

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH

C.R.P.No.3038 of 2015, C.S.No.454 of 2016 and Appln. No.3447 of 2016

C.R.P.No.3038 of 2015

The South Indian Film Chamber of Commerce,
Rep. By its Hon. Secretary T.A.Arul Pathy,
Film Chamber Building,
No.604, Anna Salai, Chennai-600 006. : Petitioner/1st Defendant

Vs.

1.Sundar V.Srinivasan,
S/o Muktha V.Srinivasan,
Proprietor, MAAYA Creations,
No.8, Flat No.4, Cenetoph 2nd Lane,
Teynampet, Chennai-600 018. : 1st Respondent/Plaintiff

2.The Election Officer,
South Indian Film Chamber,
No.604, Anna Salai,
Chennai-600 006. .. 2nd Respondent and defendant

C.S.No.454 of 2016 & Applicant 3447/2016

T.Ramasatyanarayana .. Plaintiff/Applicant

Vs.

The South Indian Film Chamber of Commerce,
Rep. by its Honorary Secretary,
No.605, Anna Salai, Cinema Centenary Building,
Phase I, 4th Floor, T.R.Sundaram Avenue,
Chennai-600 006. .. Defendant/Respondent

Prayer: Civil Revision Petition No.3038 of 2015 is filed under Article 227 of the Constitution of India praying to set aside the order dated 22.07.2015 in I.A.No.10586 of 2015 in O.S.No.4187 of 2015 on the file of IV Assistant Judge, City Civil Court, Chennai and allow this appeal.

C.S.No.454 of 2016 is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, seeking a judgment and decree against the defendant for the relief of mandatory injunction directing the defendant to conduct the election to the post of office bearers and Executive Committee members in the defendant society every year by strictly following the procedure laid down under the Rules of the defendant Society including the procedure of voting through authorised representatives as provided for in Rule 8 and for costs.

Application No.3447 of 2016 in C.S.No.454 of 2016 is filed under Order XIV, Rule 8 of the Rules of the High Court, Madras Original Side 1956 read with Order XXVI of C.P.C., to appoint an Advocate Commissioner to conduct the elections to the post of Officer Bearers and Committee Members in the respondent society for the year 2016-2017.

For Petitioner : Mr.K.Harishankar
in CRP.3038/2015 &
for defendant/respondent
in C.S.No.454 of 2016 &
A.No.3447/2016

For 1st Respondent : Mr.T.N.Rajagopalan
in CRP.3038/2015

For 2nd Respondent : Mr.D.Sridhar
in CRP.3038/2015

For Plaintiff/applicant : Mr.R.Muthukumaraswamy, S.C.,
in C.S.No.454 of 2016 for Mr.A.Jenasenan
&A.No.3447/2016

COMMON ORDER

The issue governing both the cases being one and the same between the same parties, a common order is passed.

2. For the sake of brevity, the parties as arrayed in the suit in C.S.No.454 of 2016 are taken as such.

3. The defendant is the South Indian Film Chamber of Commerce formed in the year 1939 being governed by the provisions of Tamil Nadu Societies Registration Act, 1975, (hereinafter referred to as "the Act") by virtue of Section 53 of the said enactment. The main object of the defendant is to encourage and develop the film industry spanning over the States of Tamil Nadu, Andhra Pradesh, Karnataka, Kerala and Union

Territory of Pondicherry. The members are classified under six groups viz., Studios, Producers, Distributors, Exhibitor, Affiliated Associations and Associates. The plaintiff is said to be the Member of the defendant society. The suit has been laid on a simple ground that for the wrong and imaginary reasons, election is not being conducted to the defendant society.

