

Application Nos.3103 & 3358 of 2014
in
Civil Suit No.218 of 2014

R.SUBBIAH, J.,

Application No.3358 of 2014 has been filed under Order XIV Rule 8 of the Madras High Court Original Side Rules r/w Order VII Rule 11 of CPC, praying to reject the plant in C.S.No.218 of 2014.

2.Application No. 3103 of 2014 has been filed under Section Order XIV Rule 8 of the O.S.Rules r/w Order III Rule 1 of O.S.Rules praying for revocation of the leave granted in Application No.1942 of 2014 dated 21.03.2014.

3.The applicants herein are the defendants 1 to 11 & 14 and the respondents 1 to 7 herein are the plaintiffs and the respondents 8 & 9 herein are the defendants 12 & 13 in the suit respectively. For the sake of convenience, the parties are referred to as per their rankings in the suit.

4.The plaintiffs have filed the suit for the following reliefs__

(1)For a declaration that the election of
the defendants 1 to 11 declared by the

defendants 12 & 13 declaring the defendants 1 to 11 as Officer Bearers of the 1st plaintiff-Association, including the Notification dated 21.12.2013 of the election, is illegal and void and not binding on the plaintiffs.

(2)Consequent permanent injunction restraining the defendants, their men, agents and servants or anyone claiming through or under them from in any manner interfering with the management of the 1st plaintiff-Association by the plaintiffs 2 to 7 and in particular the plaintiffs' functioning as Office Bearers in any manner.

(3)for costs of the suit.

5.The brief facts, which are necessary to decide this application, are as follows_

5-1.The 1st plaintiff is an Association registered under the Societies Registration Act, which has been functioning since 1961, in its own building in Church Hill Road, Udhagamandalam. The members of the 1st plaintiff-Association belong to the Badaga community, which was originally a Scheduled Tribe. The main

objects of the Association are to encourage higher education among the people of Badaga Community and to provide necessary possible assistance to the Community people, apart from providing healthy recreation to members by providing library, reading room for the benefit of the members. The 1st plaintiff-Association is managed and administered by 11 members of the Executive Committee, which is elected by the General Body of the Association. As per the Bye-Laws, election of the Executive Committee including the Office Bearers is to be done in the General Body Meeting to be held annually; however, in tradition the election is being conducted once in two years.

5-2. The 1st plaintiff-Association had been functioning smoothly till the year 2006 with periodical Executive Committee Meetings, Annual General Body Meetings and elections being held in time. However, after the 2nd defendant-T.Gundan, a former Member of the Legislative Assembly, took over as the President of the 1st plaintiff-Association and the 1st defendant-B.Hariji as Secretary in the year 2006, the affairs of the 1st plaintiff-Association were handled improperly and not even accounts were audited nor rendered. Last election took place in the year 2006 for the period 2006-2008 and thereafter, no elections were conducted. The

defendants 1 & 2 failed and neglected to take any step to conduct the elections. In spite of continuous and repeated requests made by the members of the Executive Committee and the other members of the Association, they failed to conduct the election. The 1st defendant brought-in a complete state of anarchy in the affairs of the 1st plaintiff-Association. Only due to the extreme pressure by the General Body, the defendants 1 & 2 agreed to conduct an election for the period 2013-2015.

5-3. An Executive Committee Meeting was convened on 04.05.2013 under the Presidentship of the 1st defendant and it was resolved to conduct a General Body Meeting on 21.05.2013 for the purpose of discussing about the election to the Executive Committee. On 21.05.2013 when the General Body Meeting of the Association was convened under the Presidentship of the 2nd defendant, many of the members questioned the 1st defendant about the undue delay in conducting the elections and also about management of the funds of the Association, failure to audit the accounts and have the audited accounts tabled before the General Body. Unable to answer the Members, the 1st defendant walked out of the Meeting Hall. Hence, at the request of the General Body, one Mr.J.B.Subramaniam, a Senior Executive Member of the 1st

plaintiff-Association and a Senior Member of the Ooty Bar, chaired and continued the Meeting. The members, who were present at the time of the meeting, condemned the attitude of the then Office Bearers including the then Secretary-the 14th defendant and the 1st defendant; the members unanimously decided to proceed with the meeting. In the said meeting on 21.05.2013, it was unanimously decided to dissolve the existing Executive Committee and to conduct the election for the Association at the earliest possible date.

