

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22--04-2016

CORAM

THE HONOURABLE MR.JUSTICE V. RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

C.R.P. Nos. 427 & 428 of 2016

Sub Continental Equities Limited,
Rep. by its Power Agent,
Mr.SiddharthPruthi
At Fifth Floor, Ebene Esplanade,
24, Bank Street, Cybercity,
Ebene, Mauritius. ...Petitioner in both revisions

Vs.

1. R.V.D. Ramaiah
2. Tamilnad Mercantile Bank Limited,
rep. through its Chairman,
Managing Director/CEO,
Having its registered office at
57, V.E. Road, Tuticorin 628 002,
State of Tamil Nadu.
3. The National Securities Depository Ltd.,
(NSDL),
Rep. through its Managing Director,
Having its Regd. Office at
"Trade World" A wing, 4th and 5th Floors,
Kamala Mills Compound, Lower Parel,
Mumbai 400 013.
4. Robert & Ardis James Company Ltd.,
Rep. through its Managing Director,
Having its regd. Office at
Door No. 608,
St. James Court, St. Denis Street,
Port Louis, Mauritius Country. ..Respondents in both
revisions

Prayer in C.R.P. No. 428 of 2016: Civil Revision Petition to set
aside the order dated 25.01.2016 passed in I.A. No. 53 of 2016

in O.S. No. 36 of 2016 by the learned Sub Judge, Vellore.

Prayer in C.R.P. No. 427 of 2016: Civil Revision Petition to strike off the plaint in O.S. No. 36 of 2016 on the file of the Subordinate Judge, Vellore.

For Petitioner :: Mr.Anand Venkatesh

For Respondents:: Mr.S. Saravanan for R1
Mr.Sankaranarayanan for R2
R3- Formal party
Mr.M.S.Krishnan,Senior counsel
for Mr.Anirudh Krishnan for R4

O R D E R

(Order of the Court was made by N. KIRUBAKARAN,J.)

The Courts are here to render justice. The finality of proceedings, at the earliest, is a necessity and multiplicity of the proceedings should be avoided. Whether the Courts have control over the proceedings or the parties are controlling the proceedings is an aspect to be gone into. The way in which a dispute comes to the Court and gets multiplied into many proceedings at various stages of the judicial hierarchy would speak volumes about the role of various stakeholders of the justice delivery system. The litigants, the lawyers and the Courts are part and parcel of justice delivery system. Without the assistance of one stakeholder, the justice delivery system cannot function in an orderly and in an effective manner. Without the co-operation of everyone, the litigation cannot come to a finality. Otherwise, a case would lead to many proceedings burdening the justice delivery system by increasing the pendency of cases. Therefore, it should be everybody's endeavour to reduce and restrict the number of cases and also avoid multiplicity of proceedings. The manner in which the present case has been dealt with, for the past two decades, would demonstrate as to how the proceedings have been prolonged at various stages. It is needless to state that a party, approaching the Court and also, who aids the party, are, by design, multiplying the proceedings to see that the other party is harassed and the dispute is not resolved to achieve their selfish ends. That is how the entire justice delivery system is being hijacked and affected. Precisely, on account of this delay in disposal of cases, even the multinationals prefer arbitration outside the country, owing to lack of faith in justice delivery system in India. This case also proves as to how the parties set up third parties to the pending proceedings to ver reach orders of this Court by approaching lower judiciary viz. Sub-Court, Vellore and obtained an interim order. Another disturbing factor is the way in which the trial court without

even looking into the facts and merits of the case without jurisdiction passed interim order, which is capable of upsetting/staying the direction given by this Court. Unless, as observed above, all stakeholders of the system act as per law in a bonafide manner, the very foundation of justice delivery system would be shaken and reduced to nothing. When a party tries to abuse and misuse the justice delivery system, the Courts should have to deal with such a client with iron hands so that the party, who is trying to misuse the process, should be suitably either punished or imposed with costs so that he will not repeat it in future. Such an approach would also be an eye-opener to other parties to drive home the point that Courts cannot be taken for a ride by persons, who misuse the process of law to achieve their own selfish motive. Such an approach has also become the need of the hour, considering the way in which the cases are created and multiplied, preventing the Courts from resolving the disputes.

