

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS (OS) No. 685/2008**

Reserved on : July 09, 2008
Decided on : August 25th, 2008

JAMIAT ULAMA-I-HIND & ANR. PLAINTIFF
Through : Mr. Salman Khurshid with Mr. D.K. Garg, Imtiaz
Ahmad and Ms. Semridihi Sinha, Advocates
versus

MAULANA MAHMOOD ASAD MADNI & ANR. DEFENDANTS
Through : Mr. Siddharth Yadav with Mr. Anoop
Chaudhary, Advocates for defendant No.1.
Mr. Anoop Chaudhary, Sr. Advocate with Mr. Sunil
Malhotra, Mr. Mizaz ahmad Siddaque, Advocates for
Defendant No.2.

CORAM:
Mr. Justice S. Ravindra Bhat

- | | | |
|----|---|-----|
| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat:

IA NOS.4574/2008, 4751/2008, 6046-6047/2008, 6338, 6339, 6340, 6341, 6342/2008 and CS (OS) No. 685/2008

1. This common order will dispose of several pending applications, filed by the plaintiffs, as well as defendants. They include, *inter alia*, defendants' applications under Order VII, Rule 11 for rejection of plaint (IA 6047/08 by the second defendant, and IA 6348/2008 by the first defendant).
2. Before proceeding with the narration of events, necessary for deciding the applications, it would be essential to extract the reliefs sought in this suit, by the plaintiffs; it is as follows:

" a) Declare that the alleged proceedings of the alleged meeting dated 6th march 2008 and 5th April 2008 said to have been conducted by defendant No.1 allegedly bringing a no confidence motion against the Plaintiff No.2 to be void, unlawful and nullity, the same being without any authority of law and hence ab-initi void.

b) Restrain the defendants jointly and severally, and their agents, servants and employees etc. from restraining them from interfering, in any manner, with the functioning/working of the plaintiff organization either director or indirectly.

c) Direct the defendants jointly & severally, and their agents, servants and employees etc to refrain from doing any act or thing as may threaten the lawful authority of the plaintiff no.2 and the Central Working Committee nominated by him as the elected President of the plaintiff organization.

d) Direct the defendant No.1 to hand over the entire records including the minute books, accounts books etc. of Plaintiff Organization entrusted to/ held by him as the General Secretary of the outgoing "Working Committee" to the Plaintiff No.2 and or the General Secretary of the Plaintiff Organisation.

e) Restrain the defendants jointly & severally from using the name/plat form of the plaintiff organization Jamiat Ulama-i-Hind in any manner whatsoever including for any gains or for political purposes.

f) Cost of the suit may be awarded in favour of the plaintiffs and against the defendants and any other or further orders as this Hon'ble court may deem fit and proper may also be passed in favour of the plaintiff and against the defendants."

3. The first plaintiff (hereafter referred to as "the Jamat") avers to being a socio-religious organization, established in 1919, having its central office in New Delhi and with a membership of more than one crore. The second plaintiff is the elected President of the Jamat. It is averred that the the Jamat played a very important role during the freedom struggle and also a vital role in maintaining the unity of the country in the aftermath of the partition. It is averred that the Jamat has a Constitution, drawn up n 1919 and continues to be observed till date.

3. It is averred that the late Maulana Sayed Asad Madni had served as the President of the the Jamat for more than 32 years from August 1973 to February 2006, up to his death. In terms of the constitution and practice of the the Jamat, its President is generally elected every two years and elections are also held for posts

at the city, district and State levels. It is averred that on 6th February 2006, the second plaintiff, brother of the late President was unanimously elected as the President of the the Jamat for the remaining term. It is also averred that the first defendant, the son of the late President, was also in the fray for the post, but withdrew his candidature in the wake of certain allegations of embezzlement and corruption leveled against him.

4. It is next averred that elections were called for in July 2007 and the second plaintiff was declared elected as the President for the term 2007 & 2008, which was announced by a circular dated 19th July 2007 issued by the first defendant in his capacity as the General Secretary of the the Jamat. It is claimed that according to Section 45 of its Constitution, the previous ‘ Central Working Committee’ of the Jamat continues to discharge the duties till election is completed in three states, after which, according to section 46, the newly elected President acquires the authority to nominate a new working committee, comprising of up to 21 members. It is stated that in accordance with these provisions, the second plaintiff nominated the new working committee comprising of 16 members, in a meeting held in 6th March 2008 and also nominated one Maulana Abdul Aleem Farooqui as the General

Secretary. Through this, it is claimed that the previous working committee stood dissolved.