5-4. Accordingly, an ad-hoc Executive Committee was formed. The ad-hoc Executive Committee called for a General Body Meeting to the election of office bearers and the same was published as a News Item in the local Newspapers having wide circulation. Accordingly, on 02.08.2013, the General Body Meeting was held, in which large number of members attended and in the said meeting, the Plaintiffs 2 to 7 were elected. The list of the elected office bearers and committee members was submitted to the Registrar of Societies under Form VII. Thus, on 02.08.2013, the election of the office bearers of the 1st plaintiff-Association had already been completed in the duly convened General Body Meeting on 02.08.2013. The office bearers have assumed office and taken charge of the management of the 1st plaintiff-Association. The

defendants were fully aware of the General Body Meeting held on 02.08.2013 and the election of the plaintiffs 2 to 7 and the other Executive Committee members. The defendants were also aware of the General Body Meeting held on 21.05.2013 and the resolutions passed therein.

5-5. While so, the 1st defendant instigated the 14th defendant to file a writ petition, by not placing on record the fact that the duly elected Executive Committee of the plaintiffs 2 to 7 and the other Committee Members was in place and the plaintiffs are in management of the Association. The 14th defendant instituted a writ petition in W.P.No.21752 of 2013 claiming to be the Secretary of the 1st plaintiff-Association, when he was not the Secretary and there were no proceedings of the 1st plaintiff-Association authorizing him to institute the writ petition. In the said writ petition, the relief sought for by the 14th defendant was that a direction to the Registrar of Societies to conduct a free and fair election by nominating an Observer preferably in the status of a Retired High Court Judge. In the said writ petition, the 2nd plaintiff herein alone was shown as 7th respondent. The said writ petition was allowed as prayed for on 29.11.2013 and the elections were scheduled to be conducted to the Executive Committee of the 1st

plaintiff-Association on 12.01.2014 as per the election schedule published by the defendants 12 & 13.

5-6. While so, aggrieved by the order dated 29.11.2013 passed in W.P.No.21752 of 2013, the plaintiffs 3 to 7 herein filed Writ Appeal in W.A.No.46 of 2014. Similarly, the 2nd plaintiff has also filed an appeal in W.A.No.141 of 2014 against the order passed in W.P.No.21752 of 2013 dated 29.11.2013. In W.A.No.46 of 2014, an interim order was passed permitting the balloting to go-on as notified by the Election Officers (defendants 12 & 13) appointed by the Court in W.P.No.21752 of 2013, but with a direction to the Election Officers (defendants 12 & 13) that they should entrust the sealed ballot boxes to the Registrar General of this Court for safe custody. The 1st defendant also filed a Miscellaneous Petition in M.P.No.3 of 2014 in W.A.Nos.46 of 2014 seeking for a direction to the Election Commissioners to count the votes cast in the election held on 12.01.2014 from the ballot boxes under the custody of the Registrar General of this Court and to declare the results. By order dated 26.02.2014, the Division Bench of this Court, upholding the order dated 29.11.2013 in W.P.No.21752 of 2013, dismissed the writ appeals and further directed the Registrar General to hand over the ballot boxes to the

defendants 12 & 13 to count the votes cast in the election held on 12.01.2014, in the Meeting Hall in the Additional Library Hall, within the precincts of this court, for the purpose of declaring the results on 28.02.2014. Further, the defendants 12 & 13 were directed to permit the candidates, who contested the election or their representatives to be present at the time of counting of the votes. Further, the defendants 12 & 13 were directed to declare the results immediately on completion of counting of the votes. In order to prevent any law and order problem, the Registrar General of this Court was directed to inform the Commissioner of Police, Chennai, to provide adequate police protection at the time of counting of the votes. Aggrieved by the order dated 26.02.2014, the plaintiffs 2 to 7 preferred SLP (c) No.6327 of 2014 before the Hon'ble Supreme Court. On 28.02.2014, the Hon'ble Supreme Court passed the following order_

“At this stage, we are not inclined to interfere with the impugned order.

