

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2015

(Orders reserved on 29.06.2015)

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Application No.317 of 2015

in

C.S.No.682 of 2014

Mr.Tim Boyd,
International President,
C/o The Theosophical Society,
Having its office at the Headquarters
at Adyar, Chennai-600 020. ... Applicant/Tenth defendant

Vs.

1. Mr.Kesiraju Krishna Phani
2. Mr.karri Sita Rama Chandra Rao
- ... Respondents 1 and 2/plaintiffs
3. The Theosophical Society,
A Society registered under the
T.N. Societies Registration Act, 1975,
Represented by its Secretary,
Having its office at the Headquarters
at Adyar, Chennai-600 020.
4. The Indian Section,
The Theosophical Society,
Represented by its General Secretary,
A constituent part of the Theosophical Society,
Adyar, Chennai-600 020.
5. Dr.Chittaranjan Sathapathy,
Secretary,
Member-Election Committee (Presidential Election 2013-14),
The Theosophical Society,
Adyar, Chennai-600 020.
6. Mr.T.S.Jambunathan,
Treasurer,
Member-Election Committee (Presidential Election 2013-14),
The Theosophical Society,
Adyar, Chennai-600 020.

7. Mr.S.Harihara Raghavan,
General Manager, The Theosophical Society,
Member-Election Committee (Presidential Election 2013-14),
The Theosophical Society,
Adyar, Chennai-600 020.
 8. Mr.S.Sundaram,
The General Secretary, Indian Section,
A constituent part of The Theosophical Society,
Adyar, Chennai-600 020.
 9. Mr.P.K.Mahapatra,
Assistant General Secretary, Indian Section,
A constituent part of The Theosophical Society,
Adyar, Chennai-600 020.
 10. Karnataka Theosophical Federation of
the Indian Section,
Represented by its Secretary Ms.Parvathamma,
A constituent part of The Theosophical Society,
No.90, Krishnarajendra Road,
Basavangudi, Bangalore.
 11. Mr.S.M.Umakanth Rao,
Executive Committee Member,
Indian Section,
A constituent part of the Theosophical Society,
Adyar, Chennai-600 020.
 12. Mr.C.V.K.Maithreya,
 13. Ms.Manju Sundaram,
Scrutineer, Presidential Election 2014,
Indian Section,
A constituent part of The Theosophical Society,
Adyar, Chennai-600 020.
- .. Respondents 3 to 13/defendants 1 to 9, 11 and 12

Application is filed and the Judge's Summons issued under Order 14 Rule 8 of the Original Side Rules of this Court, read with Order 7 Rule 11 CPC, to reject the plaint filed by the first and second respondents in C.S.No.682 of 2014 on the file of this Court and consequently dismiss the said Civil Suit against the defendant-10.

Civil Suit No.682 of 2014 is numbered and the plaint is filed under Order 4 Rule 1 of the Original Side Rules of

this Court, read with Order 7 Rule 1 CPC, praying to pass a judgment and decree against the defendants:

(a) for a declaration to declare that the election of the tenth defendant, viz., Mr.Tim Boyd as elected President of the first defendant - The Theosophical Society for a period of seven years, as per communication dated 27.04.2014, is vitiated by irregularities, mal-practices, null and void and non-est in law and set aside the same;

(b) for consequential mandatory injunction directing the first defendant to recognise and declare the eleventh defendant Mr.C.V.K.Maithreya as duly and legally elected President of the first defendant-Society, by effecting proper announcement and declarations to the organisational set up of the first and second defendants; or

(c) alternatively and consequently give suitable direction to the first defendant to conduct fresh elections, in the post-nomination stage, to the post of President of the first defendant-Society, as per the provisions of the Tamil Nadu Societies Registration Act, 1975 and

(d) to award the costs of the suit.

For applicant : Mr.R.Sankaranarayanan

For respondents : Mr.G.Rajagopalan, Senior Counsel for
M/s.S.Thiruvengataswamy for RR-1 & 2

Ms.P.T.Asha for M/s.Sarvabhauman Associates
for DD-6 and 7

Mr.V.Perumal for DD-3 and 5

Mr.S.Annamalai for D-12

Mr.D.PrabhuMukunth Arunkumar for D-11

ORDER

The applicant is the tenth defendant in the above said

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suit. This application is filed under Order 7 Rule 11 CPC

for rejection of the plaint.

2. The respondents 1 and 2 herein as plaintiffs, have filed the above said suit for a declaration to declare that the election of the tenth defendant (applicant herein) as elected President of the first defendant-The Theosophical Society for a period of seven years, as per communication dated 27.04.2014, is vitiated by irregularities, mal-practices, null and void and non-est in law and set aside the same. They have also sought for consequential mandatory injunction, directing the first defendant-Society to recognise and declare the eleventh defendant as duly and legally elected President of the first defendant-Society, by effecting proper announcement and declarations to the organisational set up of the first and second defendants. Alternatively, the plaintiffs have sought for a suitable direction to the first defendant-Society to conduct fresh elections in the post-nomination stage, to the post of President of the first defendant-Society, as per the provisions of the Tamil Nadu Societies Registration Act, 1975.