5. It is, however, averred by the plaintiffs that some members of the dissolved working committee, led by the first and the second defendant protested during the meetings, allegedly due to their non inclusion in the working committee and created problems.

6. The plaintiffs aver that they subsequently learnt that the first defendant, supported by the second defendant, vowed to damage the democratic functioning of the the Jamat and planned to take charge of it using his political clout as a Rajya Sabha member and as a member of a political party. It is claimed that both the defendants were annoyed at the second plaintiff being elected as the President. The plaintiffs also claim that as the General Secretary of the the Jamat, the first defendant was entrusted with important books of record, including the Minutes Book, account books and these records continue to be in his possession despite his ceasing to hold any position in the newly constituted working committee. The plaintiffs approached that the defendants will fabricate/tamper with the Jamat's

records to disrupt its democratic functioning. Due to such apprehension, it is averred that the plaintiff filed a suit, CS (OS) No.519/2008.

7. The plaintiffs also allude to an effort to settle the disputes, at the suggestion of the defendants, through mediation on 23rd March, 2008. At that time, the plaintiff's previous suit had been filed, and was to be heard the next day. It is claimed that lured by this suggestion, the plaintiffs did not seek interim relief in the previous suit. Maulana Marghroob-Ur-Rehman, who acted as mediator, ascertained views of the parties, and attempted mediation, through his letter of 28th March, 2008, granting four days time to both parties in that regard. The plaintiffs allege that even before that time expired, the mediator, without any authority, assumed the role of an arbitrator, and allegedly gave an award favouring the defendants approving the proceedings of the meeting dated 6th March, 2008. The plaintiffs aver to some correspondence being exchanged with the Maulana; they also allege that the defendants notified, in the press on 2-4-2008, about holding a meeting of the Central Working Committee, scheduled on 5-4-2008. That meeting took place. The plaintiffs challenge the affirmation by the Central working committee, of the decisions taken on 6th March, 2008.

8. The first defendant alleges that the suit is not maintainable. According to it, a comparison of the reliefs in this case, with the relief sought in the earlier suit, reveal that the cause of action for bringing the fresh suit by the Plaintiff is the same, and therefore the present, subsequent suit cannot be maintainable by the Plaintiff without seeking the liberty of the Court to file it. The applicant relies on paragraph 8.21 of the plaint, which is as follows:-

“8.21 That the subsequent events had necessitated the withdrawal of the original Suit CS (OS) No.519/2008, as the subsequent events would reveal and therefore, the plaintiffs have filed an application simultaneously for permission to withdraw the said suit with liberty to file a fresh suit against the defendants substantially for the same cause of action, which prayer, the plaintiffs also make herein.”

9. The applicant defendant also relies on the circumstance that the previous suit was allowed to be withdrawn, after the present suit, for the same cause of action had been filed. The applicant relies on the order in IA No. 4545/2007, in the previous suit, under Order 23 Rule 1, seeking permission to withdraw that suit, on account of subsequent developments that had taken place. This Court after hearing the counsel for the plaintiff, on the 11th April 2008 passed the following order:

“Learned counsel for the plaintiff seeks liberty to withdraw this suit in view of the subsequent suit No. CS(OS) 685/2008. It is submitted that this suit sought injunctive relief in respect of the meeting dated 26.3.2001 and the fresh suit has questioned the legality of the subsequent meeting. Leave granted.

The suit CS(OS) 519/2008 and all the pending applications are, therefore, dismissed as withdrawn.”

10. Both defendants allege that the suit is not maintainable, since the previous suit was withdrawn, and liberty was not granted, nor could be granted, for this suit, since it had been filed in court, during pendency of the present suit. It is also averred by the second defendant, that the suit by the Jamat is not maintainable, as it is an unregistered organization. Not being a juristic person, the Jamat cannot file the suit, in its own name, without impleading all its members. The plaintiffs, it is alleged, have cleverly concealed these facts from the court; this aspect is fatal to the maintainability of the suit.