It would however be open to the petitioners to challenge the election after the entire process is over.

We make it clear that we have not expressed any opinion on the merits of the petitioner's case. All contentions raised by the petitioners are kept open. If any

proceedings are initiated by the petitioners all contentions raised by the petitioners will be dealt with by the appropriate Court/authority independently and in accordance with law.....”.

Now, the election process is over and on 28.02.2014, the election results were declared and the defendants 1 to 11 have been declared as elected. Aggrieved over the same, the present suit has been filed by the plaintiffs for the reliefs as stated supra.

6. On appearance, the applicants herein/defendants 1 to 11 & 14 have taken out the above applications praying for rejection of the plaint and for revocation of leave. The sum and substance of the contentions in the affidavit filed in support of the above applications, are as follows: _

The suit is barred by the principle of *res-judicata* since the issue raised by the plaintiffs in the present suit has already been decided by the Division Bench of this Court in favour of the defendants. By suppressing the fact that the issue in the present suit, which was the subject matter before the Division Bench in Writ Appeal No.46/2014, having already been considered by the Division Bench, once again the plaintiffs have filed the present suit by

importing wrong interpretation of the order passed by this Court. Pursuant to the orders of the learned Single Judge, the election officers published the election notification on 24.12.2013 in newspaper widely in circulation in the District of Nilgiris notifying the date for filing nomination as 06.01.2014 and on 07.01.2014 and for the scrutiny of nomination, fixed the date for the election on 12.01.2014 and the votes to be counted on the same day. Thereafter, after giving consent to the Court, that too, after naming the Election Officer of his choice, the 2nd plaintiff through his henchmen, who were among the so-called persons who usurped various posts under the 2nd plaintiff, filed Writ Appeal No.46 of 2014 on the ground that the consent given by the 2nd plaintiff do not bind them. Though the said Writ Appeal was entertained with a leave, the Division Bench of this Court did not interfere with the process of the election and directed the Election Officers to proceed with the election and after the scheduled election is over, to bring the sealed ballot boxes to the High Court on the same day and hand over them to the Registrar General of this Court. Thus, the Election Officers followed the directions given by this Court and conducted the election, keeping in mind the object of the Society and the by-law of the Society. Hence, after the declaration of the result, now the plaintiffs cannot question the election. Thus, the applicants

herein/defendants 1 to 11 & 14 sought for rejection of the plaint and for revocation of the leave.

7.It is the main submission of the learned senior counsel appearing for the applicants/defendants 1 to 11 & 14 that the 1st defendant-Society is at Ooty and the Society has been registered and functioning at Ooty and all the plaintiffs and the contesting defendants are at Ooty. Pursuant to the direction given by the Division Bench in W.A.No.46 of 2014, the defendants 13 & 14, who are outside the jurisdiction of this Court, were appointed as observers of the election. As per the direction given by the Division Bench, the ballot boxes were handed over under the custody of the Registrar General of this Court, since there was no smooth atmosphere to count the votes at Ooty. The 1st defendant filed a petition in M.P.No.3 of 2014 in W.A.No.46 of 2014 seeking for a direction to the Election Commissioners to count the votes cast in the election held on 12.01.2014 from the ballot boxes under the custody of the Registrar General of this Court and to declare the results. By order dated 26.02.2014, the Division Bench of this Court, upholding the order dated 29.11.2013 in W.P.No.21752 of 2013, dismissed the writ appeals and further directed the Registrar General to hand over the ballot boxes to the election officers viz.,

12th & 13th defendants to count the votes cast in the election held on 12.01.2014 at Ooty, in the additional library hall within the precincts of this court, for the purpose of declaration of results on 28.02.2014. Pursuant to the said order, the votes were counted and results were announced and the defendants 1 to 11 were declared as elected.

