

A. No.7230 of 2015**K.K.SASIDHARAN, J.**

This is an application to permit the applicant to sue the respondents in a representative capacity, as provided under Order 1 Rule 8 of the Code of Civil Procedure.

Facts in nutshell:-

2. The applicant, Thiru.M.Thameemum Ansari, claiming himself to be the General Secretary of Manithaneya Makkal Katchi, filed the suit against Thiru.M.H.Jawahirullah and four others, for a decree declaring the meeting conducted on 6 October 2015 at D.G.P.Kalyanamahal, Rajaji Salai, Tambaram West, Chennai 42, and election of respondents 1 to 3 as President, General Secretary and Treasurer, as illegal and contrary to the constitution of Manithaneya Makkal Katchi.

3. The applicant in his plaint contended that he was elected as the General Secretary of the Manithaneyam Makkal Katchi (hereinafter referred to as MMK), in accordance with the Constitution of the organization. The General Secretary is the principal officer of the party, entitled to represent MMK. The applicant laid the suit with an allegation that the respondents convened a meeting on 6 October 2015, without his knowledge or association and took certain policy decisions which includes dissolution of the then Central Administrative Committee. Since the applicant is not aware of the details of the persons who have attended the meeting, he filed this application to sue Thiru.M.H.Jawahirullah,

Thiru.P.Abdul Samad, Thiru.O.U.Rahamuthulla, Thiru.J.S.Rifae, Thiru.Hyder Ali and all other persons who have participated in the meeting held on 6 October 2015.

4. The application is opposed by the respondents by filing separate counter affidavits.

5. The third respondent in his counter affidavit contended that the applicant is no more the general secretary of MMK and as such, the very suit filed by him is not maintainable.

6. The fourth respondent in his detailed counter affidavit contended that the term of office of the applicant expired on 21 September 2015. The Central Administrative Committee convened a meeting on 6 October 2015. The meeting was attended by 403 general council members as against the total number of 474 members. Respondents 1, 2 and 3 were elected as President, General Secretary and Treasurer respectively. The applicant thereafter conducted a meeting on 11 October 2015 and condemned the resolutions passed by the general council on 6 October 2015. The resolutions passed by the general committee at its meeting held on 6 October 2015 were communicated to the Secretary, Election Commission of India, New Delhi. The name and details of office bearers elected were also sent to the Election Commission. The present suit, filed with a clear understanding about the developments that took place after the expiry of the term of the applicant, is not maintainable.

7. The 5th respondent in his counter affidavit contended that the constitution of the party was amended on 30 September 2011. By way of the said amendment, post of President was created. The president is given the responsibility to preside over the meeting. In short, all the powers exercised by the General secretary earlier is now given to the President. The applicant was aware of the amendment to the constitution and in fact, he received a copy of the amended constitution from the election commission. Even then, he filed the civil suit with ulterior motive.

Submissions:-

8. The learned Senior counsel for the applicant contended that the present suit is a limited one to permit the applicant to sue the respondents in a representative capacity. The question regarding the maintainability of the suit and the locus standi of the applicant to represent MMK are all triable issues to be decided in the civil suit. The applicant was elected as the General Secretary and he is still occupying the post. The so called appointment of the first respondent as President and others, as office bearers, has no legal sanctity. The meeting was not convened in accordance with the constitution of MMK and as such, the applicant is correct in filing the suit in a representative capacity to declare the meeting held on 6 October 2015 as illegal and set aside the resolutions passed in the said meeting.

9. The learned Senior counsel for the first defendant by placing reliance on the provisions of Order 1 Rule 8 CPC, contended that the applicant has no idea with regard to the members who attended the meeting and as such, the suit filed in a representative capacity is not maintainable. The learned Senior Counsel contended that the amendment made to the constitution was registered by the Election Commission of India. The applicant is no more the General Secretary and as such, the suit filed by him is illegal and not maintainable.