11. Mr. Anoop Chaudhary, senior counsel for the second defendant, and Mr. Siddharth Yadav, counsel for the first defendant, contend that the suit is not maintainable, since liberty of the kind contemplated, to enable the plaintiffs to file this suit, was never granted under Order 23, Rule 1(3). According to counsel, the averments in both suits, ie. the previous suit, as well as the present one, are

substantially the same; the plaintiffs sought to incorporate some changes in view of the mediation proceedings, and the affirmation of the previous proceeding of the Jamat dated 6-3-2008. However, the reliefs sought are essentially identical. In the circumstances, the plaintiffs could not have filed the present suit, even without securing liberty of the court in the previous suit. It was submitted that the suit is clearly barred, and has to be rejected as such.

12. Mr. Chaudhary learned counsel relied on the judgments reported as *Narayan Jethanand –vs- Asapuri Vijay Saw Mill* 1995 (4) Cur. CC 295; *Duryodhan Jena –vs- Satyabadi Samal* AIR 1986 Ori 58; and *M/s Upadhyay & Co –vs- State of UP* AIR 1999 SC 509 to support the submission that the present suit is not maintainable by reason of Order 23 Rule 1(4), CPC.

13. Learned counsel next contended that the suit is also not maintainable because it purports to be on behalf of an unregistered association, i.e the Jamat. The frame of the suit, and the nature of relief are such that the Jamat and the second plaintiff claim reliefs on the basis of the same allegations. Therefore, unless the second plaintiff shows his competence in some manner to represent the first plaintiff, the

suit is not maintainable. It is contended that even otherwise, the suit cannot be maintained since the mandatory provisions of Order I Rule 8 have not been complied with. Furthermore, non-disclosure of the persons on whose behalf the suit is sought to be filed – assuming it to be in representative capacity – is a fatal infirmity.

13. It was contended that a suit, on behalf of a non-registered association, such as a club or society cannot be maintained; reliance was placed on the decisions reported as *GIP Railway Senior Institute –vs- Mohit Kumar* AIR 1954 Nag. 29; *Rajendra Nath Tikku –vs- Royal Calcutta Turf Club* AIR 1964 Cal 57; and *S. N. Nadar – vs- N.G. High School* AIR 1978 Mad 383.

14. Mr. Salman Khurshid, learned senior counsel, on the other hand, submitted that the allegations by the applicants do not constitute sufficient material to justify rejection of the plaint. It was urged that as long as a plaint disclosed some cause of action, triable by the court, provisions of Order VII Rule 11 could not be invoked. It was urged that to consider whether the proceeding disclosed a cause of action, the court should not scrutinize only the plaint, but also the documents filed along with

it; he referred to the decision reported as *Liverpool & London SP & I Asson. Ltd. v. MV Sea Success*, (2004) 9 SCC 512. It was next contended that the arguments about the suit being barred are untenable and have to be rejected.

15. Mr. Khurshid submitted that if, for some reason, the court were to conclude that the suit in its present form is not maintainable, yet that cannot be a ground to reject the plaint. Counsel submitted, on the strength of the rulings in *Hubli Panjarapole & ors, -vs-. Saraswatevva Bayappa Kala Ghatki* AIR 1953 Bom 334; *Saraf and Swarnakar Samiti -vs- Munnalal Lal & Ors* AIR 1973 MP 216; *Smt. Ram Piari -vs- Amar Singh* AIR 1978 HP 22 and *Radhaswami Satsang Sabha -vs- Smt. Puttan* AIR 1984 All. 198, that the defect if any in non compliance with provisions of Order I Rule 8 can be cured at any stage, even in appellate proceedings. Therefore, the defendants' arguments about the maintainability of the suit, were refuted as without foundation. Learned counsel also submitted that the plaintiffs have moved a separate application under Order I Rule 8 to seek leave to sue in a representative capacity.

