

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

GA No. 1 of 2019

(Old No. GA 1517 of 2019)

With

GA No. 2 of 2019

(Old No. GA 1523 of 2019)

With

GA No. 3 of 2019

(Old No. GA 1532 of 2019)

With

GA No. 5 of 2020

(Old No. GA 828 of 2020)

With

GA No. 6 of 2022

With

GA No. 8 of 2023

With

GA No. 9 of 2024

With

GA No. 10 of 2024

With
GA No. 11 of 2024
In
CS No. 111 of 2019

Mr. Anil Rajkumar Mukerji & Ors.

Versus

RT. REV. Paritosh Canning & Ors.

Mr. Jishnu Saha, Sr. Adv.

Ms. Brinda Sengupta

Mr. Ishaan Saha

Mr. Aishwarya Kumar Awasthi

... for the plaintiffs.

Mr. S. Muralidhar, Sr. Adv.

Mr. Sankalp Narain

Mr. Rohit Sthalekar

Mr. Mourya Subramaniam

Mr. M.P. Saini

Mr. Paritosh Sinha

Mr. B.P. Tiwari

... for the defendant nos. 1 and 7.

Mr. Suman Kumar Dutt, Sr. Adv.

Ms. Shrayashee Das

Mr. Shounak Mukhopadhyay

Mr. Rohan Kumar Thakur

Mr. Tridibesh Dasgupta

... for the defendant no. 2.

Mr. Sudip Deb, Sr. Adv.

Mr. Ritoban Sarkar

Ms. Pooja Sah

.... For the defendant nos. 5 & 6.

Mr. Ranjan Bachawat, Sr. Adv.

Mr. Sayan Roy Chowdhury

Mr. Satyaki Mukherjee

Ms. Rishika Goyel

... for the defendant no. 8.

Mr. Ratnanko Banerji, Sr. Adv.

Mr. Dharendra Nath Sharma, Sr. Adv.

Mr. Kanishk Kejriwal

Mr. Ramendu Agarwal

... for the Association of La
Martiniere Alumni.

Hearing Concluded On : 09.01.2025

Judgment on : 27.02.2025

Krishna Rao, J.:

1. The plaintiffs have filed the suit praying for the following reliefs:

“(a) Declaration that the letters dated 19th June 2019 issued by the defendant Nos. 1 and 2 terminating the services of the plaintiffs are illegal, non est and void and a decree cancelling and/or setting aside the said letters and the termination of the plaintiffs;

(b) Declaration that the letter dated 17th June 2019 issued by the defendant Nos. 1 and 2 terminating the services of the defendant No. 8 is illegal, non

est and void and a decree cancelling and/or setting aside the said letter and the termination of the defendant No. 8;

(c) Permanent injunction restraining defendant Nos. 1 to 7 and each of them and/or their men, servants and agents from acting in terms of and/or from giving effect to the said letters dated 19th June 2019 terminating the service of the plaintiffs;

(d) Permanent injunction restraining defendant Nos. 1 to 7 and each of them and/or their men, servants and agents from acting in terms of and/or from giving effect to the said letter dated 17th June 2019 terminating the services of the defendant No. 8;

(e) Decree directing the plaintiffs to act as and/or to carry on and to discharge duties as members of the Board of Governors of La Martiniere Schools, Calcutta;

(f) Decree directing the defendant No. 8 to discharge and carry out his duties as secretary of the La Martiniere Schools, Calcutta;

(g) Declaration that the letter of appointment of the defendant No. 7 dated 17th June 2019 appointing the defendant No. 7 as the secretary of La Martiniere Schools, Calcutta is illegal, null and void;

(h) Declaration that the appointment of the defendant Nos. 3 to 6 on 21st June 2019 as members of the Board of Governors of La Martiniere Schools, Calcutta is illegal, null and void;

(i) Permanent injunction restraining the defendant No. 7 from representing and/or holding himself out to be the secretary of La Martiniere Schools, Kolkata or from seeking to discharge any duty as secretary of the said schools;

(j) Permanent injunction restraining the defendant No. 3 to 6 from representing and/or holding themselves out to be members of the Board of Governors of La Martiniere Schools, Calcutta or from seeking to discharge any duty as members of

the Board of Governors of Schools, Calcutta; La Martiniere

(k) A scheme be framed for the management and administration of the La Martiniere Schools, Calcutta by modifying the decree dated 22nd October, 1832 read with the order dated 6th June 1944;

(l) Receiver;

(m) Injunction;

(n) Attachment;

(o) Costs;

(p) Further and other reliefs.”

- 2.** The plaintiffs have also filed an application being G.A. No. 1 of 2019 praying for the following reliefs:

“(a) Injunction restraining respondent Nos. 1 to 7 and each of them and/or their men, servants and agents from acting in terms of and/or from giving effect to the said letters dated 19th June 2019 terminating the service of the petitioners;

(b) Injunction restraining respondent Nos. 1 to 7 and each of them and/or their men, servants and agents from acting in terms of and/or from giving effect to the said letter dated 17th June 2019 terminating the services of the respondent No. 8;

(c) Injunction restraining the respondents and each of them and/or their men servants and agents from preventing, restraining and/or in any manner whatsoever obstructing and/or hindering the petitioners to act as and/or to carry on and to discharge duties as members of the Board of Governors of La Martiniere Schools, Calcutta;

(d) Injunction restraining the respondents and each of them and/or their men servants and agents from preventing, restraining and/or in any manner whatsoever obstructing and/or hindering the respondent No. 8 to act as and/or to carry on and

to discharge duties as Secretary of La Martiniere Schools, Calcutta;

(e) Injunction restraining the respondent No. 7 from representing and/or holding himself out to be the secretary of La Martiniere Schools, Kolkata or from seeking to discharge any duty as secretary of the said schools;

(f) Injunction restraining the respondent No. 3 to 6 from representing and/or the holding themselves out to be members of the Board of Governors of La Martiniere Schools, Calcutta or from seeking to discharge any duty as members of the Board of Governors of La Martiniere Schools, Calcutta;

(g) Ad Interim orders in terms of prayers above,

(h) Costs of and incidental to this petition be paid by the respondent Nos.1 to 7;

(i) Such further order and/or orders be made and/or direction and/or directions be given as to which this Hon'ble Court may deem fit and proper.”

- 3.** The defendant nos.1 and 2 have filed an application being G.A. No. 2 of 2019 praying for following reliefs:

“a) Leave granted by this Hon'ble Court in the instant suit in favour of the plaintiffs under Section 92 and also under Order I Rule 8 of the Code of Civil Procedure be immediately revoked;

b) All further proceedings pertaining to the present suit being C.S no 111 of 2019 be stayed till the disposal of the present application;

c) Ad-interim orders be passed in terms of prayer (b) above;

(d) Costs of and incidental to this application be directed to be borne by the plaintiffs;

h) Such other and/or further order or orders be passed and/or direction or directions be issued, as to Your Lordships may deem fit and proper.”

4. The plaintiffs have filed an application being G.A. No. 3 of 2019 praying for the following reliefs:

“(a) Injunction restraining the respondent Nos. 1 to 7 and each of them and/or their men, servants and agents from commencing, proceedings with and/or giving effect to new admissions for the year 2019-2020 in the La Martiniere Schools, Calcutta;

(b) A fit and proper person be appointed as receiver to oversee and control the admission process of the said two La Martiniere Schools, Calcutta for the year 2019-2020;

(c) Injunction restraining the respondent nos. 1 to 7 from giving any effect or further effect to any decision arrived at the board meeting held on the 5th July, 2019;

(d) Injunction restraining the respondent nos. 1 to 7 and/or their men, servants and agents from convening and/or holding any other board meetings of the La Martiniere Schools, Calcutta.

(e) Costs of and incidental of this petition be paid by the respondents;

(f) Such further or other order and/or orders be made and/or direction and/or directions be given as to which this Hon'ble Court may deem fit and proper.”

5. The defendant nos.1 and 2 have filed an application being G.A. No. 5 of 2020 praying for following reliefs:

“(a) The plaint filed in C.S. No. 111 of 2019 be rejected and be taken off the file;

(b) Alternatively, the present suit registered as C.S. No.111 of 2019 be dismissed;

(c) Order dated July 12, 2019, being part of Annexure D hereto be set aside and/or vacated and/or discharged:

(d) Stay of operation of the Order dated July 12, 2019 being part of Annexure D hereto until disposal of the instant application;

(e) All further proceedings pertaining to the present suit be stayed till the disposal of the present Application;

(f) Ad-interim order be passed in terms of prayers above;

(g) The costs of and incidental to this application be directed to be borne by the plaintiffs jointly and / or severally;

(h) Such other and / or further order or orders be passed and other direction or directions be issued, as Your Lordships may deem fit and proper.”