2. The above civil revision petitions relate to the transfer of 95,418 shares in the 2nd respondent Bank. A peep into the history of the case would reveal the following:

(i) The ESSAR Group of Companies acquired 67.29% of issued share capital of the 2nd respondent in the year 1994. The Reserve Bank of India refused to acknowledge the transfer on the ground that it would amount to ESSAR Group having control of the 2nd respondent Bank. The Essar Group sold the shareholding to Sterling Group using Power of Attorney executed by the original shareholders. However, the Reserve Bank of India refused to acknowledge the transfers. In 2006, the Sterling Group had entered into an agreement with Nadar Mahajana Bank Share Investors Forum to sell their shares to the purchasers, who have to be identified by two Directors of the 2nd respondent Bank, namely, Mr.B. Ramachandra Adityan and Mr.M.G.M. Maran. The said Directors identified certain foreign investors as well as NRIs and resident investors for purchasing the said shares. One among them is the vendor of the petitioner herein.

(ii) The 2nd respondent Bank effected transfer of shares in their books on 13.05.2007 with respect to 7 non-resident investors, namely, M/s. Katra Holdings Limited, M/s. RST Limited, M/s. GHI Limited, M/s. Kamehameha Mauritian Limited, M/s. Cuna Group (Mauritius) Limited, M/s. FI Investments (Mauritius) Limited, M/s. Swiss Reinsurance (Mauritius) Limited and few other resident investors namely, Mr. Gokul Patnaik, M/s. Vector Programme Limited, Mr.M.G.M. Maran, Mr.B. Ramachandra Adityan and 205 other resident investors involved in 95,418 shares. The aforesaid transfer of shares has led to several litigations before various Courts.

(iii) The Reserve Bank of India passed an order on 12.10.2009, as per the directions of the Bombay High Court in W.P. No. 2684 of 2008 by which the 2nd respondent Bank was directed to approach the Reserve Bank of India with full details of all parties seeking acknowledgement of transfer in terms of circular dated 03.12.2004. The Reserve Bank of India passed an order dated 31.03.2011 holding 18 entities including the petitioner's vendor as a group and directed them to bring down their joint holding in the 2nd respondent Bank below 5%. In compliance of the order of the Reserve Bank of India dated 31.03.2011, the shares were transferred by M/s. Katra Holdings and M/s. RST Limited in favour of the petitioner on 2.12.2011. On 11.06.2012, the shares of M/s. GHI Limited were sold to the 4th respondent herein, namely, M/s. Robert and Ardis James Company Limited.

(iv) One P.S.P.K. Maragatharaja Pandian filed W.P.(MD) No. 12543 of 2013 in July 2013 against the Reserve Bank of India and others including M/s. FI Investments (Mauritius) Limited and M/s. Cuna Group (Mauritius) Limited seeking a Writ of Mandamus directing the Reserve Bank of India to direct the 3rd respondent Bank therein not to deal or transfer the unacknowledged shares and consequently to direct the 3rd respondent Bank to cancel the transfer of unacknowledged shares on the ground of contravention of Section 12(B)(3) of the Banking Regulation Act, 1949. One M. Sundararaj filed W.P. Nos. 25256 to 25258 of 2013 etc against the Reserve Bank of India and others. The Reserve Bank of India filed counter in W.P.(MD) No. 12543 of 2013 stating that compliance of the order of Reserve Bank of India dated 31.03.2011, which has been passed pursuant to the Bombay High Court's order in W.P. No. 2684 of 2008 could be achieved by way of transfer to new investors not related to the Group and any injunction granted for such transfer would only negate the object of Reserve Bank of India's circular dated 31.03.2011.

(v) The learned Single Judge of this Court, on 26.11.2015, dismissed W.P. Nos. 25256 to 25258 of 2013 and also vacated the interim injunction granted in W.P. No. 12543 of 2013 and W.P. No. 11159 of 2011 and appointed a Chairman to conduct 88th to 93rd Annual General Meeting of the 2nd respondent Bank permitting the petitioner and the 4th respondent (M/s. Robert and Ardis James Company Limited) to exercise their full voting rights and the remaining entities, held to be a group, to jointly exercise less than 5% of voting rights.