4. It appears that the defendant is reluctant to go on with the election in view of the pendency of two suits. Of the two, one has been dismissed already. In the second suit filed in O.S.No.4187 of 2015, an order of injunction has been obtained. The said suit filed before the City Civil Court, Chennai, is on the premise that only the members, who are physically present at the time of election, alone are entitled to participate. The contentions raised therein is that bye law No.8(i) of the defendant society is void ab initio in view of Section 15(3) of the Act by applying the rigour of Section 53 of the said Act. The following is the prayer sought for in the suit:

"a) Permanent injunction restraining the election officer /2nd defendant from accepting the authorisation letter to vote in the election to be conducted on 26.07.2015 and (b) directing the defendants to conduct election by permitting the members to vote directly in person and pass such other order as this Court may deem fit and proper in the circumstances of the case and thus render justice."

5. Thus, though the suit was laid on a legal premise, the relief is for resisting the election scheduled to be held only for the year 2015. It appears, for the earlier years, no election was conducted. It is also seen that in the last election conducted, in the year 2015, every other person was elected by nomination except the post of Secretary with the plaintiff in O.S.No.4187 of 2015, the unsuccessful one.

6. C.R.P.No.3038 of 2015 has been filed against the ex parte order of injunction obtained in O.S.No.4187 of 2015. In view of the stand taken by the defendant in the present suit expressing his inability to proceed in view of the said proceeding, the revision petition was directed to be taken up along with the application. These are the background facts governing the cases.

7. The learned counsel appearing for the first respondent in C.R.P.No.3038 of 2015 and the plaintiff in O.S.No.4187 of 2015 submits that bye law No.8(i) has become redundant and unenforceable in view of Section 15(3) of the

Act. As per Section 53 of the Act, any bye law, which is inconsistent with the Act cannot be said to be in force. Therefore, the ensuing election will have to be conducted in the presence of such of the members, who are actually and physically present and not by proxy. The learned counsel while submitting that there is no objection for conducting the election, the same will have to be done by avoiding proxy. Thus, he has also expressed that there is no objection for appointing a retired Judge of this Court to act as a Supervisor for the aforesaid purpose. It is his further submission that even otherwise, the proxy can only be permitted subject to the condition imposed under bye law No.8(i), since 115 members are sought to be represented by two proxies. This submission is made without prejudice to the first contention. The learned counsel has made reliance upon Section 2 (j) of the Act to buttress his aforesaid submissions. A reliance has been made on the decision of Division Bench of this Court dated 12.06.2013 in Review Application Nos.84 to 88 of 2013.

8. The learned Senior Counsel appearing for the plaintiff/petitioner in C.S.No.454 of 2016 and A.No.3447 of 2016 submits that the basis for refusal to conduct the election is no longer available. The plaintiff in O.S.No.4187 of 2015 has not challenged the bye law. The very same practice is being done over the years. While interpreting a provision, a literal meaning is required to be adopted. Therefore, the election can be directed to be conducted under the aegis of a retired Judge of this Court.

9. The learned counsel appearing for the petitioner in C.R.P.No.3038 of 2015 and defendant/respondent in C.S.No.454 of 2016 and A.No.3447 of 2016 submits that the revision has to be disposed of and appropriate direction has to be issued by this Court to conduct election and there is no objection to appoint a retired Judge to act as Honourable Election Officer/Observer to undertake the said exercise. It is further submitted that even the father of the plaintiff in O.S.No.4187 of 2015 was selected by following the said procedure and in any case there is no inconsistency between the bye law and the Act.

10. The one and only issue to be considered in both these cases is the applicability of bye law No.8(i). This bye law permits voting by proxy. Perhaps the reason might have been the members representing various groups are from different places in southern States. This bye law also imposes certain conditions to be complied with, which mandate that the authorised representative of a Member shall be an Officer employed either in whole or part time in the film business of the "authorising Member". Such an authorised representative,

while representing members, cannot seek, propose or second any nomination. The following is the bye law governing the case:

"8(i) Any member shall be entitled to exercise the rights of his membership in one

or more groups through his duly authorised representative or representatives, as the case may be, to attend and vote at any meetings including the Annual General Body Meeting, and at the election of Office Bearers and Committee Members. Any authorisation or changes in authorisation shall be notified to the Chamber during office hours any time, but, in any case, not later than seven clear days before the date of any meeting at which the representative is to attend. The authorised representative shall be an officer employed whole time or part-time, in the film business of the authorising member. Such authorised representative may represent one or more members, but shall not be entitled to seek, propose or second any nomination for election of a Committee Member. In spite of any such authorisation, any member is entitled to attend meeting personally and exercise his rights of membership, in which case the authorisation will not hold good for any such meeting."

