

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

C.R.P.(PD) No.3222 of 2015
and
M.P.No.1 of 2015

Johnshi Manuel

..

Petitioner

Vs.

1.J.C.Sampath Kumar

2.S.Crhistopher

3.The Most Rev. G.Dyvasirvadam
Moderator
Church of South India, Synod
CSI Synod Secretariat
No.5, Whites Road
Royapettah, Chennai - 600 014

4.Rt. Rev. Thomas K.Ooman
Deputy Moderator
CSI Synod Secretariat
No.5, Whites Road
Royapettah, Chennai - 600 014

5.Rev.Dr.D.R.Sadananda
General Secretary
CSI Synod Secretariat
No.5, Whites Road
Royapettah, Chennai - 600 014

6.C.Robert Bruce
Treasurer
CSI Synod Secretariat
No.5, Whites Road
Royapettah, Chennai - 600 014

7.The Executive Committee of
CSI Synod, represented by its
Chairman, Moderator,
CSI Synod Secretariat
No.5, Whites Road
Royapettah, Chennai - 600 014

- 8.The Church of South India, Synod
represented by its General Secretary
CSI Synod Secretariat
No.5, Whites Road
Royapettah, Chennai - 600 014
- 9.The Karnataka Central Diocese
represented by its Secretary
Rev. Prasanna Kumar Samuel
No.20, 3rd Cross, CSI Compound
Bangalore - 560 027
- 10.Rt.Rev.Dr.J.Sadananda
Moderator's Commissary
Karnatkaka Central Diocese
No.20, 3rd Cross, CSI Compound
Bangalore - 560 027
- 11.Rev.Prasanna Kumar Samuel
Secretary
Karnatkaka Central Diocese
No.20, 3rd Cross, CSI Compound
Bangalore - 560 027
- 12.The Executive Committee of
Karnataka Central Diocese
represented by its Chairman
Moderator's Commissary
No.20, 3rd Cross, CSI Compound
Bangalore - 560 027
- 13.J.M.Richard
Treasurer
Karnatkaka Central Diocese
No.20, 3rd Cross, CSI Compound
Bangalore - 560 027
- 14.Rev.Solomon Thomas
Vice Chairman
Karnatkaka Central Diocese
No.20, 3rd Cross, CSI Compound
Bangalore - 560 027
- 15.Rev.Matthew M.George
Presbyter-in-charge
Weslyan Centenary Devalaya
No.19 (New No.37)
Car Street, Ulsoor
Bangalore - 560 008
- 16.Rev. John Wesley Ambler
Presbyter-in-charge
CSI Accenssion Church
No.199, Sankey Road

Sadashivanagar, Bangalore - 560 080

17.The Selection Committee for
the Panel of Bishopric
Karnataka Central Diocese
represented by its Convener
Synod Secretariat
No.5, Whites Road
Royapettah, Chennai - 600 014

..

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 23.03.2015 passed in I.A.No.8847/2013 in O.S.No.3452 of 2013 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.A.Immanuel

For Respondents : Mr.N.Paul Sunder Singh for R1 & R2
Mr.Adrian D. Rozaro for R3 to R8
Ms.T.Jayalakshmi for
M/s.Paul & Paul for R4

ORDER

The arguments advanced on behalf of the parties are heard. O.S.No.3452/2013 on the file of the XIII Assistant Judge, City Civil Court, Chennai came to be filed by J.C.Sampath Kumar and S.Christopher, the respondents 1 and 2 herein for various reliefs of declaration and injunction, including a declaration that the mandate dated 20.10.2012 issued by the third respondent herein (first defendant) from the CSI Synod Secretariat at Chennai to defendant No.9 in the said suit was in contravention of the procedures laid down by the CSI Constitution and hence the same was illegal, unconstitutional and *void ab initio*.

2. The said suit came to be filed by the respondents 1 and 2 herein in their individual capacities, but as persons representing the members of the CSI Central Karnataka Diocese, following the procedure contemplated under Order I Rule 8 CPC. Permission was granted to sue on behalf of numerous

persons under Order I Rule 8 CPC in I.A.No.8831/2013. Thereafter, summons were served on the defendants, but they have not filed their written statements. Along with the plaint, an interlocutory application was filed under Order 39 Rule 1 CPC for an interim injunction, pending disposal of the suit, restraining them from giving effect to the selection of defendant No.9 as the Bishop of the 7th defendant on 26.06.2013 and from consecrating or installing defendant No.9 or any one of the defendants 12, 13 and 14 as the Bishop of Karnataka Central Diocese.