(vi) After the order dated 26.11.2015, the 2nd respondent Bank issued a notice dated 21.12.2015 for holding the 88th to 93rd Annual General Meetings on 29.01.2016. Mr.M. Sundararaj and Mr.P.S.P.K. Maragatharaja Pandian challenged the orders passed by the learned Single Judge of this Court on 26.11.2015 in W.A. Nos. 1752 of 2015 and 2 of 2016 respectively. Though interim

orders were sought for, to restrain the holding of 88th to 93rd Annual General Meetings of the 2nd respondent Bank and from permitting any voting right based on the unacknowledged shares transferred in contravention of Section 12B(3) of the Banking Regulation Act, 1949, as per order of the Reserve Bank of India dated 31.03.2011, the Division Bench did not grant any interim order and the matter was posted to 22.04.2016 after issuing notice.

(vii) When things stood so, the 1st respondent, who is said to be a shareholder of the 2nd respondent Bank filed O.S. NO. 36 of 2016 on the file of Sub Court, Vellore seeking

(a) To declare that the schedule mentioned shares alienation made on 02.12.2011 and 11.06.2012 in favour of the 3rd and 4th defendants (4th respondent and the petitioner herein respectively) therein are null and void;

(b) To declare that the 1st defendant (2nd respondent herein) Bank has no right to allow the 3rd and 4th defendants for voting in the Annual General Body Meeting which will be held on 19.01.2016 and or any other date which will be fixed by the 2nd defendant and

(c) To pass a permanent injunction against the 3rd and 4th defendants restraining them from voting in Annual General Body Meeting which will be held on 29.01.2016 or any other date till the approval of the alienation of the shares in favour of them by the Reserve Bank of India. The said suit is said to have been filed on the ground that alienation of shares in favour of the petitioner and the 4th respondent herein is yet to be approved by the Reserve Bank of India, the acquisition of shareholding by the parties is in violation of FEMA Regulations and the same is under the investigation of the Directorate of Enforcement. Since the transfer of shares to M/s.Katra Holdings Limited, M/s. RST Limited and M/s.GHI Limited was unacknowledged by the Reserve Bank of India and held to be in violation of FEMA Regulations by the Directorate of Enforcement, therefore, the petitioner and the 4th respondent should be restrained from exercising their voting rights for 27,289 shares (about 9.5% of the shareholding) in the 2nd respondent Bank. If the ineligible shareholders are allowed to exercise their right, it would affect the management of the 2nd respondent Bank as well as the right of the 1st respondent/plaintiff. In the said suit, I.A. NO. 53 of 2016 was filed seeking an order of interim injunction against the petitioner and the 4th respondent herein from casting E-voting or voting by any other means on 26.01.2016 to 29.01.2016 in the Annual General Body Meeting which will be held on 29.01.2016 or any other date till the disposal of the petition and an order of interim injunction was granted.

3. Challenging the said order of interim injunction as well as the suit, the petitioner/4th defendant is before this Court in the above civil revision petitions under Article 227 of the Constitution of India on the ground that:

(i) the suit is an abuse of process of law;

(ii) the order of interim injunction passed by the Sub Court, Vellore, overreaching the common order passed by this Court dated 26.11.2015 and (iii) there is no cause of action for the suit to be filed before the Sub Court, Vellore.

4. On 10.02.2016, when the civil revision petitions were argued, this Court noted that the Chairman appointed by this Court to conduct the Annual General Meetings of the 2nd respondent Bank could not proceed with the counting of votes and the declaration of results due to two reasons, namely, (i) the interim order passed by the Sub Court, Vellore and (ii) the order passed by the Bombay High Court in respect of an inter se dispute between two sets of shareholders. Therefore, this Court passed the following order:

(a) The Chariman shall ignore the order of the Subordinate Court, Vellore, which we have stayed now.

(b) The votes of the two shareholders, whose rights have been taken away by the Bombay High Court, shall not be counted.