- 6.** The Association of La Martiniere Alumni have filed an application being G.A. No. 6 of 2022 praying for following reliefs:

“a) Association of La Martiniere Alumni (ALMA), having its office at 3B Camac Street, Mansarovar Building 2nd Floor, Multiwyn Group, Kolkata 700016, be added as a party to the instant suit.

b) Appropriate order and direction be passed directing the Registrar, High Court at Calcutta, Original Side to amend the records of the proceeding adding the applicant as a party on such terms and conditions as the Hon'ble Court may deem fit and proper.

c) Such further and/or other order or orders be passed and/or direction or directions be given as Your Lordships deem fit and proper.”

- 7.** The defendant no. 8 has filed an application being G.A. No. 8 of 2023 praying for following reliefs:

“a) An Order be passed for framing appropriate scheme for interim management and administration of the La Martiniere Schools,

Calcutta, pending the hearing and final disposal of the suit;

b) Such further and/or other order or orders be passed and/or direction or directions be given as Your Lordships deem fit and proper.”

- 8.** The defendant nos. 5 and 6 have filed an application being G.A. No. 9 of 2024 praying for the following reliefs:

“a. Leave granted by this Hon’ble Court under Section 92 and Order I Rule 8 of the CPC for institution of the suit, being C.S. 111 of 2019, be revoked and/or recalled;

b. The plaint in the present suit be rejected and the suit, being C.S. 111 of 2019, be dismissed;

c. Stay of any and all further proceedings in the present suit, being C.S. No. 111 of 2019, pending disposal of the present application;

d. Interim and ad-interim(s) order in terms of prayers above;

e. Such further and/or other order(s) as this Hon’ble Court may deem fit.”

- 9.** The defendant nos.1 & 2 have filed an application being G.A. No. 10 of 2024 praying for following reliefs:

“a. G.A. 2/2019 as well as the issue so as to whether leave under section 92 of CPC 1908 was granted right or not, be decided as a preliminary issue.

b. Stay of any and all further proceedings in the present suit being C.S. No. 111/2019 pending disposal of the present application as well as G.A. No. 2/2019.

c. An ad interim order in terms of the prayer above.

d. Such further/or other orders as this Hon'ble Court may deem fit."

- 10.** The defendant no.7 has filed an application being G.A. No.11 of 2024 praying for the following reliefs:

"a. Order(s) be passed directing the petitioner's objection as to maintainability of the suit as raised in I.A./G.A. 2 of 2019 to be decided first and/or as a preliminary issue prior to any of the other applications being adjudicated;

b. Stay of any and all further proceedings in the present suit, being C.S. No. 111 of 2019, pending disposal of I.A. /G.A. 2 of 2019;

c. Interim and ad-interim(s) order in terms of prayers above;

d. Such further and/or other order(s) as this Hon'ble Court may deem fit."

- 11.** The plaint was presented on 4th July, 2019 and this Court granted leave under Clause 12 of the Letters Patent, 1865, Order II, Rule 2, Order I, Rule 8 and Section 92 of the Code of Civil Procedure, 1908 and admitted the plaint.

- 12.** This Court by an order dated 12th July, 2019 revokes the leave granted under Section 92 of the Code of Civil Procedure, 1908 and also passed an interim order directing the Board of Governors of the school will not take any decision regarding management of the school till disposal of the application and Ex-Officio Governors will not, in that time, appoint any person as Additional Governor.

- 13.** Being aggrieved with the order dated 12th July, 2019, the plaintiffs as well as the defendants have preferred an appeal being APO No. 109 of 2019 and APO No. 112 of 2019. By an order dated 25th July, 2019, the Appellate Court set aside the part of the impugned order wherein this Court revoked leave under Section 92 of the Code of Civil Procedure, 1908 and held that *“The question whether this leave under Section 92 was granted properly or not shall be decided as a preliminary issue at the time of trial of the suit.”* The Appellate Court also appointed a retired Judge of this Court who was the former student of the said school as Administrator and directed that the Board appointed on 21st June, 2019 including the permanent ex-officio Governors shall act under the control and supervision of the administrator.
- 14.** Being aggrieved and dissatisfied with the order dated 25th July, 2019 passed by the Appellate Court, the defendant no.1 has filed Special Leave Petition and the same was disposed of by an order dated 20th September, 2019 by passing the following order:

“After hearing learned counsel for the parties, learned senior counsel for the petitioners on instructions states that the appeal preferred by the petitioners before the Division Bench against the order of the learned Single Judge dated 12.07.2019 itself be treated as withdrawn.

We accept the request. The appeal of the petitioner’s before the Division Bench is thus dismissed as withdrawn and consequently any interim arrangement made thereof shall stand dissolved.

The interim arrangement as opined by the learned Single Judge in its order dated 12.07.2019

stands restored noticing that it is in the nature of peremptory order.

The Special Leave Petitions stand disposed of.

Pending applications stand disposed of.

SLP(C) No. 20779 – 20788/2019

Dismissed as withdrawn.

Needless to say that the direction passed by the Division Bench in APO No. 109/2019 would thus prevail.

Learned counsel for the petitioner(s), however, seeks a direction for expeditious hearing. We are not inclined to grant such a direction. It is always up to the High Court to deal with the matter on its own.”

- 15.** After the order passed by the Hon’ble Supreme Court, the matter was again moved before this Court on 18th August, 2020 and this Court has passed the following order:

“It is clear that plaintiffs were appointed as Additional Governors for a period of one year. On approaching Court the interim order was passed and short directions given for expeditious adjudication and management being restored to the Board. It is now, therefore, necessary that there be clarification that the interim order was not intended to overrun into the next term. Since the application could not be disposed of within the term of plaintiff, on the controversy of whether they were rightly or wrongly removed, this clarification that the interim order cannot and does not presently operate.

Mr. Saha submits, there was another aspect, which led to the passing of the order and the clarification made, should not be made. The other aspect is the question of administration. Court having had prima facie satisfaction on there being necessity in the matter of administration, had passed the interim order and it should not now be clarified to the effect of it being vacated.

Court has perused order dated 12th July, 2019 and is convinced that what weighed in the making of it was prima facie appreciation of the manner, in which plaintiffs had been removed. The larger question of administration may be a question to be answered but was not gone into at that stage.”

- 16.** Being aggrieved and dissatisfied with the order dated 18th August, 2020, the plaintiffs have preferred an appeal being APO No. 83 of 2020 and the Appellate Court by an order dated 8th October, 2020 passed the following interim order:

“The appellants complain that major policy decisions have been taken by the Board of Governors headed by the present Bishop of Calcutta for establishing branches or new schools in the name of La Martiniere in conjunction with other schools. It would be in the best interest of all concerned that all decisions taken by the Board after the institution of the suit or after the passing of the initial order therein on July 12, 2019 be not immediately given effect to except those pertaining to the day-to-day administration and functioning of La Martiniere School, Calcutta, both the Boys’ and Girls’ sections. No decision pertaining to any new school should be given effect to or any steps taken in pursuance thereof till the matter is decided.

It may be necessary to make the constitutional document more contemporary and to revisit the manner of the composition of the Board of Governors of the school. Since such part of the exercise may be purely for the interest of the school and not adverse to any person, the exercise may even be taken up in course of the present appeal to preserve and protect the interest of the school which ought to be the paramount concern of the Court.”

- 17.** Being aggrieved and dissatisfied with the order dated 8th October, 2020, the defendant no.1 has filed Special Leave Petition and the Hon’ble

Supreme Court has disposed of the said SLP by an order dated 27th November, 2020 by passing the following order:

“The appeal is still pending before the Division Bench and it appears that at the preliminary hearing, the contours of the disputes have been set out only to facilitate the respondents to respond to the same. This does not take away, in any manner, right of the petitioner to contend that such issues need not be decided in the appeal.

As an abundant caution, we may state that any observations made in the impugned order naturally would not colour the final finding in the appeal.