11. This bye law has come into existence much prior to the enactment of Tamil Nadu Societies Registration Act, 1975. Section 2(j) of the Act speaks about the special resolution. Such a resolution has to be passed by members, who are present "in person" or by proxy. Section 15(3) of the Act speaks about appointment of the members of the Committee. This has to be done by a resolution of a majority of the members present and entitled to vote thereat. Section 53 of the Act speaks about the application of Act to the existing registered societies. As per this provision, the bye laws of the society which has come into existence prior to the enactment, shall continue to be in force insofar as they are not inconsistent with any provisions of the Act. It is apposite to reproduce the aforesaid provisions 2j, 15 (3) and 53 of the Act.

"2(j) "special resolution" means a resolution passed by a majority of not less than three-fourths of such members of a registered society entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which a notice of not less than such period as may be prescribed, specifying the

intention to propose the resolution as a special resolution, has been duly given:

Provided that, if all the members entitled to vote at any such meeting so agree, a resolution may be passed as a special resolution at a meeting of which a notice of less than the period prescribed under this clause has been given;"

"15. Committee- (3) The members of the committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitled to vote thereat."

"53. Application of Act to existing registered societies:- Every society registered under the Societies Registration Act, 1860 (Central Act XXI of 1860), or under any law corresponding to this Act in force in the transferred territory immediately before the date of the commencement of this Act including the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Travancore-Cochin Act XII of 1955), shall be deemed to be registered under this Act, and the by-laws of such society, shall, in so far as they are not inconsistent with any provision of this Act, continue in force until altered or rescinded."

12. Now every one wants an election to be conducted. This Court also do not have any reservation for the appointment of a retired learned Judge of this Court to act as the Supervisor

or Observer. This Court does not find any inconsistency in bye law No.8(i) and Section 15(3) of the Act. If we have a look at Section 2(j), it speaks about two categories of Members, who are present. They are, members "present in person" and "members present by proxy". Thus, the aforesaid provision clearly demarcates a distinction between the members present in person or by proxy. Section 15(3) of the Act speaks only about "members present". It is trite law, words cannot be included and read into a provision unless a literal interpretation would lead to absurdity making the provision otiose. A provision a simple, literal and natural interpretation is required. The concept of causes omission is the last resort to make a provision workable. Thus, applying the principle of reasonable interpretation, this Court is unable to accept the submission made by the plaintiff in O.S.No.4187 of 2015.

13. After all, it is for the person, who alleges inconsistency between the bye law and the Act, to prove it to the satisfaction of the Court. Such an inconsistency cannot be inferred. Even Section 53 is couched in such a way to validate any bye laws, which were in existence prior to the enactment.

14. Reliance is made on the judgment of this Court in D.JAYARAMAN V. GOVERNMENT OF TAMIL NADU AND ANOTHER (AIR 1987 Madras 215). The said judgment does not have any application to the case on hand. The issue before the Court was the one between the members present and voting on the one hand and the members withdrew from the House at the time of voting. Thus, the Court took into consideration of the voters present as some of the members are not even present. In the said case, the question as to whether the members present would mean only in person and not by proxy was not an issue. A presence can thus be either in person or by proxy as defined while dealing with Special Resolution under Section 2(g) of the Act.