3. The case of the plaintiffs, in short, is as follows:

(a) Both the plaintiffs are the members of the first defendant-Society and of the Indian Section Council, Theosophical Society, Varanasi. The first defendant-Society is an international organisation having its international headquarters in Chennai. It is an Association registered

under the Central Act No.21 of 1860, now deemed to be registered under the Tamil Nadu Societies Registration Act, 1975.

(b) The General Body of the first defendant-Society is the General Council. Clause 9 of the Memorandum of Association and the Rules and Regulations, 1997 of the first defendant-Society provides that the office of the President shall be for seven years and Clause 10 of the said Rules deals with the election of the President. Total membership of the first defendant-Society is 26,000, out of which, 12,000 to 15,000 are Indians. Following the demise of the President, viz., Mrs.Radha Burnier on 31.10.2013, International Elections were called for as per the Rules and Regulations of the first defendant-Society. The first phase of the election is the nomination phase, where the members of the General Council nominate suitable persons for the post of President. The General Council consists of heads of National Sections, nominated members and International Officers. The President and each National Section Head have three nominations, while the others have only one nomination each. No person who gets less than twelve nominations, is entitled to contest the election.

(c) In the elections concluded on 27.04.2014, only two persons, viz., the tenth and eleventh defendants, got the required number of nominations. The tenth defendant, an American, also happens to be the National President of

American Section of the first defendant-Society. During the nomination phase, each National Section Head is required to consult the respective governing bodies and make the nomination thereafter. On 29.12.2013, there was a Council meeting of the Indian Section, convened in Chennai. On that day, the issue regarding nomination was not on the Agenda of the said meeting. However, the General Secretary of the Indian Section, the sixth defendant herein, even before consulting the members of the Indian Section Council, abruptly announced the name of the tenth defendant as his choice for the President without having any prior consultation or deliberation with the Council of the Indian Section. The members of the Council advised him not to nominate only one candidate, but to use all three nominations, of which, at least one should be an Indian. Thereafter, in the Council Meeting, the name of the eleventh defendant was duly proposed and seconded by one Mr.K.V.L.Kanta Rao (Secretary of Rayalaseema Theosophical Federation) and Mr.S.K.Srinivasan (Secretary of the Madras Theosophical Federation). The game plan to avoid consideration of the nomination of the eleventh defendant appeared to have started with the active connivance of the sixth defendant. Even though the Council members wanted to nominate three persons, the sixth defendant was not in the mood to consider the name of the eleventh defendant.

seconded as stated supra, the sixth defendant completely ignored the same. However, the name of the eleventh defendant was found eligible for nomination on account of the support by way of the required number of nominations from other countries and Additional General Council members.

(d) While the nomination of the eleventh defendant was in accordance with the Rules, the nomination of the tenth defendant was clearly illegal, as the procedure was not followed and there was no proper consultation before nominating him. Consequently, the election of the tenth defendant is illegal, void and liable to be set aside. Immediately after the Indian Section Council Meeting held on 29.12.2013, the first plaintiff wrote a letter to the Secretary of the first defendant-Society questioning the nomination of the tenth defendant. There was no response. The first plaintiff wrote another letter to the General Secretary, namely the sixth defendant, on 24.01.2014, questioning the legality of the nomination of the tenth defendant. Without responding to those letters, the electoral process started. Even after starting the electoral process, the plaintiffs noticed several malpractices and illegal acts committed by the sixth defendant, who wanted to show undue favour to the tenth defendant.

in connivance with the ninth defendant, allowed distribution of pamphlet papers in bulk with specific instructions to vote for a particular candidate, namely the tenth defendant. The members of the City Lodge, Bangalore wrote to the former Joint General Secretary of the Indian Section of the first defendant-Society about the mal-practices adopted in the election process. Likewise, there were also communications from the General Secretaries, Theosophical Society, South Africa and Germany and other well known members to the Secretary of the first defendant-Society, expressing anguish over certain mal-practices followed by the Indian Section, particularly by those persons who canvassed in favour of the tenth defendant. The eligible members were deprived of their votes and the sixth defendant allotted ballot papers to those persons reported dead.

(f) The eighth defendant adopted unique and illegal method of having ballot boxes not provided in the Rules. The sixth and ninth defendants have adopted manipulative process to get the shortfall vote adjusted with the help of the eighth defendant. While normally the number of ballot papers should match the total number of members eligible to vote, about 1500 to 2000 ballot papers were printed in excess and eligible voters did not get the ballot papers, but persons who are dead and not traceable, were issued with more than one ballot paper. The Karnataka Theosophical

Federation's votes have been mixed with the rest of the votes, to vastly increase the votes for the tenth defendant. It is feared that the extra ballot papers printed at Varanasi, were to cast in favour of the tenth defendant and used in replacing the proper votes received in favour of the eleventh defendant. Account should be given for 1741 votes which were printed in excess. Mrs. Manju Sundaram, wife of the Indian Section's General Secretary, was appointed as Scrutineer, which indicates that the sixth and tenth defendants designed the plan in such a way to get the post of President of the first defendant-Society using devious means. Immediately after the election, the results were declared on 27.04.2014. Instead of preserving the ballot papers, the Election Committee, at the instance of the sixth defendant, destroyed the ballot papers. Hence, the present suit is filed for the relief stated supra.

