

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.05.2014

Coram

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

C.S.No.411 of 2015

O.A.No.520 of 2015

1. Jayaraj Sivan
2. Mukund Srinivasan

.. Plaintiffs

v.

1. The Arihant Majestic Towers Flat Owners Association,
rep., by its President,
No.216, Jawaharlal Nehru Salai,
Koyambedu, Chennai 600 107.
2. The Management Committee of Arihant
Majestic Towers Flat Owners Association,
rep., by its President,
No.216, Jawaharlal Nehru Salai,
Koyambedu, Chennai 600 107.

3. Thiru.T.Srinivasan

.. Defendants

Suit filed under Order IV Rule 1 of the Madras High Court Original Side Rules r/w. Order VII Rule 1 CPC., for a declaration, declaring that the notice, dated 14.04.2015, issued by the 3rd defendant, on behalf of the 1st defendant is illegal, *ab initio void* and liable to be set aside; consequentially grant an order of permanent injunction, restraining the

defendants from in anyway giving effect to the notice, dated 14.04.2015, either by conducting the Extraordinary General Body Meeting on 10.05.2015 or on any other date on the basis of notice, dated 14.04.2015 or in any other manner and costs.

For Plaintiffs : Mr.P.Wilson,
for Mr.Richardson Wilson

For Defendants : Mr.A.Saravanan

JUDGMENT

Plaintiffs have filed the present Civil Suit, for the reliefs, stated therein. In Original Application No.520 of 2015, the plaintiffs have sought for an interim injunction, restraining the defendants from in anyway giving effect to the notice, dated 14.04.2015, either by conducting the Extraordinary General Body Meeting on 10.05.2015 or on any other date on the basis of notice, dated 14.04.2015 or in any other manner, pending disposal of the above suit.

2. When the application came up for hearing, Mr.A.Saravanan, learned counsel for the defendants submitted that the request of the plaintiffs for inclusion of four subjects, mentioned in the notice, dated

31.03.2014, addressed to the President/The Secretary, Management Committee, Arihant Majestic Towers Flat Owners Association, Chennai, would be considered in the General Body Meeting, scheduled on 10.05.2015.

3. At this juncture, inviting the attention of this Court to Clause 11 of the Memorandum of Association & Bye-laws of Arihant Majestic Towers Flat Owners Association, Mr.P.Wilson, learned Senior Counsel for the plaintiffs submitted that voting in the Extraordinary General Body Meeting be cast, by secret ballot. Mr.A.Saravanan, learned counsel for the defendants also agreed for the abovesaid submissions.

4. Both the learned counsel appearing for the parties suggested that either an Advocate Commissioner or any other retired Judge of this Court, be appointed to monitor the Extraordinary General Body Meeting, scheduled on 10.05.2015, or any other subsequent date and that the parties would equally share the remuneration, to be fixed by this Court.

5. Having regard to the consensus arrived at, by the parties and considering the relief sought for in the suit in C.S.No.411 of 2015, both the learned counsel appearing for the parties prayed that C.S.No.411 of 2015, be disposed of, by incorporating the same, as the final judgment in the suit. Thus, by consent of the parties, C.S.No.411 of 2015 is disposed of, subject to the following conditions,

(i) Both the parties have no objection for the Extraordinary General Body Meeting to be conducted on 10.05.2015 or on any other subsequent date, as per the notice.

(ii) Apart from the Agenda fixed for the Extraordinary General Body Meeting on 10.05.2015, the following four subjects will be included in the Extraordinary General Body Meeting,

1. Fixation of monthly maintenance charge @ Rs.2.50 per sq.ft., instead of Rs.3 per sq.ft., through ballot box voting system only - one vote per flat only and only one vote per owner, if he/she owns more than one flat.
2. Submission of details of AMT renovation account and usage of renovation fund collected at the rate of Rs.30/- per sq.ft., from

each apartment from 2011 till date.

3. Presentation of Audit Report by the external auditor as mentioned above (Sl.No.16) and queries thereof.
4. Review of new lobby project with details of quotations, approvals, from Government Departments., etc.

(iii) Clause 11 of the Memorandum of Association & Bye-laws of Arihant Majestic Towers Flat Owners Association, deals with voting, as follows:

(a) Voting shall be one vote per member as set out in Clause 9(a).

(b) It shall be cast in person by show of hands only.

(c) In case of necessity by the decision of GB it can be cast by secret ballot.

(d) Proxy for permanent members can cast vote, and they shall be the resident of the Apartment. They shall submit the authorization letter before the commencement of the meeting or earlier and shall be valid only for the particular meeting.

As consensus is arrived at, for voting, by secret ballot, there shall be an order to that effect.

(iv) Monitoring the Extraordinary General Body Meeting by an officer to be appointed by the Court and sharing of his remuneration, is also agreed. Considering the nature of issues involved, number of members of the association, this Court deems it fit to nominate Hon'ble Mr. Justice G.M.Akbar Ali, Former Judge of this Court, to monitor the Extraordinary General Body Meeting scheduled to be held on 10.05.2015 or on any other subsequent date, as per the notice. Remuneration is fixed at Rs.1,00,000/- (Rupees one lakh only). Both the plaintiffs and the defendants are directed to pay Rs.50,000/- (Rupees fifty thousand only) each, by tomorrow, towards remuneration. In addition to the above, necessary arrangements have be made, for the conduct of the Extraordinary General Body Meeting, Ballot papers, Box, etc., for voting by Secret Ballot, and for such other incidental works. Both parties shall bear the expenses for the above, and for transportation and other incidental expenses, equally.

There shall be a decree in above terms. No costs. Consequently, Original Application No.520 of 2015 is also closed.

07.05.2015

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S. MANIKUMAR, J.

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