15. The plaintiff in O.S.No.4187 of 2015 is a only one single person, who filed the suit. Earlier, election was conducted in the very same manner. Now the relief sought for by him in the suit has also become infructuous since the year 2015 has passed by. Therefore, the relief sought in the suit itself has become infructuous due to passage of time. When the suit has become infructuous, it goes without saying the entire cause of action for filing the suit also goes along with it. Same is the case with the interim order. Thus, with the aforesaid observation, the Civil Revision Petition in C.R.P.No.3038 of 2015 filed by the petitioner-South India Film Chamber of Commerce is closed. However, though the plaintiff in O.S.No.4187 of 2015 is not a party defendant in C.S.No.454 of 2016, his submissions are taken note of as this Court does not want to stand on the technicalities. In fact, once the Civil Revision Petition is disposed of in favour of the revision petitioner, the election has to go on unhindered. Legally speaking the plaintiff in O.S.No.4187 of 2015 has no role to play in the subsequent suit in C.S.No.454 of 2016.

16. There is one more issue to be considered. In this issue, there is a consensus among the parties. On the allegation of non compliance of bye law No.8(i) made by the learned counsel for the plaintiff in O.S.No.4187 of 2015, the counsels appearing for the plaintiff in C.S.No.454 of 2016 and the first defendant in the said suit fairly submit that only such of those authorised representatives, who comply with bye law No.8(i) would be allowed to represent the members in the ensuing election.

17. Accordingly, C.S.No.454 of 2016 is decreed in the following terms.

1. Honourable Thiru Justice D.Hariparanthaman (Retd.) No.2, First Main Road, Kamaraj Nagar, Thiruvannamiyur, Chennai-600 041, is appointed as Supervisor/Observer to supervise and oversee the election for the Executive Committee of the first defendant.

2. The learned Observer is requested to take appropriate steps to see to it that bye law No.8(i) is complied with in its letter and spirit.

3. The first defendant shall conduct the election under the supervision and guidance as per the directions of the learned Observer.

4. The election shall be conducted by following the procedure as contemplated under the bye laws and Act and if no sufficient mechanism is available, as per the discretion of the learned Observer.

5. The first defendant shall extend all co-operation to the learned Observer to ensure the proper conduct of the election. Any objections can be raised by the parties on the non compliance of the bye laws to the learned Observer, whose decision will be final.

6. After the conclusion of the election, result will be announced by the learned Observer.

7. The first defendant shall pay an initial remuneration of a sum of Rs.1,50,000/- as part payment of fees to the learned Observer, who may also have an assistance of a counsel of his choice in discharge of his function, in which case, he should also be paid a sum of Rs.50,000/- as remuneration initially. After the conclusion of the election, a further sum of Rs.1,00,000/- to be paid to the learned Observer and Rs.50,000/- to the assisting counsel.

8. The learned Observer may endeavour to conclude the election within a period of three months after the initiation of the process.

9. Suit filed in O.S.No.4187 of 2015 on the file of IV Assistant Judge, City Civil Court, Chennai, stands dismissed along with I.A.No.10586 of 2015.

18. Now the suit filed in O.S.No.4187 of 2015 on the file of IV Assistant Judge, City Civil Court, Chennai, has become infructuous. Thus, the same is called for from the file of the IV Assistant City Civil Court, Chennai, and dismissed as infructuous. Similarly, by consent of the parties to the suit in C.S.No.454 of 2016, the same stands decreed in the light of

the discussion made above. Consequently, Application No.3447 of 2016 in C.S.No.454 of 2015 stands closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

raa

To

1 The Registrar
IV Assistant City Civil Court,
Chennai

2 The Sub Asst., Registrar
Original Side,
High Court, Madras

3 Mr. Justice D. Hariparanthaman (Retd.,)
No.2 First Main Road,
Kamaraj Nagar,
Thiruvanmiyur
Chennai 600 041.

C.R.P.No.3038 of 2015,
C.S.No.454 of 2016 and
Appln. No.3447 of 2016

KJI (CO)
MD : 20/09/2016

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