4. The tenth defendant has filed the above application for rejection of plaint by raising the following contentions:

(a) The plaint does not disclose any cause of action or any proper legal injury against the plaintiffs to maintain the civil action.

(b) From a reading of the prayer sought for in the plaint, it is very clear that no cause of action has arisen in favour of the plaintiffs to maintain the suit. By

declaring the tenth defendant as the President of the first defendant-Society, the plaintiffs have not suffered any legal injury enabling them to bring the Civil Suit.

(c) The plaintiffs did not contest in the election for the post of President. The plaintiffs are neither losing candidates, nor they were election agents of the eleventh defendant. Therefore, the plaintiffs are not personally aggrieved by the electoral process or the ultimate outcome of the election. Thus, the plaintiffs have no locus-standi to bring the Civil Suit.

(d) The first plaintiff no longer enjoys the relationship with the first defendant-Society whatsoever and his Membership Diploma to the first defendant-Society was cancelled by the sixth defendant after following due process authorised by law. Therefore, he does not show any demonstrable cause of action to file the suit.

5. The first plaintiff who is the first respondent in this application, has filed a counter affidavit, wherein it is stated as follows:

None of the ingredients required under Order 7 Rule 11 CPC have been satisfied to reject the plaint at the threshold. The averments made in the plaint constitute a very valid cause of action warranting trial on merits, in view of the serious allegations of irregularities committed by the applicant/D10 along with the other defendants. The plaintiffs have disclosed all material facts whose

productive value can be appreciated only during the course of trial. The applicant has started acting in a prejudicial manner in connivance with the sixth defendant. The first plaintiff has always been in the best interest of the Society and therefore, he raised the issues about the illegalities and irregularities being committed in the first defendant-Society. Instead of responding to the issues that were raised, the applicant has filed this application making all sorts of vexatious allegations. As a member of the Society, the first plaintiff has an interest in its affairs and the entire thrust of the suit is how election was conducted by irregularities and mal-practices. Therefore, the first plaintiff has locus-standi to file the present suit. The averments raised in the plaint cannot be decided during consideration of the application filed under Order 7 Rule 11 CPC. Since the first plaintiff raised his voice against the illegalities committed in the management and administration of the first defendant-Society, specifically seen during the conduct of the election, the sixth defendant cancelled the first plaintiff's Membership Diploma and alive membership of the first defendant-Society after filing of the suit. Therefore, along with the suit, the first plaintiff filed other applications in O.A.Nos.931 to 933 of 2014 and A.No.7186 of 2014, challenging the cancellation of his Membership Diploma and also injunction and also sought for suspending the

operation of the same.

6. Mr.R.Sankaranarayanan, learned counsel appearing for the applicant/D10 submitted as follows:

(a) The applicant/D10 has sought for rejection of the plaint mainly on the ground that there is no cause of action for the plaintiffs to maintain the suit and that they have no locus-standi to challenge the election of the applicant/D10.

(b) Normally, Courts will not interfere with the internal affairs of the first defendant-Society. A voter, who has not contested in the election, is not entitled to challenge the election of the elected candidates and seek for declaration of the election of the defeated candidate, namely the eleventh defendant as successful candidate.

(c) The plaintiffs are not having any legal right to file the suit, as they did not suffer any legal injury. It is not a representative suit. Therefore, the plaintiffs cannot maintain the suit.

(d) The right to challenge the election is not a common law right; on the other hand, such a right should be made available under the statute. Therefore, the present suit is not maintainable.

(e) D11 who has lost the election, has not challenged the election of the D10, and therefore, the plaintiffs do not have any locus-standi to maintain the suit.

(f) Entire reading of the plaint averments shows that

there is no cause of action for the plaintiffs to maintain the suit. If plaint does not disclose the cause of action, then the plaint is liable to be rejected under Order 7 Rule 11 CPC.

(g) The prayer sought for in the suit, more particularly, the relief in (b) and (c) of the prayer, contradicts each other. As the plaintiffs seek consequential prayer under relief in (c) for a direction to the first defendant-Society to conduct fresh election in the post-nomination stage to the post of President, it is evident that they are not having any grievance in respect of pre-nomination stage.

In support of the above contentions, learned counsel for the applicant/D10 relied on the following decisions:

(i) AIR 1991 SC 2219 (State of Punjab Vs. Gurdev Singh);

(ii) 2015 SCC Online Bombay 3186 (Raju Vs. State of Maharashtra);

(iii) 1998 (2) MPLJ 710 (Bhushan Vs. S.D.O., Janjgir)
and

(iv) 1984 (1) SCC 390 (Charan Lal Sahu Vs. Giani Zail Singh).

7. Per contra, Mr.G.Rajagopalan, learned Senior Counsel appearing for the respondents 1 and 2/plaintiffs submitted
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as follows:

(a) The first defendant-Society registered under the Societies Registration Act (Central Act) is deemed to have been registered under the Tamil Nadu Societies Registration Act, 1975 by virtue of Section 53 therein. (b) If the members of the Society feel that there is violation of Bye-laws, they are entitled to challenge the same before Court of law. Ultra violate action can always be challenged by such members and there is no bar for such challenge. Though Section 36 of the Tamil Nadu Societies Registration Act deals with the power of the Registrar to enquire into the affairs of a registered society, the election dispute will not come under the purview of such enquiry by the Registrar. The Bye-laws of the first defendant-Society do not provide for any mechanism to challenge the election. Therefore, common law remedy, namely filing of the suit, is always available.