The special leave petition is disposed of”

- 18.** After the order passed by the Hon’ble Supreme Court dated 27th November, 2020, the appeal filed by the plaintiffs being APO No. 83 of 2020 was disposed of by the Appellate Court by an order dated 13th July, 2023 passing the following order:

“66. *In the facts and circumstances of the present case, it would be appropriate to hold that, the pleadings of the appellants/plaintiffs had made out a prima facie case. The balance of convenience and inconvenience was also in favour of the appellants/plaintiffs in granting interim reliefs.*

67. *The interim order initially granted on July 12, 2019 had proceeded on the basis of a person who can officiate as Ex-officio Governor signing two documents, contexts of which contradict each other. The interim order granted was not in relation to the appointment of the plaintiffs/appellants as Additional Governors but related to the management of administration of the affairs of the two schools. Management and the administration of the two schools are not limited to the time period of the office of the plaintiffs/appellants particularly in view of the fact that, the suit was under Section 92 of the Code of Civil Procedure, 1908.*

68. *The plaintiffs/appellants have raised serious issues with regard to the composition of the Board of Governors of the two schools. Interest of the public including the students studying in the two schools have to be taken into consideration. Prima facie, there is an urgent need for the Court to revisit the composition of the Board of Governors. As on date, there are only two members of the Board of Governors. The requisite quorum as prescribed by the constitution of the two schools are not available in the present Board of Governors of the two schools. Therefore, there is a serious issue as to whether, the present Board of Governors can function at all without requisite quorum being present.*

69. *However, those issues have to be taken into consideration in an appropriate proceedings. The scope of the appeal being limited, we refrain ourselves from embarking on such route despite the order dated October 8, 2020.*

70. *In such circumstances, it would be appropriate to direct that the Board of Governors of the two schools will not take any decisions regarding the management of the two schools till the disposal of the interlocutory applications. The Ex-officio Governors will not, till the disposal of the interlocutory applications, appoint any person as Additional Governors. All decisions taken by the Board of Governors after the institution of the suit or after the passing of the initial order therein, on July 12, 2019, be not given effect to, except those pertaining to the day to day administration and functioning of the two schools. No decision pertaining to any new school should be given effect to or any steps taken in pursuance thereof till the interlocutory applications are decided.*

71. *The learned Judge before whom the matters are pending is requested to dispose of all the pending interlocutory applications as expeditiously as possible and preferably within a period of four weeks from date.*

72. *During the pendency of the appeal, an application being GA 7 of 2023 has been filed seeking framing of a scheme for the management and administration of the two schools. In view of*

Meena Chaudhary (supra) since the scope of GA 7 of 2023 is greater than the scope of the main appeal such prayer is not considered by us. It would however not prevent the parties to the suit from seeking appropriate relief before the Trial Court. All points with regard thereto are left open.

73. *In view of the discussions above GA 4 of 2021 is disposed of by holding that the appeal is maintainable. GA 6 of 2023 has lost its force in view of the fact that, every learned counsel who wanted to address the Court on the virtual platform was allowed to do so.*

74. *APO 83 of 2020 with all other connected applications are disposed of without any order as to costs.”*

19. Being aggrieved and dissatisfied with the order dated 13th July, 2023 passed by the Appellate Court, the defendant no.7 had preferred a Special Leave Petition before the Hon’ble Supreme Court. After some argument before the Hon’ble Supreme Court, the Counsel appearing on behalf of the plaintiff/defendant no.7 prays for withdrawal and accordingly the same was dismissed as withdrawn.

20. Again a Special Leave Petition was filed against the order dated 13th July, 2023 and the said Special Leave Petition is dismissed on 15th July, 2024 by passing the following order:

“2. *We are not inclined to entertain the present special leave petition. The special leave petition is dismissed accordingly.*

3. *However, we clarify that while deciding the preliminary issued the learned Single Judge would not be influenced by the observations made by the Division Bench in the impugned order.”*

- 21.** G.A. No. 2 of 2019 (Old G.A. No. 1523 of 2019), G.A. No. 5 of 2020 (Old G.A. No. 828 of 2020) and G.A. No. 10 of 2024 filed by the defendant nos.1 and 2, G.A. No. 9 of 2024 filed by the defendant nos. 5 & 6, G.A. No.11 of 2024 filed by the defendant no.7 and GA No. 8 of 2023 filed by the defendant no. 8 are taken up together as all the above applications are connected with revocation of leave granted under Section 92 of the Code of Civil Procedure, 1908 and for framing of interim scheme for management and Administration of La Martieniere Schools in Calcutta.
- 22.** By an order dated 4th July, 2019, this Court granted leave to the plaintiffs under Clause 12 of the Letters Patent, Order II Rule 2, Order I Rule 8 and under Section 92 of the Code of Civil Procedure, 1908. Subsequently, on the application filed by the defendant nos.1 and 2 being G.A. No. 2 of 2019 (Old G.A. No. 1523 of 2019) this Court by an order dated 12th July, 2019 revoked the leave granted under Section 92 of the Code of Civil Procedure, 1908. In an appeal preferred by the plaintiffs against the order dated 12th July, 2019, the Appellate Court by an order dated 25th July, 2019 set aside the part of the order dated 12th July, 2019 wherein this Court revoked the leave granted under Section 92 of the Code of Civil Procedure, 1908. At the time of setting aside the said portion of the order dated 12th July, 2019, the Appellate Court held that the question whether the leave under Section 92 was granted properly or not shall be decided as a preliminary issue at the time of trial of the suit.

- 23.** Late Major General Claude Martin executed a Will dated 11th January, 1800 wherein under Article-24 of the said Will bequest is made by him for setting up schools in Kolkata which reads as follows:

“Article Twenty Four (24) - I give and bequeath the sum of two hundred thousand Sicca Rupees to the Town of Calcutta for to be put at interest in Government papers or the most secure mode possible and this principal interest to be put under the protection of Government or the Supreme Court that they may device an institution the most necessary for the public good of the Town of the Calcutta or establishing a School for to educate a certain number of children of any sex to a certain age and to have them put apprentice to some profession at the conclusion of their school and to have them married when at age and I also wish that every year a premium of few Rupees or other thing and a medal be given to the most deserving or virtuous boy or Girl or to both, to such that have come out of that School, or that are still in it and this is to be done on the same day in the month died, that day those that are to be married are to be married and to have a sermon preached at the Church to the Boy and Girl of the School afterwards a public Dinner for the whole and a toast to be drunk in memorandum of the Fouundator this Institution is to bear the Title of La Martinier and to have an inscription either on stone or marble in large character to be fixed on any part of the school on it wrote instituted by Major General Martin Burn the 6th January, 1935 at Lyon who died the day month and year mentioning. The day month and year and buried at mentioning the place and as I am little able to make any management for such on institution I am in hope government or the Supreme Court will devise the best institution for the public good and to have it as I said above mentioned, the name of the institutor. After every Article of my or this will and Testament is carefully settled and every article provided and paid for the several pension or other gift, donation institution and other any sum remaining may be made to serve first to buy or build a house for the institution as that it may be made permanent and perpetual by securing the interest by government paper either in India or Europe that the interest annually may

support the institution for this reason I give and bequeath one hundred and fifty thousand sicca Rupees more according the proportion that may remain after every Article of this Testament is fulfilled then this sum to be added for the permanency of the institution making the sum of three hundred and fifty thousand sicca Rupees."

- 24.** In the year 1832, an Equity Suit was filed before the Hon'ble Supreme Court of Judicature at Fort William in Bengal and on 22nd October, 1832, the Hon'ble Court given effect to the Will for establishing the Schools. Decree dated 22nd October, 1832 reads as follows:

"This Court doth think fit to order and decree, and doth hereby accordingly order and decree that a School, called and distinguished by the name of "LA MARTINIERE", be, and the same is hereby established; and that for such purpose a building be erected forthwith, on the land already purchased, and situated at Short's Bazar in Calcutta; and that such building shall be erected and completed according to the Plan and Estimate reported and approved by George Money, Esquire, the Master of this Honourable Court, in and by his Reports made and filed the 30th day of January, and the 24th day of September, in the year of our Lord 1832; and that such School shall be conducted as nearly as possible in conformity with the 24th Clause of the Will of Major-General Claude Martin, the Testator in the pleadings of these causes mentioned. And this Court doth further order and decree, that out of the funds applicable to this Charity, and amounting this day to the sum of sicca rupees nine hundred and sixty-two thousand and four hundred, invested in Government Securities bearing interest at the rate of five per cent per annum and sicca rupees four hundred and twenty five, five annas, and seven pie, in cash; making together the sum of sicca rupees nine hundred and sixty-two thousand eight hundred and twenty-five, five annas and seven pie, as appears by the certificate of George Money, Esquire, the Accountant General of this Honorable Court; the sum of Sicca Rupees 1,65,293, all annas, and 6 pie, being the amount of the Estimate

approved by the said Master, be appropriated and applied for the purpose of erecting and completing the said building according to the said Plan so approved by the said Master; and that Mr. James Powell Parker, the Builder and Architect whose estimate has been approved by the said Master, shall be employed to erect and complete the said building upon the said plan, upon his giving security in manner and form reported by the said Master for the complete and substantial completion of the same on or before the first day of January, which will be in the year of our Lord 1835. And it is further ordered and decreed, that Captain George Hutchinson, an Engineer Officer in the Military Service of the Honorable the East India Company of their Bengal Establishment, who has been reported by the said Master to be a fit and proper person to superintend the erection of the said buildings, shall be appointed to superintend the same, he having first obtained and filed with the said Master the leave of Government so to do; and that the said Captain George Hutchinson do and shall receive for his trouble and superintendence a commission of six percent upon the sum to be expended in the erection of the said building, and that he do and shall, once every three months, or more frequently if he should deem it necessary, make and deliver to the Governors of the said school a full report as to the state and progress of the building. And this Court doth further order and decree, that the said sum of Sicca Rupees 1,65,293/- 11 annas, and 6 pie, so set apart for the said building, shall be carried to the credit of a separate account, to be headed, La Martiniere building fund; and in as much as it may be necessary from time to time to make advances to the builder to enable him to proceed in the work with expedition, it is hereby ordered and decreed, that the said Mr. James Powell Parker, when he shall require any advance, shall state the same in writing to the said captain George Hutchinson, who shall certify upon such application whether he consider any and what advance fit and proper to be made, and shall deliver the said application with his own certificate thereon to George Money, Esquire, the Accountant General of this Honorable Court, who shall grant to the said Mr. James Powell Parker an order on the accountant General and Sub-Treasurer of the Honorable East India Company for the payment

of the sum of certified by the said captain George Hutchinson out of the said building fund, and the Accountant General and Sub-Treasurer of the said Honorable East India Company shall pay the same to the said Mr. James Powell Parker, without any further order or authority whatsoever and for the purposes aforesaid the Accountant General and Sub-Treasurer of the Honorable East India company shall be and they are hereby at liberty, from time to time, to sell company's paper as may be necessary. And this court doth further order and decree, that in a conspicuous place on the front entrance of the said building so to be erected as aforesaid there shall be marble table containing an inscription in these words: This School, named La Martiniere, was established and is supported by means of property bequeathed for that purpose by Claude martin, a native of France and a Major-General in the service of the Honorable East India Company. He was born at the city Lyons in the month of January, in the year of our Lord 1735, and died at Lucknow in the Kingdom of Oude in the month of September, in the year of our Lord 1800. This building was completed the day of.

And this court doth further decree and declare, that the following persons (their assent having first been obtained) shall be ex-officio Governors of the said School, namely, the Governor General, the Members of Council the Judges of the Supreme Court, the Bishop of Calcutta and the Advocate General, provided always, that if any of the said persons shall not consent to become a Governor of the said school, an application shall be made to the Supreme Court to appoint some other person in lieu of every person so refusing; and every person as appointed shall have the same power and authority to all intents and purposes as an -Ex-Officio Governor and the said Master is hereby directed forthwith to communicate with the foregoing persons, and ascertain whether or not they respectively consent to become such Governors, and to report the result to the said Court. And this Court doth further order and decree, that the said Ex-officio Governors shall annually elect and nominate four additional Governors, who shall, during the year for which they shall be so nominated and elected, have equal power and authority with the Ex-officio Governors

of the said school in the management and direction thereof, and in all matters relating thereto. And this Court doth further decree and declare that there shall be paid secretary who shall be nominated and appointed by the Governors of the school, and that such secretary shall receive such salary or remuneration as shall be fixed by the said Governors. and this Court doth further order and decree, that after setting apart the said sum of Sicca Rupees 1,65,293/- 11 annas and 6 pie, for the building as aforesaid, the residue, amounting to the sum of Sicca Rupees 7,97,531/- 10 annas, and 1 pie, do and shall remain invested in Government Securities to the credit of these causes, but to the separate head of the La Martiniere School, for the permanent maintenance and support of the said school, and that before and after this day, the interest accruing due on such principal sum shall be paid by the accountant General and Sub-Treasurer of the Honourable East India Company, upon the receipt or order of any three of the Governors of the School, without any further or other authority. And it is further ordered and decreed, that the Governors of the said School do appropriate and apply the interest which accrue on the said principal sum of Sicca Rupees 7,97,531/- 10 annas, and 1 pie, from this time the January 1935 when the buildings will be completed, towards the payment of the commission allowed to the said captain George Hutchinson as aforesaid, the furnishing of the building, the purchase of books, and any other purposes they may deem necessary for the said institution. Provided always, that the said Governors shall reserve in hand and have on the said first day of January, which will be in the year of our Lord 1835, wherewith to commence the current expenses of the said school, a portion of such accruing interest amounting not to less than Sicca Rupees 15,000/-. And this Court doth further order and decree, that the Governors shall from time to time select from amongst the Christian population of Calcutta a sufficient number of poor girls, of an age not less than four nor more than twelve years, so that there may always be twenty girls at the least on the Establishment of the School; and that such girls shall be entirely educated and supported out of the funds belonging to the said school, and that as many of the girls as

conduct themselves well shall be permitted to remain at the school until they shall be apprenticed, or placed out to some honest employment, or married, and that according to the state of the funds, moderate sums may from time to time be advanced at the discretion and by the direction of the said Governors for the purpose of enabling girls remaining at the said school who shall be or the age or sixteen years to be apprenticed, or placed out to some honest employment, or for the purpose of marriage portions for such girls. And this Court doth further decree and declare, that the Governors shall from time to time select from amongst the Christian population of Calcutta a sufficient number of poor boys, off an age not less than four nor more than ten years, so that there may always be at the least thirty boys on the Establishment of the said school; and that such boys shall be entirely educated and supported out of the funds of the said school; and that according to the state of the funds, moderate sums may from time to time be advanced at the discretion and by the direction of the said Governors, for the purpose of putting out any boy as an apprentice, or for enabling him to obtain any other honest employment or means of livelihood upon his departure from the school: And this court doth further order and decree, that once a year, upon the anniversary of the death of the Founder, the Governor of the School shall procure a clergyman in holy orders, to preach an appropriate Sermon to the boys and girls of the said school, and that a dinner be given to the boys and girls on that occasion, and that the memory of the founder shall be drunk by them, and that a medal with an appropriate inscription shall be delivered to one of the boys and to one of the girls, the Governors selecting such boy and girl as to them may appear to be most deserving of the same. And this court doth further decree and declare, that the Governors shall be at liberty to admit any other boys or girls, being children of Christian inhabitants of Calcutta, to be educated and boarded or educated only at the said school, upon condition of their paying a reasonable and sufficient sum, so that they may not be in any way a charge upon the funds of the school. And this court doth further order and decree, that the paid Secretary so to be appointed as aforesaid shall visit, inspect, examine, and

enquire into the affairs, management, and conduct of the said school, and once in every month shall lay before the Governors a full report of the state and proceedings of the said school and the accounts and funds, showing the balance in hand and the outstanding debts and demands if any, and shall also assist in all other ways in the conduct and management of the said school as the Governors may direct and think expedient. And in as much as the court are of opinion that it is not expedient to set forth in this Decree the details plan and arrangement of the intended school, or to adopt the scheme approved by the said Master in and by this said report of the said 23rd day of June, 1828, further than such parts thereof have been embodied in this decree; and that the intention of the said testator will be better carried into execution, and the institution rendered more useful and more conformable to the wants and Circumstances of the objects of the charity, by leaving such details to the Governors, it is hereby further decreed and declared, that subject to what has been hereinbefore specified and directed the said Governors shall have full power and authority to select and appoint such Masters, Mistresses, and Teachers with such salaries, as they may deem fit and determine the number of boys and girls to be admitted to the school and the nature and system of education to be pursued, and all other matters and things necessary to give effect to the said school; and shall have full and entire control over the receipt and expenditure of the interest accruing on the said sum of Sicca Rupees 7,97,531/- 10 annas, and 1 pie, so ordered to be transferred to the credit of this school, provided always, that the said Governors shall, as nearly as possible, confirm in all things to the intention of the said testator, and provided also they shall never expend more than the interest accruing on the said principal sum of Sicca Rupees 7,97,531/- 10 annas, and 1 pie. and this Court doth further decree and declare, that all matters and things required in any by this Decree to be done or determined by the Governors of the said School shall and may be done and determined by the majority of them resident at the time in or within sixteen miles of Calcutta. And this court doth further decree and declare, that the Supreme Court shall at all time have full power of authority, either

on motion by the Advocate General for the time being or otherwise time to time, to make all such alterations for the establishment and management of the school then may seem meet.