16. Learned counsel submitted that as regards the objection to maintainability, on the ground of Order 23 Rule 1(4) is concerned, the terms of the previous order of court, in Suit No. 519/08 show that the plaintiff asked for liberty to withdraw the suit in the light of filing the present suit (described as “*the subsequent suit No. CS(OS) 685/2008*”) which was granted. In these circumstances, the defendants are not entitled to contend, hyper-technically, that the present suit is not maintainable in law.

17. Before discussing the merits of the contentions, it would be useful to extract the relevant provisions, i.e Order I, Rule 8, and Order 23, Rule 1; they are as follows:

“ORDER I, Rule 8: ONE PERSON MAY SUE OR DEFEND ON BEHALF OF ALL IN SAME INTEREST.

(1) where there are numerous persons having the same interest in one suit, -

(a) one or more of such person may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to

all persons so interested, either by personal service, or where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1) and no such suit shall be withdrawn under sub-rule (3) of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order unless the court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any suit does not proceed with due diligence in the suit or defence, the court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation : For the purposes of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

Order 23, Rule 1, which deals with withdrawal of suit applications, reads as follows:

"XXIII WITHDRAWAL AND ADJUSTMENT OF SUITS

1 WITHDRAWAL OF SUIT OR ABANDONMENT OF PART OF CLAIM

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim :

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the court is satisfied, -

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff -

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs."

18. As far as the first objection to maintainability of the suit, on account of leave not having been obtained, is concerned, the applicant's arguments appear attractive. A bare reading of the text of Order 23, Rule 1(4) lends credence to such an interpretation. However, in the recent decision of the Supreme Court, reported as *Vimlesh Kumari Kulshrestha, Petitioner V. Sambhajirao* (Appeal (civil) 2976 of 2004, decided on February 5, 2008) the decision of the High Court, rejecting a suit, filed when the previous suit was pending and leave had not yet been obtained, though applied for, it was held that:

"A somewhat similar question came up for consideration in Mangi Lal vs. Radha Mohan [1930 Lahore 599(2)], wherein it was held;

"Order 23, Rule 1, refers to permission to withdraw a suit with liberty to institute a fresh suit after the first one has been withdrawn. Order 23, Rule 1, cannot be read so as to bar a suit which has already been instituted before the other suit has been abandoned or dismissed. The rule is clear and can only be applied to suits instituted after the withdrawal or abandonment of previous suits".

The said view was followed by the Karnataka High Court in P. A. Muhammed vs. The Canara Bank and Another [AIR (1992) Kar. 85].

An identical view was also taken in Girdhari Lal Bansal vs. The Chairman, Bhakra Beas Management Board, Chandigarh and Others [AIR 1985 Punj. and Har. 219] wherein it was held;

"4. The earlier application was filed on 6th October, 1982 and the present application was fixed on 26th October, 1982 and the first application was withdrawn vide order dt. 18-11-1982. The learned counsel for the Board could not show if aforesaid two decisions were ever dissented from or overruled. The aforesaid two Lahore decisions clearly say that if second suit is filed before the first suit is withdrawn then O. 23, C.P.C. is not attracted and the second suit cannot be dismissed under O. 23, R. 1(4) of the Civil P.C. Accordingly, I reverse the decision of the trial Court and hold that the present petition was not barred under O. 23, C.P.C."

We agree with said views of the High Court."

19. This court cannot take a contrary view, since the judgment of the Supreme Court is binding. Therefore, it is held that the suit, though filed when the previous suit was pending, cannot be defeated by reason of that fact; at best it might have constituted an irregularity.

20. Next, the more substantial issue about maintainability on the ground that the suit is not a representative one. Order I Rule 8 was conceived in public interest to enable "numerous" persons having common interest, to approach the court, through one, or few of them, in a representative character. The object of the provision is

avoidance of multiplicity in litigation. In *T.N. Housing Board v. T.N. Ganapathy*, (1990) 1 SCC 608 the Supreme Court held that:

“The provisions of Order I of Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. In Kodai Goundar v. Velandi Goundar AIR 1955 Mad 281 a Full Bench of the Madras High Court observed that on the plain language of Order I Rule 8, the principal requirement to bring a suit within that rule is the sameness of interest of the numerous persons on whose behalf or for whose benefit the suit is instituted. The court, while considering whether leave under the rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the rule. The object for which this provision is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will sub-serve the object for its enactment.”