(c) In the Governing Council's meeting held on 29.12.2013, there was no agenda for nomination by the President. There was no consultation made before making the nomination as required under Bye-law 10(c). Therefore, the nomination of the tenth defendant without such consultation, is bad.

(d) As the very nomination itself is illegal, the plaintiffs being the members of the first defendant-Society, are entitled to challenge the election of the tenth defendant, as such illegal nomination goes to the

root of the matter.

(e) The plaintiffs have made specific allegations against the sixth defendant/Secretary.

(f) The ballot papers were destroyed on the same day.

(g) Suits of civil nature which are not expressly or impliedly barred, can be filed and entertained by civil Courts as contemplated under Section 9 of the CPC. In this case, there is no specific bar under any law for filing the Civil Suit. No authority of law is required to file a suit. Even if the suit is frivolous, it cannot be rejected as not maintainable, by considering the application filed under Order 7 Rule 11 CPC.

(h) The voter can challenge the election.

(i) For finding out the cause of action, the entire plaint must be read as a whole. In this case, a reading of the entire plaint discloses the cause of action for the plaintiffs to maintain the suit.

(j) Even though the present suit is not filed in a representative capacity, still it is curable by filing such application at any stage of the proceedings. Therefore, the present suit filed in the interest of the entire members of the Society, cannot be rejected at the threshold.

In support of the above contentions, learned Senior Counsel appearing for the plaintiffs relied on the following decisions:

(i) AIR 1974 SC 1126 = 1974 (2) SCC 393 (Smt.Ganga Bai

Vs. Vijay Kumar) and

(ii) AIR 1963 SC 1144 (T.P.Daver Vs. Lodge Victoria).

8. Mr.V.Perumal, learned counsel appearing for the third and fifth defendants adopted the arguments advanced by the learned counsel appearing for the applicant/D10 and supported his case. They have not filed any affidavit.

9. Ms.P.T.Asha, learned counsel representing M/s.Sarvabhauman Associates, appearing for the sixth and seventh defendants, supported the case of the applicant/D10 and reiterated the contentions raised by the learned counsel appearing for the applicant/D10.

10. Mr.D.Prabhu Mukunth Arunkumar, learned counsel appearing for the eleventh defendant submitted that he is supporting the case of the plaintiffs and further stated that even before the eleventh defendant challenges the election of the tenth defendant by filing the proceedings before this Court, the plaintiffs have come forward to file the present suit by arraying the eleventh defendant also as a party. Therefore, the eleventh defendant has got every right to challenge the election of the tenth defendant in these proceedings by supporting the case of the plaintiffs.

11. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

12. The point for consideration in this application is as to whether the plaint is liable to be rejected on the

ground that it does not disclose the "cause of action" as contemplated under Order 7 Rule 11(a) CPC.

13. The tenth defendant in the suit has filed the present application for rejection of the plaint only on the ground that it does not disclose the cause of action for the plaintiffs to file the present suit, as they do not have locus-standi to maintain the suit. In short, the core contention of the applicant/D10 is that the plaintiffs having not participated in the election, cannot challenge the same, that too by filing a Civil Suit. Therefore, it is the contention of the applicant/D10 that the plaintiffs have no locus-standi to file the present suit challenging the election of the tenth defendant.

14. Before going into the merits of the above contention, let me consider the scope of Order 7 Rule 11 CPC, which reads as follows:

"Order 7: Plaint:

Rule 11: Rejection of plaint:--The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with

the provisions of Rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

15. As per the above provisions of the Code of Civil Procedure, the plaint can be rejected only under the circumstances stated therein and not otherwise. Insofar as the present case is concerned, the plaint is sought to be rejected only by invoking sub-rule (a) of Rule 11 of Order 7 CPC under which it is contemplated that the plaint shall be rejected if it does not disclose the "cause of action". It is to be noted at this juncture that what is contemplated is the rejection of the plaint and not the relief sought for in the suit itself. In other words, the Court will not go into the merits of the plaint as well as the rival contentions made by the defendant on the merits of the suit claim, while considering the application filed under Order 7 Rule 11 CPC. On the other hand, what is to be seen is as to whether the plaint as such discloses the cause of action or not. At this juncture, it is relevant to note Order 7 Rule 13 CPC, which reads as follows:

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"Order 7: Plaint:

Rule 13: Where rejection of plaint does not preclude presentation of fresh plaint:--The rejection of the plaint on any of the grounds herein before mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

16. Thus, from a reading of the above provision, it is clear that the plaintiff is not precluded from presenting a fresh plaint in respect of the same cause of action, even if he suffered rejection of the plaint under Order 7 Rule 11 CPC, earlier, on any of the grounds stated therein. Thus, it is clear without any ambiguity that the rejection of plaint under Order 7 Rule 11 CPC on any of the grounds referred to therein, is not rejecting the merits of the matter, or the relief sought for therein.