(c) The Chairman shall proceed with the counting of the remaining votes leaving the votes of these two shareholders and

(d) There are also certain disputes about proxies. The Chairman shall reject proxies of dead persons. Thereafter, he shall prepare two sets of results containing one set of results where the votes of proxies of the surviving members are included and another set of results where proxies of both surviving and deceased memberes are rejected. Both sets of results shall be filed before this Court on the next date of hearing namely, 17.02.2016."

Thereafter, a report has been filed by the Bank giving the details of the votes secured by the parties and this Court declared the results and permitted them to take charge of the administration.

5. When the matter was called on 07.03.2016, on which date all the parties were present, the learned counsel for the 1st respondent did not appear in spite of his name having been shown in the cause list. Therefore, the matter was directed to be

posted on 08.03.2016. Learned counsel for the 1st respondent sought time to file counter to the civil revision petitions. When this Court pointed out that there is no necessity for filing counter as they are only revisions under Article 227 of the Constitution of India and all the facts are before the Court, he would point out that an SLP has been filed as against the order passed by this Court and he sought time till Monday. However, this Court was not inclined to grant any time. As stated above, the dispute could not be resolved due to various factors and various proceedings before various fora from Sub Court to the Supreme Court, without any discrimination. Though this Court called upon the learned counsel for the 1st respondent and the revision petitioner, the learned counsel for the 1st respondent did not make any submission. When the above matter was posted on 10.03.2016 along with the connected matters, the learned counsel for the first respondent/plaintiff came forward and argued the matter on merits.

6. Heard the learned counsel for the parties.

7. The learned counsel for the first respondent would submit that the jurisdiction of the Trial Court, could be questioned at the earliest opportunity, whereas the petitioner did not question at the earliest opportunity. However, the said contention is liable to be rejected. The petitioner is always at liberty to challenge the entire proceedings under Article 227 of the Constitution of India before this Court for lack of jurisdiction.

8. The issued raised by the petitioner due to non-acknowledgement of shares and the order passed by the Reserve Bank of India dated 31.03.2011 has been elaborately dealt with, by the learned Single Judge, in his order dated 26.11.2015 which is the subject matter of writ appeal pending before this Court. The allegations made in the suit have also been dealt with by the learned Single Judge and thereafter only, he had directed the elections to be held. If that is so, the proper course is to approach the single Judge with a review petition or to file an appeal.

9. W.P. No. 25257 of 2013 filed for issue of a Writ of Mandamus directing respondents 1 to 4 therein namely, the Reserve Bank of India, the Directorate of Enforcement, the Assistant Director, FEMA & PMLA, Directorate of Enforcement and the Tamil Nadu Mercantile Bank Limited, to nullify the transaction/transfer of (disputed) shares 94,818 of TMBL - effected under the Board Resolution dated 13.05.2007 of the 4th respondent and consequently to rescind the entries in the Register of Members of shareholders of the 4th respondent with respect to (disputed) shares 94818 was dismissed.

10. As far as WP. No. 12543 of 2013 filed by

Mr.P.S.P.K.Maragatharaja Pandian is concerned, the interim order already granted was vacated. The relevant portions of the order at paragraph Nos. 20, 21 and 22 are extracted hereunder:

"20. Annexure- C of the Order dated 12.10.2009 passed by the Executive Director of Reserve Bank of India deals with the 32.92% of the share holdings of the group. With respect to Sl.Nos.1 and 2, there was an alienation in favour of Sub continental equities for about 4.62%. Similarly, M/s.GHI Limited has sold the share in favour of M/s.Robert and Ardis James Company Limited. By the above said order, followed by the subsequent order dated 31.3.2011, the Reserve bank of India has taken a specific stand based upon available material that 8.34% of share holders cannot be allowed to vote forming part of the group. This is the import of the Order dated 31.3.2011. The memo dated 27.10.2015 filed before this Court is exactly in consonance with the said order. Thus, as on today, there cannot be any valid objection to give effect to the memo filed by the Reserve Bank of India - respondents 1 and 2 in W.P.(MD) No.12543 of 2013 in pursuant to its order dated 31.3.2011. At the cost of repetition, it can be said that the said order dated 31.3.2011 has never been come into challenge nor it could be contended legally that de hors the said order, there is no legal right available to the petitioners corresponding to the legal duties on behalf of the statutory authorities from preventing the others in participating in the voting process. Therefore, except the share holders of 18.34%, which is the subject matter of the memo, as well as the order dated 31.3.2011, there cannot be any bar in the eye of law from allowing others to vote. Though the learned counsels appearing for the parties made substantial reliance upon Section 12-B of the Banking Regulation Act as well as the order passed in Application No.2954 of 2008 in C.S.No.481 of 2008, this Court is not willing to go into the same at this stage, since as of now, the parties are governed by the Order dated 31.3.2011. The endeavour of this Court at this stage is to allow the meeting to go on so that the unfinished agendas can be proceeded. This Court is of the view that a beginning has to be made. Precisely for this reason this Court has informed the parties to confine the arguments to the interlocutory applications. In other words, the rights of the parties on a construction of Section 12-B with reference to the voting rights notwithstanding the order passed by the Reserve Bank of India dated 31.3.2011 armed with the order passed by this Court on the earlier occasion are the matters