21. In *Ahmed Adam Sait –vs- M.E. Makhri* AIR 1964 SC 107 the Supreme Court held that decision in a representative suit, properly instituted, would bind all the persons sought to be represented, and constitute *res judicata*, under Section 11, CPC. There is also authority (*Hubli Panjarapole case*; *Saraf and Swarnakar Samiti*; *Smt. Ram Piari's case* and *Radhaswami Satsang Sabha* – referred to supra) that the lacunae or infirmity in not seeking leave in the suit, at the initial stage, can be cured later. To this extent, the plaintiffs' contentions are well founded.

22. The defendant applicants contend that the nature of the right sought to be projected, and the cause of action is such that leave cannot be granted; they also contend that neither has the second plaintiff shown authorization or right to represent the membership of the Jamat as a whole, nor has he disclosed the Jamat's membership, to enable the court to take effective steps toward issuing notice to them, and granting leave, under Order I Rule 8, to pursue this suit in a representative capacity, to him.

23. In this context, the reliance, by the defendants, on the decision in *Rajendra Nath Tikku*, appears to be appropriate. That was a case of an unincorporated entity, viz a club; the contention raised was that the mis-description of the party was curable, by amendment of the cause title. The Calcutta High Court negatived the plea, in the following terms:

"5. The term 'misdescription' a fortiori means that a defendant has not been correctly described. It has been recently held by the Supreme Court in the decision of Purushottam Umedbhai and Co. Vs. Manilal, reported in (1961) 1 SCR 982; (AIR 1961 SC 325) that if a foreign firm is sued in the firm name though the Code does not recognize such a procedure, the plaint is not bad and such a defect or irregularity is one of misdescription of the defendant because all the partners who form the firm are in effect sued as defendants but their names are not set out behind the firm cloak used for the sake of brevity in the plaint. Counsel for the respondent contended in the present case that the suit as constituted against the Royal Calcutta Turn Club was a nullity because such a

Club cannot be suit in its Club name. It may be stated here that Lord Parker in the London Association for Protection of Trade V. Greenlands Ltd., (1916) 2 AC 15 said that an association which is not a corporate body, nor a partnership nor a creation of statute could not be made of defendant in its name. A member's club which is an unincorporated and unregistered body is not a legal entity which can be sued in its own name. If that is so, is the amendment of the nature sought in the present case an attempt to describe the defendant correctly? In my opinion, counsel for the respondent is right in his contention that it is not a case of misdescription at all."

The Special Bench of the Allahabad High Court in *N.F. Barwell v. John Jackson* AIR 1948 All 146, was concerned with a resolution by a majority vote that an unregistered Club should be dissolved. It was held by the Special Bench that in the absence of any provision in the rules of the Club laying down the circumstances and the manner in which the dissolution of the Club could take place, the dissolution of the Club would not be brought about by a majority vote. The Club could be dissolved only if all the members unanimously agreed to such dissolution. Similarly, the Madras High Court, in *D.Gopalan, Vs. Raghava Naicker & Others* AIR 1990 Mad 314 held that:

"From the answers given by the deponent to the affidavit as could be seen from his evidence recorded before the learned judge on the Original Side, it is clear that the very existence of the so called Association is doubtful. More than this, the number of members of the Association and their interest in this matter and their having authorized the deponent to the affidavit to institute the suit on

behalf of the Association since all the members had the same interest in the subject-matter in suit, have all not been established."

24. Similarly, in *Tulsi Ram & Ors, V. Mathura Sagar Pan Tatha Krishi & Anr*, AIR 2003 SC 243 the Supreme Court held that a suit on behalf of several persons, claiming community rights is not maintainable. In this case too, the nature of the right sought to be asserted on behalf of the Jamat, that the impugned resolution was illegal, and that the second plaintiff continued as President, has been pleaded in a general manner; the Jamat's interest has been projected as the cause of action for approaching the court. The second plaintiff has nowhere disclosed his right, or authorization by the body of persons, on whose behalf the Jamat's rights are sought to be asserted. Therefore, even if he were to be allowed to sue in representative capacity; the suit would have to fail.