17. Further, a careful perusal of Order 7 Rule 11(a) CPC shows that the rejection of the plaint is warranted only when the plaint does not disclose the cause of action. On the other hand, if the plaintiff states the various facts and circumstances which are material for filing the suit and claims that those are the cause of action, it is enough to hold that the plaint discloses the cause of action.

18. At this juncture, it is useful to refer the decision of the Supreme Court reported in 2007 (6) MLJ 1487 (SC) = 2007 (10) SCC 429 (Y.A.Ajit Vs. Sofana Ajit), wherein the Apex Court has dealt with in detail with regard

to the expression "cause of action" and observed in paragraph 4 as follows:

"4. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is therefore not a stranger to criminal cases.

It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise."

(emphasis supplied)

19. Likewise, in another decision reported in 2008 (1) MLJ 1055 (SC) = 2008 (1) SCC 618 (Laxman Prasad Vs. Prodigy Electronics Ltd.), the Apex Court observed in paragraphs 15 to 17 as follows:

"15. We find considerable force in the submission of the learned Counsel for the respondent Company. In our view, 'cause of action' and 'applicability of law' are two distinct, different and independent things and one cannot be confused with the other. The expression 'cause of action' has not been defined in the Code. It is however settled law that every suit presupposes the existence of a cause of action. If there is no cause of action, the plaint has to be rejected [Rule 11(a) of Order VII]. Stated simply, 'cause of action' means a right to sue. It consists of material facts which are operative for the plaintiff to allege and prove to succeed in the suit. The classic definition of the expression ('cause of action')

is found in the observations of Lord Brett in *Cooke v. Gill* (1873) 8 CP 107 : 42 LJ CP 98.

16. His Lordship stated;

"Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

17. In *A.B.C.Laminart Pvt. Ltd. Vs. A.P.Agencies* (AIR 1989 SC 1239 = 1989 (2) SCC 163 = 1990 (1) MLJ 10), this Court said:

"A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

(emphasis supplied)"

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20. In yet another decision reported in 2005 (3) MLJ 65 (SC) = 2005 (10) SCC 51 (*Swamy Atmananda Vs. Sri Ramakrishna Tapovanam*), the Apex Court observed in

paragraph 27 as follows:

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"27. A cause of action, thus, means every fact, which, if traversed, it would be necessary

for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

(emphasis supplied)

21. From a perusal of the above three decisions of the Apex Court dealing with the expression "cause of action", it is clear that the 'cause of action' means a bundle of facts, including some acts done by the defendant, if traversed, it would be necessary for the plaintiff to prove, in order to support his claim for the relief sought for in the suit. It is further evident from those decisions that the cause of action has no relation whatsoever to the defence which may be set up by the defendant, nor it depends upon the character of the relief prayed for by the plaintiff in the suit. In the above said decision reported in 2005 (3) MLJ 65 (SC) = 2005 (10) SCC 51 (cited supra), the Apex Court also observed that the cause of action is not limited to the actual infringement of the right sued on, but includes all the material facts on which it is founded. Therefore, the bundle of material facts referred to in the plaint, is to be construed as the "cause of action" for the plaintiff to file the suit.

22. It is also well settled that while considering the application under Order 7 Rule 11 CPC, the Court has to only go by the various averments made in the plaint to find out as to whether it discloses the cause of action or not, and not to judge the issue based on the rival contentions made by the defendant in his pleadings. In other words, the disclosure of cause of action by the plaintiff in the plaint, has to be found out from the point of view of the plaintiff as set out in the plaint, and not from the point of view of the defendant as projected by him in his defence.

23. Whether a plaint discloses the cause of action as required under Order 7 Rule 11 CPC, is a question which is a distinct and different one from the question as to whether the plaintiff can succeed in the suit based on such cause of action. It is needless to state that only the latter question involves the consideration of other allied questions with regard to the maintainability of the suit as well as the "locus-standi" of the plaintiff to file the suit. In my considered view, these questions, namely the maintainability of the suit or the locus-standi of the plaintiff to maintain such suit, are the questions which are to be relegated to be considered and decided along with the other issues on merits, after conducting trial, since these questions also involve consideration of facts and law. That is why the provision made under Order 7 Rule 11

CPC for rejection of plaint, specifically reads that the plaint shall be rejected on one of the grounds, namely where it does not disclose the "cause of action". In other words, the above said provision nowhere contemplates the rejection of plaint if the suit is not maintainable, or on the ground that the plaintiff is not having locus-standi to file the same. Thus, in my considered view, the cause of action and locus-standi are two different aspects of the suit and insofar as the application filed under Order 7 Rule 11 CPC is concerned, the question of locus-standi cannot be a ground for rejecting the plaint.

24. Keeping the above statutory position in mind, let me consider as to whether the applicant/D10 has made out a case for rejection of the plaint.