3. In the said application, after the respondents entered appearance and after hearing both sides, an order of *status quo* dated 01.07.2013 came to be passed. The said application is I.A.No.8847/2013. Subsequently, the respondents 1 and 2 herein, chose to file a memo dated 23.03.2015 withdrawing the said interlocutory application I.A.No.8847/2013. Meanwhile, Mr.Johnshi Manuel, the revision petitioner herein filed an application in I.A.No.2948/2015 for being impleaded as a party in the suit. While the said application was pending, I.A.No.8847/2013 was sought to be withdrawn and the learned trial Judge, acting on the Memo filed by the respondents 1 and 2 herein, passed the impugned order dated 23.03.2015 dismissing I.A.No.8847/2013 as withdrawn. Subsequent to the said order, the revision petitioner, namely Johnshi Manuel got impleaded as a party in the suit and was ranked as third plaintiff by an order dated 30.04.2015.

4. Along with the memo seeking permission to withdraw I.A.No.8847/2013, the respondents 1 and 2 also filed a Memo seeking permission to withdraw the suit. Both the Memos were dated 23.03.2015. No order came to be passed in the Memo seeking permission to withdraw the suit.

The said Memo seeking permission to withdraw the suit was not accepted and the respondents 1 and 2 herein were directed to file a petition seeking permission to withdraw the suit. However, the learned trial Judge chose to accept the Memo seeking permission to withdraw I.A.No.8847/2013 filed for interim injunction pending disposal of the suit and passed an order dismissing the said application I.A.No.8847/2013 as withdrawn, having the effect of vacating the order of *status quo* granted in the said interlocutory application. Aggrieved by the same, the petitioner herein has approached this court with the present revision under Article 227 of the Constitution of India.

5. The sole ground on which the impugned order of the trial court dated 23.03.2015 made in I.A.No.8847/2013 dismissing the said IA as withdrawn is that the suit being a representative suit, the order permitting withdrawal ought not to have been granted without following the procedure contemplated under Order I Rule 8(4) CPC. On the other hand, the civil revision petition is resisted by the respondents 1 to 8 based on their contention that Order I Rule 8(4) CPC shall stand attracted only for the withdrawal of the suit and not for the incidental proceedings.

6. In support of their contention, the respondents herein drawn the attention of this court to a judgment of a learned single Judge of Allahabad High Court in ***Dr.Iqbal Hasan Khan vs. III Additional District Judge, Aligarh and others*** reported in ***AIR 1984 ALLAHABAD 259***. Of course in the said judgment, the learned single Judge of the Allahabad High Court took a view that the procedure contemplated under Order I Rule 8(4) CPC shall apply only to a case where there is a suit finally withdrawn and it will not apply to the application seeking interim reliefs. The relevant portions from the said

order is extracted here under:

"consequently, of the opinion that Sub-r. (4) of O.1, R.8, CPC would apply only to a case where either the suit is finally withdrawn or there is an agreement, compromise or satisfaction in the suit itself on the basis of which a decree has to be passed by a Court. It is then alone that this provisions will apply and not otherwise. It would, therefore, not apply to a case wehre an application for ad interim prayer is being considered by the Court. The review application, in the instant case, has been moved in a petition under Art. 226 of the Constitution of India. Even assuming that this provision applies to a petition under Art.226 of the Constitution, then too, since the petition arose out of an application moved for an ad interim prayer, the provisions of R.8(4) of O.1. CPC would not apply and, as such, it cannot be said that the Order dated 10th Mar, 1983 was manifestly erroneous or void in law."

7. On the other hand, learned counsel for the petitioner, relying on a judgment of a learned single Judge of the Delhi High Court in **S.Narain Singh and another vs. M/s.Ram Gopal Madan Lal and others** reported in **AIR 1981 DELHI 88**, submits that the said judgment provides an authority that abandonment of an interlocutory application for injunction will be equivalent to abandonment of a part of claim in the suit, even though Order I Rule 8 CPC has not been referred to and the provision contained in Order 23 Rule 1 and Section 141 of the Code of Civil Procedure alone were considered. The learned counsel for the petitioner relied on the said judgment to provide an analogy to show that an application/interim application will be nothing but an application by way of interim claim in the suit and that abandonment of such application cannot be permitted to be made in a Representative suit without following the procedure contemplated under Order I Rule 8(4) CPC. The relevant portion in the said judgment is extracted here under:

"Section 141 of the Code makes the procedure applicable to the suits to all proceedings in court of civil jurisdiction. The proceedings for the grant of temporary injunction are proceedings in a civil court. Thus reading together O.23 and Section 141 of the Code it appears that the present application for temporary injunction filed on 16th April, 1980 decided by the impugned order

dated 15th July, 1980 is barred under sub-rule (4) of Rule 1 of Order 23 of the Code."