10. The learned counsel for the second defendant by placing reliance on the documents produced by him, contended that the applicant was well aware of the meeting held on 6 October 2015 and the resolutions passed by the members who have attended the meeting. The applicant obtained a copy of the amended constitution from the Election Commission by filing application. However, he suppressed the information with regard to the amendment made to the constitution and filed the present suit. According to the learned counsel, the applicant is not entitled to represent MMK on account of the subsequent events.

11. The learned Senior counsel for the fifth respondent contended that the applicant is no more the General Secretary of MMK and as such, he is not entitled to represent the organization. The learned Senior counsel submitted that as per the new constitution, only the president is entitled to

represent the organization. The applicant suppressed material particulars and filed the suit with ulterior motives and as such, he is not entitled to the grant of leave to file a representative suit.

Analysis:-

12. The erstwhile General Secretary of MMK filed the suit for and on behalf of MMK to declare the meeting held on 6 October 2015 as illegal and contrary to the constitution and consequently to declare invalid the resolutions passed by the respondents 1 to 3, electing them as President, General Secretary and Treasurer of the political party.

13. The plaint proceeds as if the applicant is still continuing as the General secretary, entitled to represent the organization. The applicant in the plaint as well as in the affidavit filed in support of the Judge's summons, contended that the General Secretary alone is entitled to represent the organization. He pleaded ignorance with regard to the amendment made to the constitution and creation of the post of President and the authority to represent the organization in the place of General Secretary. The documents produced by the respondents show that amendment was made to the constitution by the general body. Those amendments were registered with the Election Commission. The deponent himself made an application before the Election Commission of India to furnish him a copy of the amended constitution. The term of office of the deponent had expired

on 21 September 2015. It was only thereafter, a new set of office bearers were elected by the general body held on 6 October 2015.

14. The applicant by way of his application dated 14 October 2015, requested the Election Commission of India to furnish him a copy of the amended constitution of the party. This document very clearly shows that the applicant was aware of the amendment made to the constitution. There was no need for him to apply for the unamended constitution in view of the fact that he was the General Secretary till 21 September 2015. Therefore, it is clear that he was fully aware of the subsequent events relating to the amendment made to the constitution of MMK.

15. The suit is one for declaration that the deponent continued to be the General Secretary of MMK. The suit is not filed by him in his capacity as General Secretary. The suit is filed for and on behalf of MMK.

16. The core question is as to whether the applicant is entitled to file a suit representing MMK. So long as the amended constitution is not set aside, and the resolution passed by the general body, electing respondents 1 to 3, are not set aside in the manner known to law, it would not be possible for the applicant to institute a suit in the name of MMK. The applicant is not entitled to represent MMK in his capacity as the General Secretary on account of the expiry of his term and subsequent election of

respondents 1 to 3.

17. Order 1 Rule 8 CPC provides that one or more of such persons having the same interest are entitled to file a suit or to be sued or may defend the suit on behalf of all persons interested. In order to file a suit under Order 1 Rule 8 CPC, the plaintiff should be legally entitled to maintain the suit.

18. In the case on hand, the suit is not filed by an individual. The deponent claims that he is the General Secretary of MMK. The plaintiff is none other than the organization. In view of the voluminous documents produced by the respondents, the applicant cannot be heard to say that he is still entitled to represent MMK. The applicant suppressed the amendments made to the constitution. The election of respondents 1 to 3 could be challenged only in the manner known to law. The deponent, instead of filing the suit in his individual capacity, or in his capacity as the General Secretary, notwithstanding the expiry of term, filed the suit by making the MMK as the plaintiff. Such being the factual position, it would not be legally permissible to direct registration of the suit in a representative capacity.

19. For the reasons aforesaid, I am of the view that this is not a fit case to permit the applicant to file the suit in a representative capacity.

K.K.SASIDHARAN, J.

20. In the upshot, I dismiss the application. No costs.

(K.K.SASIDHARAN, J.)

25 February 2016

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P.D. Order in

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