Witness, Sir William Oldnall Russell, Knight, Chief Justice at Fort William aforesaid, the 22nd day of October, in the year of our Lord 1832.”

- 25.** Upon the petition of the Advocate General of Bengal, the Decree dated 22nd October, 1832 was amended by the Hon’ble Supreme Court of Judicature at Fort William, Bengal by an order dated 11th March, 1918 which reads as follows:

“Notwithstanding anything contained in the decree made in these suits and dated the twenty second day of October One thousand eighteen hundred and thirty two or in any subsequent Decree and order of the late Supreme Court or of this Court (whether such decree or order is upon the records of these suits or not). His Excellency the Viceroy and Governor General of India shall be the visitor of La Martiniere School Calcutta and there shall be twelve ex-officio Governors of the said schools in substitution for the Governors appointed by any such decree or order in the suits as aforesaid such twelve Governors being (1) His Excellency the Governor of Bengal, (2) the Hon’ble the Chief Justice of Bengal, (3) the most reverend the Lord Bishop of Calcutta, (4) the Hon’ble member of the Viceroy’s Council in-charge of Education, (5) one of the members of the Executive Council of His Excellency the Governor to be nominated from time to time by His Excellency the Governor, (6) one of the puisne judges of the Court to be nominated from time to time by the Chief Justice, (7) the Advocate General of Bengal, (8) the General Officer in Command of the Presidency Brigade, (9) the Director of Public Instruction Bengal, (10) the Chairman of the Corporation of Calcutta, (11) a Minister of St. Andrew’s Church of the Scotland in Calcutta duly nominated by the Kirk Session of the said church and, (12) the President of the Bengal Chamber of Commerce.

Provided always that no person for the time being holding or officiating in any of the said offices who does not profess the Christian Religion shall exercise or perform any of the power or the powers or duties of an ex-officio Governor and the other ex-officio Governors shall exercise and performed their power and duties as if such officers had not been appointed but upon the same office being again held by a person (whether substantively or officiating) professing the said religion such officer shall become entitled to exercise and perform the powers and duties of an ex-officio Governor as aforesaid."

- 26.** Mr. S. Muralidhar, Learned Senior Advocate representing the defendant nos.1 and 7 submits that the Hon'ble Division Bench in its order dated 25th July, 2019 in APO No. 109 of 2019 observed that the question whether leave was properly granted will be decided as a preliminary issue at the time of trial. He submits that the defendant nos. 1 & 2 have preferred an application being G.A. No. 2 of 2019 praying for revocation of leave granted under Section 92 of the Code of Civil Procedure, 1908 and have further questioned the maintainability of the suit. He submits that as per Order XIV, Rule 2(2) of the Code of Civil Procedure, 1908 as well as the fact that the issue of maintainability goes to the root of the matter, this Court is to firstly decide the application filed by the defendant Nos. 1 & 2 being G.A. No. 2 of 2019 and also decide the issue as to whether the present suit would continue as a suit under Section 92 of the Code of Civil Procedure, 1908, since it is only the Section which provides for framing of a scheme of a public Trust. He submits that since the suit itself is not maintainable under Section 92 of the Code, thus no order on the interlocutory application

being G.A. No. 8 of 2023 can be passed framing any interim Scheme of Administration. In support of his submissions, has relied upon the judgment in the case of **Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another** reported in **(1974) 2 SCC 695** and **Vidyodaya Trust Vs. Mohan Prasad R and Others** reported in **(2008) 4 SCC 115**.

- 27.** That the defendants have not opened any new branch of La Martiniere School, Calcutta nor do they intent to open any branch. He submits that the National Commission for Minority Educational Institutions by a letter dated 18th January, 2010, declared the La Martiniere Schools as Minority Institutions in terms of Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004. He submits that it was further declared that the Schools are Minority Schools covered under Article 30 of the Constitution of India. He submits that once any school has been recognised as a Minority School by the National Commission for Minority, then it would have been a Minority Institute from its very inception. In support of his submissions, he relied upon the judgment in the case of **N. Ammad Vs. Manager, Emjay High Schools & Ors.** reported in **(1998) 6 SCC 674** and **Sisters of St. Joseph of Cluny Vs. State of West Bengal** reported in **(2018) 6 SCC 772**.

- 28.** Mr. Murlidhar submits that the first Equity Suit No. 2602 of 1967 was never decided and adjudicated finally. He submits that even though there were only 3/12 Christian members who were functioning as the

Ex-Officio Board of Governor the Court held that the intention of the testator was to establish a school for the education of Christian Boys and Girls then entrustment of the Management of the said school to Ex-Officio Governors who professed Christian faith was quite proper and is recognised by the provisions of the Constitution of India under Articles 29 and 30 of the Constitution of India which protect the institution and the schools of Minority Community.

29. Mr. Murlidhar Submits that neither in the original Will nor the subsequent decrees prescribed any quorum of the Board. He submits that even if assumed that there has to be any quorum of the Board, then the same shall be calculated from amongst the eligible member, who professes the Christian Faith as per the decrees dated 11th March, 1918 and 6th June, 1944. In support of his submissions, he has relied upon the judgment in the case of ***Aligarh Muslim University Vs. Naresh Agarwal & Ors.*** reported in **2024 INSC 856**.
30. Mr. Suman Dutt, Learned Senior Advocate representing defendant no.2 submits that the plaintiffs herein have no locus to maintain a suit under Section 92 of the Code of Civil Procedure Code, 1908 nor have prayed for change of Scheme or Constitution of Scheme. He submits that on plain reading of the plaint would show that the same was filed by four persons, who were appointed Additional Governors by the said institution and having accepted and enjoyed their tenure as Additional Governors, the plaintiffs do not have the right to turn around and to challenge the functioning or administration of the same institution.

- 31.** Mr. Dutt submits that except prayer (k) and the interlocutory reliefs sought from time to time would show that the intention of the plaintiffs were nothing but to challenge their dismissal from the post of Additional Governors. He submits that none of the pleadings in the plaint or in the interlocutory application anywhere allege or give particulars regarding the alleged maladministration of the school or for necessity for amending the existing Scheme or constitution by way of interim reliefs.
- 32.** Mr. Dutt submits that the plaintiffs are not interested in the administration of the institution nor has the suit been filed for such purpose. He submits that the plaintiffs have filed an application for interim scheme for the first time before the Appellate Court i.e. after four years from the date of the institution of the suit but the Appellate Court has not considered the prayer of the plaintiffs and now the plaintiffs have filed an application being G.A. No. 8 of 2023 on the basis of the observation made by the Appellate Court. He submits that the observation made by the Appellate Court has no consequences as the same has been clarified by the Hon'ble Supreme Court in its order dated 15th July, 2024.
- 33.** Mr. Dutt submits that the plaintiffs have filed the suit in the year 2019 and till filing of the application being G.A. No.8 of 2023 after four years from the date of filing of the suit, the plaintiffs have not taken any steps, thus the plaintiffs are not interested in the administration of the

institution but only seeking to ventilate their personal grievances and disputes. He submits that the plaintiffs are the ex-students of the School but they are no way connected with the functioning and administration of the Schools. In support of his submissions, Mr. Dutt relied upon the judgment in the case of ***T.R. Ramachandra Aiyar & Anr. Vs. Parameswaran Unni & Others*** reported in ***ILR (1919) 42 Mad 360*** and ***Swami Gayananda Vs. Jagdish Chandra Bagchi and Ors.*** reported in ***AIR 1942 All 315***.

- 34.** Mr. Dutt submits that in order to decide as to whether the suit falls within the purview of Section 92 of the Code of Civil Procedure, 1908 and whether the suit is maintainable evidence is to be led and the objection of the defendant as to improper granting of leave under Section 92 needs to be decided on trial as a preliminary issue. He submits that the objection raised by the defendant is required to be decided first before any interim order is passed. In support of his submissions, has relied upon the judgment in the case of ***Sathyanath & Anr. Vs. Sarojamani*** reported in ***2022 (7) SCC 644***.