8.The learned senior counsel appearing for the applicants/defendants 1 to 11 & 14 submitted that the entire cause of action arose only at Ooty and only as per the direction given by the Division Bench, the ballot box were handed over to the Registrar General and counting of votes were conducted at the Meeting Hall in Additional Library Building of this Court. But, based on the direction given by the Division Bench in the said writ appeal, the present suit has been filed by the plaintiffs before this Court. In this regard, the learned senior counsel for the applicants/defendants 1 to 11 & 14 submitted that the direction given by this Court in the writ appeals will not give rise to a cause of action to file the present suit before this Court. The direction given by the Division Bench of this Court in the said writ appeals cannot be taken as a cause of action for filing the suit because the same is beyond the scope of Clause 12 of Letter Patents of Original Side. In this regard, the

learned senior counsel for the applicants/defendants 1 to 11 & 14 has also invited the attention of this Court to Clause 12 of Letters Patent Act and made a detailed argument.

9. Per contra, the learned senior counsel appearing for the respondents/plaintiffs submitted that the present suit was not filed based on the direction given by the Division Bench of this Court in the Writ Appeal. The suit was filed only based on the fact that the counting of the votes and the declaration of the result took place only at Chennai ie., in the Meeting Hall in Additional Library Building of this Court. In this regard, the learned senior counsel for the plaintiffs has also invited the attention of this Court to the judgment passed in O.S.A.Nos.221 to 223 of 2007, dated 31.10.2011, in the case of *Uttar Pradesh Cricket Association Vs. Board of Control of Cricket in India*, and submitted that in case, a part of cause of action arose within the local limits of the ordinary original jurisdiction of this Court, the suit is maintainable within the jurisdiction of this Court. The learned counsel for the plaintiffs would further submit that cause of action is a bundle of fact. In the instant case, one of the facts is counting of the votes, which took place at the Meeting Hall in Additional Library Building of this Court, within the jurisdiction of this Court. Therefore, the suit is very well maintainable on the original side of this Court.

10. Heard the submissions made on either side and perused the materials available on record.

11. The suit has been filed by the plaintiffs seeking to declare the election of the defendants 1 to 11 as Officer Bearers of the 1st Plaintiff-Association as well as the election Notification dated 21.12.2013 as illegal and void. Admittedly, the 1st plaintiff is a registered Society and having registered office at Ooty. All the members of the Society, plaintiffs and the defendants are residing at Ooty. Since there was dispute with regard to conducting election, the 14th defendant had filed a writ petition in W.P.No.21752 of 2013 before this Court and in the said writ petition, the 14th defendant had sought for a mandamus directing the Registrar of Societies to conduct a free and fair election by nominating an observer. The said writ petition was allowed as prayed for on 29.11.2013 and the elections were scheduled to be conducted to the Executive Committee of the 1st plaintiff-Association on 12.01.2014 as per the election schedule published by the defendants 12 & 13. While so, aggrieved by the order dated 29.11.2013 passed in W.P.No.21752 of 2013, the plaintiffs 3 to 7 herein filed Writ Appeal in W.A.No.46 of 2014. Similarly, the 2nd plaintiff has also filed an appeal in W.A.No.141 of 2014 against the order passed in