25. This court, in *Sudhir Joshi & Others V. Smt. Shanta Joshi & Others* 113 (2004) DLT 254, held that:

"The Chairman, Tamil Nadu Housing Board, Madras v. T.N. Ganapathy, AIR 1990 SC 642 in which it has been observed that provision of Order I Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. In the present situation, since partition of property is in question, fifteen Plaintiffs who have not either subscribed their signatures to the Plaint or have executed Power of Attorneys in favour of any of the other Plaintiffs, could have been arrayed as Defendants. There would have been no question of

multiplicity of proceedings. What I see, therefore, is a possible mischief in that the Court will not be in a position to know the views and stance of these un-represented Plaintiffs unless they are personally summoned to the Court. Neither of these decisions, therefore, advance the case of the Plaintiffs."

In an earlier decision, *Kapoor Group & Another v. Supreme Court of India Bar Association*, 2002 III AD(Delhi) 490 this court had held, *inter alia* that:

"13. Order 1 Rule 8 applies only to representative suits when there are large number of persons having common interest in a suit. One or more of those persons with the permission of the Court can sue or be sued or defend the suit on behalf of others also. On such permission, if given, it becomes the imperative duty of the Court to direct notice to be given to the absent parties in the manner as the Court in each case required. Under this rule the suit cannot be filed on behalf of innumerable, countless persons but it may be filed on behalf of limited and clearly defined class of people who had common interest and common right. Indeed the proper course is to obtain the permission for suing in representative capacity before the suit is actually instituted. But Order 1 Rule 8, CPC does not forbid leave being granted afterwards at any stage of the proceeding. No notice of the application is contemplated to be served on the opposite party for granting the permission. In the instant case the permission has been applied for and granted by the Court though notice has not been issued to all those persons on whose behalf and in whose interest the suit was filed because of a subsequent event".

26. These observations underscore the necessity of seeking leave, under Order I Rule 8, on behalf of a *named* body of individuals, whose particulars are disclosed, to permit the court to take effective steps to notify them. This is a necessary procedure, since any decree made in the proceeding would bind them (*Kumaravelu -vs-*

Ramaswami AIR 1933 PC 188; *FA. Shihan –vs- Abdul Alim* AIR 1930 Cal 787; *Bishan Singh –vs- Mastan Singh* AIR 1960 Punj. 26 and *Ahmed Adam Sait [supra]*).

27. A Division Bench of this court had dealt with a somewhat similar situation, where the plaintiff's request for leave under Order I Rule 8 was rejected, in *Subhash Market –vs- Municipal Corporation of Delhi* AIR 2005 Del 211, in the following manner:

"...Order 1 Rule 8 of the Code of Civil Procedure.. Sub-rule (2) of Rule 8 of Order I of the Code of Civil Procedure mandates that the court in all cases where a permission or direction to sue or be sued, or may defend such suit, on behalf of or for the benefit of all persons so interested, to give notice of the institution of the suit to the persons so interested, either by personal service or by public advertisement."

"... The plaintiff claimed membership of 75-80 persons in the plaint. It was strongly canvassed that in compliance with the orders, the appellant filed process fee in the case for issuance of notices by the court. Perusal of the process fee form shows that the process fee filed by the appellant would have been sufficient to serve only 3/4 persons. No list of the 75-80 members was filed. It was also an admitted position, as stated in paragraph 11 of the impugned judgment, that the plaintiff did not comply with the requirements of Order I Rule 8 of the Code of Civil Procedure. We find no reason to vary the findings of the learned Trial Judge."

28. In this case, the plaintiff's application, IA 6338/2008, under Order I Rule 8 generally mentions about the District Committees having authorized him to file the suit on behalf of Jamat. However, the membership of those committees remains undisclosed; the membership of the Jamat, whose interests are allegedly affected due to the impugned resolution, has not been shown. According to the suit, the Jamat has a membership base of one crore. These lacunae are, in the opinion of this court, incurable.

29. For the above reasons, it is held that the suit is not maintainable. IA 6047/08 and IA 6348/2008 accordingly deserve to succeed and are allowed. The plaint is accordingly rejected; the interim orders are vacated. All pending applications are disposed of accordingly. In the circumstances of this case, parties shall bear their costs.

DATE: 25th August, 2008

S. RAVINDRA BHAT,J