- 35.** Mr. Dutt submits that the interest of the plaintiffs in seeking reliefs under Section 92 of the Code of Civil Procedure, 1908 acts of administration and maladministration, requirement of framing a Scheme and /or modifying an existing Scheme can only be done at the final stage of the suit upon obtaining evidence. In support of his submissions Mr. Dutt relied upon the judgment in the case of ***Swami Paramatmanand Saraswati and Another (supra)***. Mr. Dutt further

relied upon the judgments in the case of ***Bhupinder Singh Vs. Joginder Singh & Ors.*** reported in ***(2020) 18 SCC 243*** and ***Vidyodaya Trust (supra)***.

- 36.** Mr. Dutt submits that the School is a certified Minority Institution enjoying the provisions of Articles 29 and 30 of the Constitution of India. The School fulfils all the testes and indicia of being minority institution having been established by a member of the minority having being established by a member of the minority Christian community and the right to administer the same has been vested with the minority pursuant to decrees of this Court. He submits that such fundamental right of the institution gives the institution autonomy to manage and administer the institution without any interference from any corner. He submits that no order either interim or final can be passed by a Court or Judicial Authority, which interferes with the fundamental right of the institution as guaranteed under the Constitution of India. In support of his submissions he has relied upon the judgment in the case of ***The Ahmedabad St. Xavier's College Society & Anr. Vs. State of Gujarat & Anr.*** reported in ***(1974) 1 SCC 717***, ***T.M.A Pai Foundation & Ors. Vs. State of Karnataka & Ors.*** reported in ***(2002) 8 SCC 481***, ***St. Stephen's College Vs. University of Delhi*** reported in ***(1992) 1 SCC 558*** and ***Aligarh Muslim University (supra)***.
- 37.** Mr. Dutt submits that final relief cannot be granted at the interim stage other than in exceptional cases where a strong prima facie case has been made out and sufficient material is placed before the Court but in

the present case, the application is not maintainable as if the interim relief is granted, the same would amount to the final relief prayed for in prayer (k) of the plaint. In support of his submissions, he has relied upon the judgment in the case of ***Deoraj Vs. State of Maharashtra & Ors.*** reported in **(2004) 4 SCC 697.**

- 38.** Mr. Sudip Deb, Learned Senior Advocate representing the defendant nos. 5 and 6 submits that the La Martiniere Schools were established pursuant to a Will dated 1st January, 1800 of the General Claude Martin who was a Christian. He relied upon the decrees dated 11th March, 1918, 6th June, 1944 and 1st February, 1968 and submitted that in the order dated 1st February, 1968, it is categorically held that:

“If the intention of the testator to establish a school for the education of Christian boys and girls, then the entrustment of the management of the said school to Ex-officio Governors who professed the Christian faith was, in my opinion, quite proper and is recognized and protected even by the provisions of our constitution, namely, articles against and regarding the composition of India which protect the institution and schools of minority community. Christians are admittedly a Minority Community in India.”

- 39.** Mr. Deb submits that by an order dated 12th July, 1996, this Court has appointed twelve Governors of the said institution in substitution to the Governors appointed by any decree or order passed by the Supreme Court of Judicature at Fort William in Bengal or by this Court in these matters and the said order was assailed before the Appellate Court and the Appellate Court by an order dated 1st March, 2000, set aside the

order passed by this Court dated 12th July, 1996, holding that the order would defeat and nullify the intent, object and purpose of Major General Claude Martin, Christian character of the said school will be changed as was not of the intention of the testator and directing supersession of the Board of Governors and appointment of new Governors and Governing Body is beyond the competence of the Learned Judge and is without jurisdiction. Mr. Deb submits that the order passed by the Appellate Court dated 1st March, 2000, was not challenged and the said order attained finality.

40. Mr. Deb submits that National Commission for Minority Educational Institutions declared the La Martiniere Schools as Minority Institutions and the Schools covered under Article 30 of the Constitution of India. He relied upon the Judgment in the case of ***Aligarh Muslim University (Supra)***.

41. Mr. Deb submits that the suit under Section 92 of the Code of Civil Procedure, 1908 is not maintainable, thus no interim Scheme can be framed as prayed for in the application being G.A. No. 8 of 2023. He submits that the present suit is to be decided without being influenced by the observation of the order passed by the Hon'ble Division Bench in APO No. 83 of 2020. He submits that the Hon'ble Supreme Court has nullified the observation made by the Hon'ble Division Bench in the order dated 15th July, 2024.

- 42.** Mr. Deb submits that the old equity suit is still pending before this Court and this Court time and again has passed orders in respect of the functioning of the schools in the old pending equity suit and thus any alteration in the decree and the scheme of administration of the schools to be done in the old equity suit only. Mr. Deb relied upon the judgment in the case of ***T.K. Lathika vs. Seth Karsandas Jamnadas*** reported in ***(1999) 6 SCC 632***.
- 43.** Mr. Jishnu Saha, Learned Senior Advocate representing the plaintiffs submits that the first paragraph of the plaint itself speaks that the plaintiffs have filed the suit in respect of the management, administration, control and affairs of the La Martiniere Schools at Calcutta. He submits that till paragraph 28 of the plaint, the plaintiffs have stated about the several decrees and orders passed by the Courts and functions of the schools. He submits that it is the specific allegation against the defendant nos. 1 and 2 in the plaint that in the absence of the full strength of the Board of Governors, there has been concentration of power in the hands of the defendant nos.1 and 2 who were seeking to convert the said schools into missionary schools of the Church of North India which is totally contrary to the Will of the Founder.
- 44.** Mr. Saha submits that the Will does not say about the institution shall be minority school. He submits that pursuant to the charitable object of the Will, the school was established by the Supreme Court of Judicature at Fort William in Bengal by a decree dated 22nd October,

1832. He submits that by the said order, the Court retained jurisdiction to alter the scheme. He submits that it is settled law that the Courts have a parents patriae jurisdiction over Trust for charitable and religious purposes and can therefore always act in public interest so far as such trusts are concerned. In support of his submissions, he has relied upon the judgments in the case of ***Executive Officer Arthanareswarar Temple Vs. R. Sathyamoorthy & Others*** reported in ***(1999) 3 SCC 115*** and ***Aruna Ramchandra Shanbaug Vs. Union of India & Ors.*** reported in ***(2011) 4 SCC 454***.

45. Mr. Saha Submits that the decree dated 22nd October, 1832 modified by this Court on 6th June, 1944 wherein it is provided that the School must be administered by a Board of twelve Ex-Officio Governors, which would in turn be entitled to appoint four additional Governors every year. He submits that most of the Ex-Officio posts have been ceased to exist, as a result, it is only the Bishop of Calcutta and a Minister of St. Andrews Church in Calcutta are at present running the school. He submits that the Minister of St. Andrews Church in Calcutta is nominated by the Bishop of Calcutta, thus the school is essentially been run by only one Ex-Officio Governor i.e. the Bishop of Calcutta. He submits that out of 12 (twelve) posts only 2 (two) had anything to do with religion and the rest 8 (eight) were imminent people in the society.
46. Mr. Saha submits that as per the constitution of the La Martiniere Schools at Calcutta, the “Board of Governors” means the Board of 12 Ex-Officio Governors. He submits that Article 7 of the Constitution of

the schools provides that “*at all board meetings one third of the Governors shall constitute a quorum and the Presiding Governor shall have the casting vote*”. He submits that in such circumstances, the Board of Governors of La Martiniere School at Calcutta have acted and are continuing to act without a quorum.

47. Mr. Saha submits that in the present suit, Section 92 has been invoked on account of breach of trust by the two Ex-Officio Governors purporting to represent the entire Board of twelve Ex-Officio Governors, thereby requiring directions of the Court for administration of any such Trust. He submits that thus Court has the Power under Section 92 of the Code of Civil Procedure, 1908 to settle a Scheme of the Trust particularly when the scheme is no longer workable.
48. Mr. Saha submits that the plaintiffs have filed the suit against the illegal action taken by the defendant nos.1 and 2 and the mismanagement of the affairs of the schools in contraventions to the orders passed by this Court time to time as well as the Constitution of the said Schools.
49. Mr. Saha submits that it is settled law that pending determination of question of maintainability of suits, interlocutory reliefs can be granted by Courts and in support of his submissions, Mr. Saha has relied upon the judgments in the case of ***Rama Narang Vs. Ramesh Narang & Ors.*** reported in ***(2021) 15 SCC 338***, ***Ramesh V. Desai and Ors. vs. Bipin Vadilal Mehta & Ors.*** reported in and ***(2006) 5 SCC 638***.