W.P.No.21752 of 2013 dated 29.11.2013. In W.A.No.46 of 2014, an interim order was passed permitting the balloting to go-on as notified by the Election Officers ie., the defendants 12 & 13 appointed by this Court in W.P.No.21752 of 2013, but with a direction to the Election Officers that they should entrust the sealed ballot boxes to the Registrar General of this Court for safe custody. The 1st defendant also filed a Miscellaneous Petition No.3 of 2014 in W.A.No.46 of 2014 seeking for a direction to the Election Officers to count the votes cast in the election held on 12.01.2014 from the ballot boxes under the custody of the Registrar General of this Court and to declare the results. By order dated 26.02.2014, the Division Bench of this Court, upholding the order dated 29.11.2013 in W.P.No.21752 of 2013, dismissed the writ appeals and further directed the Registrar General to hand over the ballot boxes to 12th & 13th defendants to count the votes cast in the election held on 12.01.2014, in the Meeting Hall in Additional Library Building within the precincts of this court and to declare the result. Pursuant to the order passed by this Division Bench, the votes were counted and results were declared. Aggrieved over the election results, the present suit has been filed by the plaintiffs for the reliefs as stated supra.

12.The only cause of action shown by the plaintiffs in the plaint to bring the suit within the original side jurisdiction of this Court is counting of votes, which had taken place in the Meeting Hall in the Additional Library Building of this Court, since they are challenging the election result. In this regard, it would be appropriate to extract the cause of action paragraph in the plaint viz., Paragraph 17, which reads as follows_

"7.The cause of action for the suit arose within the jurisdiction of this Court when the 14th defendant, unauthorisedly in the name of the Plaintiff Association instituted W.P.No.21752 of 2013 in this Hon'ble Court suppressing the election of the plaintiffs 2 to 8 on 02.08.2013 and thereafter, when the learned Single Judge issued directions for the conduct of the elections to the Office Bearerships of the Plaintiff Association and appointed the Defendants 12 and 13 as the two election Officers who under the said Orders notified the elections and thereafter when under the Orders of the Division Bench in W.A.No.46 of 2014 brought the sealed ballot boxes and entrusted the same to the Registrar General of this Hon'ble Court and thereafter when final orders in Was were pronounced on 26.02.2014 under which order, the Registrar

General of this Hon'ble Court handed over the custody of the sealed ballot boxes to the election officers in the Additional library Buildings, Madras High Court Buildings, Chennai, and thereafter, when in the said hall the votes were counted and results were declared on 28.02.2014 by the Election Officers within the precincts of this Hon'ble Court and thereafter."

A perusal of the above said cause of action paragraph in the plaint, I find that the present suit has been filed before this Court mainly on the basis of the direction given by the Division Bench in the above said Writ Appeals. Pursuant to the direction given by the Division Bench of this Court, the custody of the ballot boxes were entrusted by the Election Officers to the Registrar General of this Court. Since there was no desirable atmosphere in Ooty, this Court has directed the counting of the votes to be done in the Meeting Hall in the Additional Library Building of this Court in the presence of the representatives of the plaintiffs as well as the defendants. In my considered opinion, the direction given by this Court in a writ proceedings will not give rise to a cause of action to file the suit before this Court, to declare the election held at Ooty as illegal and not binding on the plaintiffs. This Court has given a direction in the

writ appeal to count the votes in the Meeting Hall in the Additional Library Building of this Court, since there is no desirable and conducive atmosphere to count the votes. But, except counting of votes pursuant to the direction of this Court, I find that Election Notification was issued at Ooty, plaintiffs as well as defendants are residing at Ooty and Election was also conducted at Ooty. In other words, the entire cause of action for filing the suit arose only within the jurisdiction of Ooty. Therefore, as contended by the learned counsel for the applicants/defendants 1 to 11 & 14, the direction given by this Court to count the votes at the Meeting Hall in the Additional Library Building of this Court certainly will not give rise to a cause of action to bring the suit within the original side jurisdiction of this Court and it is beyond the scope of Clause 12 of the Latters Patent Act. Hence, the plaint is liable to be rejected.

In the result, the applications are allowed as prayed for and the plaint is rejected.

09.01.2015

Internet : Yes / No

Index : Yes / No

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R.SUBBIAH, J.,

SSV

Pre-delivery order

in

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