25. In this case, the respondents 1 and 2/plaintiffs have challenged the election of the applicant/D10 on very many reasons as set out in the plaint which are referred to supra. It is the categorical contention of the plaintiffs that the Bye-laws of the first defendant-Society were not followed strictly while conducting the election. In fact, the plaintiffs question the very nomination of the applicant/D10 as an electoral candidate by contending that the same is against the procedures contemplated under the Bye-laws of the first defendant-Society. It is their contention that no proper selection was made in the Council

candidate. The plaintiffs have specifically made the allegations against the sixth and ninth defendants that they have connived with the applicant/D10 in making the nominations as well as in conducting the elections. It is their specific contention that the pamphlet papers in bulk with specific instructions to vote for the applicant/D10, were distributed by the sixth defendant with the connivance of the ninth defendant. It is also the contention of the plaintiffs that having ballot boxes was not provided under the Bye-laws of the first defendant-Society and about 2,000 ballot papers were printed in excess and the eligible voters did not get the ballot papers, whereas the persons who are dead and were not traceable, were issued with more than one ballot paper. They also question the appointment of the wife of the sixth defendant as one of the Scrutinisers of the nominations. Apart from these grounds, the plaintiffs have raised very many other grounds as could be seen from a close reading of the plaint in-toto.

26. Thus, the above stated facts and circumstances as stated in the plaint, show that the respondents 1 and 2/plaintiffs have certainly disclosed the cause of action for filing the present suit. Therefore, it cannot be contended that the plaint does not disclose the cause of action at all. Whether the plaintiffs will succeed in their suit based on the above cause of action, is totally a different issue, which at this stage, is not for this Court

to consider and decide, as such issue has to be gone into only at the time of trial, by allowing the parties to let in oral and documentary evidence in support of their respective pleadings and claim.

27. Insofar as the present application filed under Order 7 Rule 11 CPC for rejection of plaint is concerned, it is enough for this Court to find out as to whether the plaint as such discloses the "cause of action" or not. I have already pointed out that on a reading of the plaint in this case, it discloses the cause of action. Therefore, I am of the view that the applicant/D10 is not correct and justified in contending that the plaint does not disclose the cause of action.

28. In fact, the contention of the applicant/D10 in this application is more on the locus-standi of the plaintiffs to maintain and file the present suit. According to the applicant, the plaintiffs being not contesting candidates for the elections, cannot maintain the suit and challenge the election. It is their further contention that if at all the challenge has to be made by the contesting candidates, it could be only by filing an Election Petition. I am unable to appreciate the above said contentions for the following reasons.

29. In this case, the Bye-laws of the first defendant-Society do not deal with the procedures for challenging the elections. In other words, there is no specific bar in the

Bye-laws for filing a suit for challenging the elections. Equally, the Bye-laws do not contemplate that such challenge should be made only by the contesting candidates by filing an Election Petition. The relevant statutory provision, namely Section 36 of the Tamil Nadu Societies Registration Act, also is not empowering the Registrar of Co-operative Societies to go into the election dispute. In fact, the very same issue was considered by me in a recent decision decided on 15.07.2015 in O.A.No.411 of 2015 and Application Nos.4053 and 2853 of 2015 in C.S.No.309 of 2015, wherein it has been observed in paragraphs 20 to 23 as follows:

"20. Thus, it is evident that the elections have to be conducted only as per the above mandatory procedures and not otherwise. A further perusal of the above said Bye-laws shows that there is no provision prohibiting the members or voters from challenging the elections by filing a suit. In other words, it is not contemplated in the Bye-laws that such elections can be challenged only by way of Election Petition and not otherwise. If the process of elections is by certain procedures which are outside the scope of the Bye-laws and against the specific mandatory procedures contemplated therein for conducting the elections, certainly, the same can be challenged before the Court of Law. It can be at the instance of a voter, even if he is not a contesting candidate. It is needless to say that the voter is a member and not a stranger of an Association and thus, he has every right to protect the interest of the Association and see that the election is conducted as per the Bye-laws of such Association. If the contesting candidate(s) has/have chosen to keep silent, for various reasons or for any extraneous consideration, it does not mean that such procedures followed in the process of elections, cannot be challenged by any other person, namely the voters/members of the Association. Equally,

the Court cannot be a mute spectator to such illegal process of elections and give its seal of approval, merely because the challenge was not made by a contesting candidate. While expressing this view, I am fully conscious of the well-settled principle that the challenge to the elections is not a common law remedy and it has to be specifically provided under the statute. Further, the right to contest the election or to question the election by means of the Election Petition is neither common law nor fundamental right and instead, it is a statutory right regulated by the statutory provisions.

21. At the same time, this Court is also reminded of the fact that the election is a symbol of Democracy and the same has to be conducted strictly in accordance with the procedures established by law in a fair, transparent and unbiased manner. There cannot be any compromise on the mandatory and essential procedures in conducting the elections. Only when those procedures are strictly followed, it could be said that the Democratic way of electing people, has been achieved. If there are any deviations, it should be viewed seriously, as the same cannot get the seal of approval from a Court of Law, automatically.