8. So far as the procedure contemplated under Order I Rule 8(4) CPC is concerned, in **R.K.Wangalsana Singh vs. Gopinath Devta and others** reported in **1988 (Supp) Supreme Court Cases 512**, the Hon'ble Supreme Court has made it clear that non-observance of the procedure contemplated under Order I Rule 8(4) was the ground on which the High Court could interfere with the order. The relevant portion from the said judgment is reproduced here under:

" Having heard learned counsel for the appellant for some time we see no reason to interfere as the High Court was right in entertaining the review petition and setting aside the compromise decree as the compromise decree in a suit which was filed in representative character was compromised without following the procedure laid down in Order 1 Rule 8 sub-clause (4) of Civil Procedure Code and it also appears that while recording the compromise the High Court did not keep in view the interest of the deity for the worship of which the endowment was created by Ruler of erstwhile State of Manipur. In view of these circumstances the High Court was right in entertaining the review petition and setting aside the decree which was passed on a compromise. In our opinion therefore there is no substance in this appeal. It is, therefore , dismissed."

9. Similar view has been expressed in **Bhagwati Developers Private Limited vs. Peerless General Finance Investment Company Limited and others** reported in **(2013) 5 SCC 455**. Although dealing with a company petition, Their Lordships of the Supreme Court referred to Order 23 Rule 1(5) Order I Rules 8 and 10, held as follows:

" The courts have consistently held that a suit filed in representative capacity also represents persons besides the plaintiff, and that an order of withdrawal must not be obtained by such a plaintiff without consulting the category of people that he represents. The court, therefore, must not normally grant permission to withdraw unilaterally, rather the plaintiff should be advised to obtain the consent of the other persons in writing, even by way of effecting substituted service by publication, and in the event that no objection is raised, the court may pass such an order."

If the court passes such an order of withdrawal, knowing that it is dealing with a suit in a representative capacity, without the persons being represented by the plaintiffs being made aware of the same, the said order would be an unjustified order. Such order, therefore, is without jurisdiction."

A conjoint reading of the above said judgments will make it clear that whenever a representative suit filed after getting permission under Order I Rule 8(1) is sought to be compromised or withdrawn, the procedure contemplated under sub clause (4) of Order I Rule 8 should be complied with so as to enable the other interested persons to get into the shoes of the outgoing plaintiffs and proceed with the case.

10. On a comparative study of the judgment of the learned single judge of the Delhi High Court in **S.Narain Singh and another vs. M/s.Ram Gopal Madan Lal and others** and the judgment of the learned single Judge of the Allahabad High Court in **Dr.Iqbal Hasan Khan vs. III Additional District Judge, Aligarh and others**, this court is of the view that the view expressed by the learned single Judge of the Delhi High Court reflects the correct position of law and the other view expressed in the judgment of the Allahabad High Court does not reflect the correct position of law. Hence this court, following the view expressed by the learned single judge of the Delhi High Court in **S.Narain Singh and another vs. M/s.Ram Gopal Madan Lal and others**, holds that the procedure contemplated under Order I Rule 8(4) CPC equally applies to an interlocutory application/incidental proceedings also and it is not confined to the main suit alone.

11. In view of the above view expressed by this court, this court does have no hesitation in holding that the permission granted by the learned trial Judge to the respondents 1 and 2 to withdraw I.A.No.8847/2013, without

following the procedure contemplated under Order I Rule 8(4) CPC, is nothing but an exercise of jurisdiction, which is not conferred on the trial court and it can also be said that the jurisdiction conferred on the trial court has not been exercised by the trial court as the mandate provided in sub clause (4) has not been followed. This court, in exercise of its power of superintendence over the subordinate courts under Article 227 of the Constitution of India, holds that the finding of the trial court is quite infirm, erroneous and discrepant and the same requires interference by this court in this revision. Accordingly, this court comes to the conclusion that the revision is bound to succeed and the order of the trial court dated 23.03.2015 made in I.A.No.8847/2013 is liable to be interfered with and set aside.

In the result, the civil revision petition is allowed. The order of the trial court dated 23.03.2015 made in I.A.No.8847/2013 permitting withdrawal of the same and dismissing the same is set aside. The trial court is directed to restore I.A.No.8847/2013 to file and follow the procedure contemplated under Order I Rule 8(4) CPC in respect of the prayer sought for by the respondents 1 and 2 to withdraw the said application. All interim orders granted in the said application which were in force as on the date of dismissal of the said petition shall stand restored. However there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

15-04-2016

Index : Yes
Internet : Yes
asr/-

To

The XIII Assistant Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR,J.

Asr/-

**C.R.P.(PD)No.3222 of 2015
and
M.P.No.1 of 2015**

Dated : 15-04-2016