- 50.** Mr. Saha submits that the schools were not established by the minority institutions. He submits that neither the Will of 1800 nor the decree dated 22nd October, 1832, provided that the schools must be administered only by Christians. He submits that it is only the modified decree of 6th June, 1944, which provided that all the Ex-Officio Governors of the Schools must profess the Christian faith. He submits that it is on the strength of the decree, the school managed to obtain a minority certificate in the year 2010. He submits that the certificate does not show that the same is a religion based minority institution.
- 51.** Mr. Ranjan Bachawat, Learned Senior Advocate representing the defendant no. 8 and submits that the defendant no.8 was appointed a Secretary of the two La Martinere Schools in Calcutta with effect from 5th November, 2018, for a period of three years by the Board of Governors and subsequently, he was wrongfully removed as the Secretary at an illegally held meeting of Board of Governors by the defendant nos.1 and 2. He submits that the said meeting was held without notice to any of the other Governors and without valid quorum.
- 52.** Mr. Bachawat submits that none of the orders passed by the Court from time to time relating to the Schools in any manner restrict or remove the power and jurisdiction of the Court to amend and / or alter the Scheme for the better administration of the Schools.

- 53.** Mr. Bachawat submits that in the year 1967, the decision of Governors to appoint a new Principal was challenged on the ground that the Ex-Officio Governors did not have the right to appoint additional Governors and as such the decision taken by the Board comprising of 3 Ex-Officio and 4 additional Governors was bad. He submits that the Court was of the prima facie view that the restriction on the Ex-Officio Governors being Christian did not apply to the Additional Governors and the appointment of additional Governors was valid. He submits that the question of whether the restriction on the Ex-Officio Governors being the exclusively Christian was valid or required to be changed would be decided by this Court at the final hearing of the suit. He submits that it was held that the Board of Governors had the power to take decisions on the appointment of the Principal.
- 54.** Mr. Bachawat submits that in the Hon'ble Division Bench by an Order dated 13th July, 2023, held that the Suit No. 2602 of 1967 in which the interlocutory order dated 1st February, 1968, was passed has been struck off from the register of the suit in the year 1969, therefore, the judgment and order dated 1st February, 1968, lost significance as the suit in which the order was passed no longer remains.
- 55.** Mr. Bachawat submits that in the year 1996, the Governors have applied before this Court for leave to grant a 99 years lease of a property to ICICI Ltd. and in the said application, no prayer was made for changing of scheme or superseding the Board of Governors. He submits that in an uncontested appeal, the Hon'ble Division Bench set

aside the order of the Learned Single Judge on the ground of jurisdiction. He submits that the stray observation of the Hon'ble Division Bench on merits with regard to "Christian Character of the School" being the purported intention of the testator, are also without jurisdiction and of no avail. In support of his submissions, he has relied upon the judgment in the case of **T.K. Lathika (Supra)**.

- 56.** Mr. Bachawat submits that in view of the above, the earlier judgments and orders do not come in the way of passing orders as prayed for by the defendant no.8 having regard to the present changed circumstances. He submits that the Court retains full power and authority to amend the Scheme and pass necessary orders for ensuring that the School is run properly for the public good of the town of Calcutta in accordance with the intention of the testator. He submits that supervising circumstances justify alteration to the Scheme and the bar of res-judicata will not apply. In support of his submissions has relied upon the judgment in the case of **Ahmad Adam Sait and Ors. vs. M.E. Makhri and Ors.** reported in **AIR 1964 SC 107**.

- 57.** Mr. Bachawat submits that 10 out of 12 posts of Ex-Officio Governors are vacant. Only 2 posts are occupied by persons claiming to be post holders. There is vacuum in the Board which also lacks a quorum. He submits that it is in reality, a one member Board as the defendant no.1 has appointed the defendant no.2 who is under his control. He submits that if the provisions of the Scheme are to be strictly construed, the defendant nos.1 and 2 are not entitled to be on the Board as Ex-Officio

Governors as the offices under which they claim to hold position no longer exist.

58. Mr. Bachawat submits that various Schemes, judgments and orders passed by this Court and this Court has full power and authority to modify the Scheme to ensure proper administration of School. He submits that the Scheme has been modified from time to time to meet exigencies. He submits that in case of public trust, it is the duty of the Court's to safeguard the beneficiaries and act for the benefit of the Trust. In support of his submissions, he has relied upon the judgment in the case of ***Vikrama Das Mahant vs. Daulat Ram Asthana and Ors.*** reported in ***AIR 1956 SC 382.***
59. Mr. Bachawat submits that the order revoking leave under Section 92 of the Code of Civil Procedure, 1908 was set aside by the Appellate Court by an order dated 25th July, 2019 and the issue was directed to be decided as preliminary issue in the suit. He submits that it is settled law that objections on jurisdiction do not prevent the Court from passing necessary interim orders. In support of his submissions, he has relied upon the judgment in the case of ***Rama Narang vs. Ramesh Narang and Others*** reported in ***(2021) 15 SCC 338.***
60. Mr. Ratnanko Banerji, Learned Senior Advocate representing the Association of La Martiniere Alumni herein after referred to as "ALMA" submits that pursuant to a public notice published by the plaintiffs in local newspapers on 7th August, 2019, the ALMA has filed an

application being G.A. No. 6 of 2022 praying for added as party to the suit. He submits that ALMA is a Registered Society of about 1350 former students of the said schools, many of whom are also parents of students of the said Schools. Mr. Banerji submits that ALMA is a necessary and proper party to the suit and by reason of ALMA's interest in the management and affairs of the said schools, its presence will be necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the present suit.

61. Mr. Banerji relying upon the judgment in the case of ***Kumudavalli Ammal alias Kuppammal Vs. P.N. Purushotham*** reported in **1978 91 L.W. 205** submitted that ex-students and even residents of the locality in which a trust/school is functioning are undoubtedly interested in keeping the School truthful, upright and well managed, and thus would come within the meaning of the expression "having an interest". He further relied upon the judgment in the case of ***Regeena & Ors. Vs. Jeppiaar Sheela & Ors.*** reported in **MANU/TN/3131/2020** and submitted that the suit filed by the plaintiffs including 2 former students of a school was held to be maintainable under Section 92 of the CPC. He further submits that ALMA has also filed an application for addition of party in an appeal being APO No. 83 of 2020 arising out of the same suit and the Appellate Court has added ALMA in the said appeal as respondent no.10 by an order dated 8th June, 2023.
62. Mr. Banerji submits that this Court has the jurisdiction and power to formulate and/or regulate the scheme of management of the Schools.

He further submits that it is imperative that the existing scheme to be modified for proper and effective management of the schools for the public good of the Town of Calcutta as per the desire of Major General, Claude Martin. He submits that the Hon'ble Division Bench in its order dated 13th July, 2023, held that there is an urgent need for the Court to revisit the composition of the Board of Governors, as on date, there are only two members of the Board of Governors.

- 63.** Mr. Banerji submits that there is no bar on this Court to exercise its *parents patriae* powers to regulate or modify the scheme of management of the Schools in the present suit. He submits that the Old Equity Suit which was not disposed of, does not take away this Court's inherent power to pass orders for regulating the management of the public trust in the present suit. He submits that the plaintiffs upon serving as Additional Governors of the said Schools came to know about serious lapses in the scheme of management/ administration of the said schools. The plaintiffs have highlighted such lapses in the administration, that call for urgent intervention and directions upon the trust, the suit is maintainable under Section 92 of the CPC. In support of his submissions, he has relied upon the judgment in the case of ***T.A. Balakrishna Odayar and Anr. Vs. Chakravarthy V. Jagannada Chariar and Ors.*** reported in ***AIR 1925 Mad 820.***

- 64.** Considering the general applications being GA No. 2 of 2019, GA No. 5 of 2020, GA No. 8 of 2023, GA No. 9 of 2024, GA No. 10 of 2024 and GA No. 11 of 2024 filed by the parties and the submissions made by

the respective parties, before deciding other issues raised by the parties, this Court is of the view the point of maintainability of the suit is to be decided first.