22. In this case, I have already pointed out that the Bye-laws of the first defendant-Association are totally silent about the manner in which the elections have to be challenged. In other words, there is no prohibition for challenge of the elections before the Court of Law by invoking the common law remedy. Likewise, the Tamil Nadu Societies Registration Act, 1975, more particularly, Section 36 therein does not empower the Registrar of Societies to go into the validity of the election and thus, the election of the office bearers of the Society cannot be challenged before the Registrar under such provision of law. At this juncture, a Division Bench decision of this Court reported in 2005 (1) CTC 399 (Thamil Arasan.S. Vs. R.Narayanan) is useful to be referred to. In paragraphs 3 and 4 of the said decision, the Division Bench has observed as follows:

"3. When Dr.G.Krishnamurthy, learned counsel appearing for the first respondent was asked as to under which provision the impugned order was passed, he has stated that the impugned order was passed under Section 36 of the Tamil Nadu Societies Registration

Act, 1975. Section 36(1) of the said Act states that,

"the Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one-third of the members of that registered society, or, if so moved by the District Collector hold or direct some person authorised by the Registrar by order in writing in this behalf to hold, an enquiry, into the constitution, working and financial condition of that registered society."

4. A perusal of the said provision shows that this provision does not permit any one to challenge the validity of an election held for the office bearers of the society, but only permits the Registrar to inquire into the constitution, working and financial condition of the society. In our opinion, since there is no specific provision permitting the challenge of an election to the society, the only remedy for challenging such election is by means of a civil suit."

(emphasis supplied)

23. Further, a learned Judge of this Court, while considering the scope of the Tamil Nadu Societies Registration Act, 1975, observed in paragraph 17 of the decision reported in 2001 (3) CTC 486 (R.Karuppan, Advocate Vs. P.K.Rajagopal, Secretary, Advocates' Association, High Court) (which was relied on by the learned Senior Counsel appearing for the applicants/plaintiffs), as follows:

"17. Point No.3: The second defendant argued that once election has started, it cannot be stalled by the Courts. This argument is based upon the procedures and practices as well as the rules of the Representation of the People Act which govern the general elections. He argued that just like the process of general elections of Parliament or the State Legislative Assembly cannot be stalled or stopped by any proceedings before the Court, the election to the association also cannot be stalled. This argument of the defendant is not acceptable. The General Election for Parliament and the State Legislative Assembly are governed by the Representation of

People Act and Rules. It cannot be extended to the Association registered under the Societies Registration Act. These associations are undoubtedly governed only by the Societies Registration Act and rules and nothing else. Therefore, in the absence of any provision excluding the jurisdiction of Courts, this argument is not acceptable and hence, rejected."

30. Further, the issue as to whether the Election Petition alone is maintainable and not the Civil Suit, has also been considered by me in the above said decision in O.A.No.411 of 2015, etc., and the said issue was answered as follows:

"27. Much emphasis was made by the learned counsels appearing for the contesting respondents/defendants that the Election Petition only has to be filed, after declaration of the results, that too by a contesting candidate and not by anybody else. Several decisions were cited in support of such contention, out of which, most of them are in relation to the elections conducted under the Representation of People Act, 1950/1951. It is true that under the Representation of People Act, 1950/1951, there is a bar for challenging the elections except by Election Petition presented in accordance with the provisions of Chapter-2 therein. Section 80 reads so. Section 81 of the said Act contemplates that presentation of Election Petition should be by any candidate. Section 79 (b) therein defines the word "candidate" to mean that a person who has been or claims to have been duly nominated as a candidate at any election. Section 82 therein deals as to who should be parties to the Election Petition. As contemplated therein, apart from the Election Petitioner, who must be a candidate in the said election, the respondents to be arrayed therein can be other contesting candidates, apart from the Returning Candidate.

<https://hcservices.ecourts.gov.in/hcservices> 28. The word "Election" referable under the Representation of People Act, 1950/1951, is an election for a House of the People and the

Legislature of States. Therefore, the embargo put on the persons other than a candidate to such election to challenge the election of the Returned Candidate under the Representation of People Act, cannot be made applicable in respect of all other elections, especially in respect of the elections which are governed by specific statute or Bye-laws of any Association/Society. Therefore, the contesting respondents/defendants are not justified in saying that the present Civil Suit is not maintainable."

31. In the above decision in O.A.No.411 of 2015, etc., this Court has also found that a member or voter of a Society/Association has a right to challenge the elections in the absence of specific bar either in the Bye-laws or under the statutory provisions. This Court has also distinguished the elections governed under the Representation of People Act and the elections governed by the specific statutes or the Bye-laws. Therefore, in my considered view, the present case also will fall under the same line, namely as decided by this Court in the above decision.

32. Accordingly, this Court is of the view that the applicant/D10 is not justified in contending that the respondents 1 and 2/plaintiffs are not having locus-standi to file the present suit. Even otherwise, as I have already pointed out, such question of locus-standi cannot be a ground coming within the purview of Order 7 Rule 11 CPC.

<https://hcservices.ecourts.gov.in/hcservices/> Therefore, the applicant/D10 cannot seek for rejection of the plaint on the ground that the respondents 1 and

2/plaintiffs are not having the locus-standi to file or maintain the present suit.

33. Further, it is a fact that a defeated candidate is arrayed as D-11 in the present suit, as the relief is also sought for in the suit to declare him as an elected candidate. Therefore, even assuming that the plaintiffs cannot challenge the election of the applicant/D10, the very presence of D-11 in the suit shows that a situation cannot be ruled out for this Court to exercise the power under Order 1 Rule 10(1) and (2) CPC, which reads as follows:

"Order 1: Parties to suits:

Rule 10: Suit in name of wrong plaintiff:--

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties:--
The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

(emphasis supplied)

34. Under the above said provision, the Court may at any stage of the suit proceedings, either on its own motion or upon application of either party, order to include a party as plaintiff or defendant, whose presence before the Court may be necessary in order to enable the Court to adjudicate effectually and completely upon all the questions involved in the suit. Therefore, when once the plaint discloses the "cause of action", all the other contentions on merits have to be relegated only for trial.

