 92.

<sup>6</sup>(2020) 4 SCC 321



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