- 65.** Now the issue of maintainability of the suit is taken into consideration. Immediately after grant of leave under Section 92 of the Code of Civil Procedure, 1908, the defendant nos.1 and 2 in an application being G.A. No. 2 of 2019 prays for revocation of leave to be granted under Section 92 of the Code of Civil Procedure, 1908. This Court by an order dated 12th July, 2019 revoked the leave granted under Section 92 of the Code of Civil Procedure. In an appeal preferred by the plaintiffs, the Appellate Court by an order dated 25th July, 2019 set aside the order revoking leave under Section 92 of the Code of Civil Procedure, 1908, on the ground that the question whether leave under Section 92 was granted properly or not shall be decided as a preliminary issue at the time of trial of the suit.
- 66.** Mr. Muralidhar, Learned Senior Counsel referred to Order XIV, Rule 2(2) of the Code of Civil Procedure, 1908 and relied upon the judgment in the case of **Sathyanath (Supra)** which reads as follows:

“Order XIV Rule 2. Court to pronounce judgment on all issues.-

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only it may try that issue first if that issue relates to -

a. the jurisdiction of the Court or

b. a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postponed the settlement of the other issues until after that issue has be determined, and may deal with the suit in accordance with the decision on that issue.”

In the case of **Sathyanath (supra)**, the Hon’ble Supreme Court held that:

“21. The provisions of Order 14 Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order 14 Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the court or the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision. Thus, if the court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.”

It is the case of the defendants except the defendant no.8 that the suit is filed by the four persons who were appointed as Additional Governors and after accepted and enjoyed their tenure as Additional Governors, the plaintiffs do not have the right to challenge the function and administration of the School. The intention of the plaintiffs to hold their post of Additional Governors though their respective tenures have come to an end in terms of the Constitution of the Schools. The

defendants have tried to impress upon this Court by showing the pleadings and the prayer portion of the plaint wherein, the plaintiffs have made altogether prayers (a) to (p) but prayers (a) to (j) are only concern with their personal grievances and only prayer (k) is with regard to framing of Scheme for the management and administration of the Schools.

- 67.** The plaintiffs said that in the first paragraph of the plaint, it is categorically stated that the suit filed by the plaintiffs is in respect of the management, administration, control and affairs of the Schools and the plaintiffs have also mentioned about how the cause of action arose for filing of the case. It is the case of the plaintiffs that if the plaint is read as a whole, it will be found that though the plaintiffs have challenged their illegal termination as Additional Governors of the Schools before the period was expired and the plaintiffs have also explained why the Scheme is to be framed.
- 68.** This Court by an order dated 12th July, 2019 revoked the leave granted under Section 92 of the Code of Civil Procedure, 1908, after hearing the Learned Advocates for the parties but on 25th July, 2019, the Appellate Court set aside the order of revocation of leave and held that the said issue is to be decided as preliminary issue at the time of trial. Special Leave petition was preferred against the order dated 25th July, 2019 but the Hon'ble Supreme Court has not interfered with the order of the Appellate Court.

- 69.** The parties to the suit have argued the matter for revocation of leave granted under Section 92 of the Code of Civil Procedure, 1908 only on the basis of the pleadings and documents relied by the parties. The core question raised by the defendants that the suit filed by the plaintiffs are personal in nature and there is no pleading with regard to any maladministration of the schools. The plaintiffs say that in the first paragraph of the plaint, it is stated that the plaintiffs have filed the suit in respect of the management, control and affairs of the schools and sufficient averments have been pleaded.
- 70.** The main allegation of the plaintiffs against the defendant nos. 1 and 2 is that management, administration and control of the two Schools have been usurped and grabbed by the Church of North India acting through the defendant nos. 1 and 2, who are now treating the Schools as missionary schools. It is also alleged that in the absence of the full strength of the Board of Governors, there has been concentration of power in the hands of the defendant nos. 1 and 2 who are seeking to convert the Schools into missionary Schools of the Church of North India which is totally contrary to the Will of the founder.
- 71.** After the death of Major General Claude Martin a suit was filed and on 22nd October, 1832, a decree was passed in terms of the last Will of Major General Claude Martin. On 11th March, 1918, the decree dated 22nd October, 1832 was amended. Subsequently on 4th June, 1944 and 1st February, 1968 further orders were passed. In the order dated 1st February, 1968, it was observed by this Court that “*This is a matter*

which in my opinion should be tried with the utmost expedition. Written Statements have been filed by the defendants. Cross orders for discovery within a week. Inspection forthwith thereafter. suit to appear at the top of the prospective list four week hence. Liberty to mention for early date”.

72. Thereafter in the same suit an application was filed being G.A. No. 898 of 1996 and this Court disposed of the said application by an order dated 12th July, 1996. The said order was carried to an appeal and the appellate Court by an order dated 1st March, 2000 set aside the said order. At the time of hearing of appeal being APO No. 83 of 2020, it was informed to the Hon’ble Court that the Suit being Suit No. 2602 of 1967 was struck off from the register of the suits in the year 1969 and on the basis of the said submissions, the Hon’ble Division bench held that the judgment and order dated 1st February, 1968 has lost significance.

73. In spite of several queries by this Court, none of the parties to the suit brought to the notice of this Court that the Suit No. 2602 of 1967 was struck off from the register of the suit. *Per contra*, the Learned Counsel for the defendant no. 2 has taken the stand that the Old Equity Suit is still pending and the present suit filed by the plaintiffs is maintainable. This Court has enquired about the Old Equity Suit No. 2602 of 1967 from the department and on inquiry it is found that there is no order for striking of the said suit from the register of the suit. On the other hand the record of the said suit was placed before this Court and finds that after the order dated 12th July, 1996 which was set aside by the

Hon'ble Appellate Court no steps have been taken in the said suit and the suit is still pending.

74. From the order dated 1st February, 1968, it is clear that the suit is pending for adjudication and this Court has also directed to expedite the said suit but no action has been taken in the pending suit.

75. This Court has called for the record of the Old Equity Suit No. 2602 of 1967 and the Registrar, Original Side has produced the original record of the Old Equity Suit No. 2602 of 1967. After going through the said record, it is found that the plaintiffs in the said suit have prayed for the following reliefs :

- a. *A Scheme of management for the said school be settled and in particular the provision in the existing scheme relating to the disqualification of the governors on the ground of religion be declared void and deleted;*
- b. *The defendants and/or the defendant nos. 4 to 7 be forthwith removed from their alleged position as governors of the said school;*
- c. *Injunction restraining the defendants and/or the defendant nos. 4 to 7 from acting as governors or exercising any authority in relation to the said school;*
- d. *Receiver and/or administrator pendente lite;*
- e. *Such directions be given for the administration of the said school as to this Hon'ble Court may seem fit and proper;*
- f. *If necessary the trust created under the said Will be administered,*
- g. *Further or other reliefs;*

h. Costs.”

- 76.** On perusal of the old equity suit this Court finds that the plaintiffs in the said suit admitted that proviso relating to the disqualification of non-Christian Governors introduced by an order dated 11th March, 1918 but it is alleged that the said order is repugnant to and contrary to the intention of the founder and provisions of the decree dated 10th October, 1832 or the Scheme of management. In the year 1967 itself the plaintiffs of the said suit alleged that only 3 out of 12 Ex-officio Governors is Christians and the Schools being run by the 3 persons only. In the year 1967 three one Ex-officio Governors were (1) Lord Bishop of Calcutta, (2) Minister of St. Andrews Church and (3) The President of the Bengal Chamber of Commerce.
- 77.** This Court finds that the plaintiffs have suppressed the fact that the Old Equity Suit No. 2602 of 1967 is pending before this Court and have misrepresented before the Hon’ble Division Bench at the time of hearing of appeal that the Old Equity Suit was struck off from the register of the suit. As the Old equity suit is pending before this Court since the year 1967 and in the said suit written statements were also filed and directions for discovery and inspection were also passed but instead of taking appropriate steps in the said suit, the plaintiffs have filed the present suit. Considering the above, this Court finds that the suit filed by the plaintiffs is not maintainable.

- 78.** In view of the above, the Suit filed by the plaintiffs being **C.S. No. 111 of 2019** is **dismissed as not maintainable**. Accordingly, leave granted by this Court under Clause 12 of the Letters Patent, 1865, Order II, Rule 2, Order 1, Rule 8 and under Section 92 of the Code of Civil Procedure, 1908, dated 4th July, 2019 are revoked.
- 79.** **G.A. No.1 of 2019 (Old No. GA 1517 of 2019), G.A. No. 3 of 2019 (Old No. GA 1532 of 2019), G.A. No.6 of 2022 and G.A. No. 8 of 2023** are accordingly **dismissed**.
- 80.** **G.A. No. 2 of 2019 (Old No. GA 1523 of 2019), G.A. No. 5 of 2020 (Old No. GA 828 of 2020), G.A. No. 9 of 2024, G.A. No. 10 of 2024 and G.A. No. 11 of 2024** are accordingly **allowed**.

(Krishna Rao, J.)