35. Further, it is contended by the learned counsel appearing for the applicant/D10 that the present suit is not filed as a representative suit, as no permission was sought for or obtained under Order 1 Rule 8 CPC. I do not think that such question would arise in this case, in view of the fact that this Court has already found in the above referred to decision in O.A.No.411 of 2015, etc., that a voter or a member can maintain the suit challenging the election in respect of a Society/Association. Even otherwise, as rightly pointed out by the learned Senior Counsel appearing for the respondents 1 and 2/plaintiffs, such permission under Order 1 Rule 8 CPC can be obtained at any time and at any stage of the suit proceedings. Moreover, it is a curable defect and hence cannot be fatal to the case of the plaintiffs.

36. At this juncture, the stand taken by the eleventh

defendant through his counsel in the present proceedings, is relevant to be noted. Learned counsel for the eleventh defendant categorically submitted that the eleventh defendant is supporting the case of the plaintiffs and that even before the eleventh defendant challenges the election of the applicant/D10, the plaintiffs have come forward to file the present suit. This stand of the eleventh defendant shows that he has not given up his contest in the election even after his defeat.

37. Learned counsel appearing for the applicant/D10 relied on the decision of the Supreme Court reported in AIR 1991 SC 2219 (State of Punjab Vs. Gurdev Singh) to contend that the Court can invalidate an election, if the right remedy is not sought by the right person in the right proceedings. As this Court has already found that the filing of the Civil Suit in this case is maintainable at the instance of a member/voter, the above decision of the Apex Court is not helping the applicant/D10 in any manner.

38. The decision of the Bombay High Court reported in 2015 SCC Online Bombay 3186 (Raju Vs. State of Maharashtra) is also relied on by the learned counsel appearing for the applicant/D10 to contend that the right to challenge the election on a Returned Candidate is not a common law right and such challenged has to be made in the manner prescribed. For the same proposition, the decision of the

(Bhushan Vs. S.D.O., Janjgir) is also cited by him. First of all, the facts and circumstances of the above cases are totally different and distinguishable. In any event, as this Court has already taken a view in its recent decision in O.A.No.411 of 2015, etc., discussed supra, this Court is bound to follow its own decision. Consequently, I am not able to apply those two decisions to the facts and circumstances of the present case. Even otherwise, in view of the decision of the Apex Court reported in AIR 1974 SC 1126 = 1974 (2) SCC 393 (Smt.Ganga Bai Vs. Vijay Kumar), relied on by the learned Senior Counsel appearing for the plaintiffs, I am of the view that so long as the statute does not bar filing of a suit, the maintainability of such suit cannot be questioned at the threshold. Paragraph 15 of the said decision of the Supreme Court reported in AIR 1974 SC 1126 = 1974 (2) SCC 393 (cited supra), reads as follows:

"15. It is thus clear that the appeal filed by Defendants 2 and 3 in the High Court was directed originally not against any part of the preliminary decree but against a mere finding recorded by the trial Court that the partition was not genuine. The main controversy before us centres round the question whether that appeal was maintainable. On this question the position seems to us well established. There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no question of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of

appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

39. Learned counsel appearing for the applicant/D10 further relied on the decision of the Supreme Court reported in 1984 (1) SCC 390 (Charan Lal Sahu Vs. Giani Zail Singh), to contend that the present challenge by way of filing the suit, is not maintainable and only the defeated candidate can challenge the same, that too by filing an Election Petition. A perusal of the above decision of the Apex Court shows that the subject matter "Election" therein was governed under the Presidential and Vice-Presidential Elections Act and that under Section 14-A therein, an Election Petition can be filed only by a person who was a candidate in the election. Therefore, it is evident that there is a specific bar under the above statute itself for filing a suit challenging the election, that too by a third party. Here, in this case, the facts and circumstances disclose that no such specific bar is contemplated either under the Bye-laws of the first defendant-Society or under the relevant statute, namely the Tamil Nadu Societies Registration Act. Therefore, the above decision of the Apex Court is not helping the applicant/D10 in any manner.

<https://hcservices.ecourts.gov.in/hcservices/> 40. Learned Senior Counsel appearing for the plaintiffs relied on the decision of the Supreme Court reported in AIR

1963 SC 1144 (T.P.Daver Vs. Lodge Victoria), to contend that a member of a Society is bound to abide by the Rules/Bye-laws of the Society and they should act strictly in accordance with the said Rules/Bye-laws.

41. Considering all the above stated facts and circumstances, this Court find that the plaint in this case in fact discloses the "cause of action" as contemplated under Order 7 Rule 11(a) CPC and consequently, the plaint cannot be rejected as sought for by the applicant/D10 in this application. Accordingly, this application deserves no merits and the same is dismissed. No costs.

sd/.K.R.C.B.J

22.07.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/10.12.2015

COURT OFFICER

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