to be decided in future. The issue with respect to the regularisation of the transfer of shares and further sale are not gone into, as they are the matters between the respective parties and the Reserve Bank of India. However, it is expected that such transferees and the Bank would make such applications for the said purpose at the earliest.

21. This Court is of the considered view that the interim orders cannot be allowed to continue for the reasons aforesaid. The petitioners cannot agitate a private dispute in a different form. There is no legal right in favour of the petitioners as of now and there is no failure on the part of the Reserve Bank of India to perform its statutory duty. Merely because proceedings are pending with the Enforcement Directorate the same cannot be a ground to deny the voting rights to the unacknowledged shareholders. As of now, the order dated 31.3.2011 governs the parties. The rights of the parties, who suffered an adverse order on acknowledgement from the hands of the Reserve Bank of India, cannot be decided now. This is only an interim measure. This Court is merely concerned with the role of an authority under Article 12 qua the writ petitions filed. Therefore, this Court is of the view that the memo filed by the Reserve bank of India merits acceptance, as it is filed in compliance with its own order dated 31.3.2011. The objection made by the petitioner in W.P.(MD) No.12543 of 2013 cannot be accepted. The petitioners are neither transferors nor transferees. Their shares are not interfered with as of now. Section 12-B of the Banking Regulation Act does not come in conflict with the Memo. Accordingly, the interim orders passed in M.P.No.1 of 2011 in W.P.No.11159 of 2011 dated 28.4.2011 and M.P.(MD) No.2 of 2013 in W.P.(MD) No.12543 of 2013 dated 29.7.2013 are hereby vacated. It is also to be seen that in W.P.(MD) No.12543 of 2013 the affected parties are also not made as parties. The petitioner cannot prevent the parties from getting the benefit of the Order dated 31.3.2011 without challenging the same. As there is no objection to the memo filed by the Reserve Bank of India, it is accordingly accepted. Even otherwise there is no contra material to dispute the same. The pendency of the Transfer Petitions filed at the instance of the Bank cannot be a bar for passing these orders. They were only filed to transfer the cases from other High Courts to this Court. Being the holders of negligible shares, the petitioners cannot hold the Bank to ransom. The

damage caused by the interim orders is far more greater than a possible benefit, if any.

22. As all the parties are otherwise willing to convene the meetings for the purpose of conducting the annual general body meetings and on the earlier occasion this Court has also appointed Hon'ble Mr. Justice R. Balasubramanian, (Retd.) to act as a Chairman, this Court appoints the learned Judge to act as the Chairman for the purpose of convening and conducting the annual general body meetings on the same day. The learned Judge is requested to undertake the said process of convening and conducting the meetings of the seven annual general body meetings with the active cooperation of the Bank. The learned counsel appearing for the Bank submitted that 70 clear days from the date of receipt of copy of the order is required for the above said purpose. Accordingly, the same is granted. It is made clear that all the objections towards the conduct of the meeting followed by the seven annual general body meetings can be given to the Chairman, who shall deal with the same as per law. The learned Chairman of the Bank has to fix voting rights by giving effect to the memo filed by the Reserve Bank of India before this Court."

11. Therefore, all the contentions raised by the 1st respondent/plaintiff have been dealt with elaborately by the learned Single Judge of this Court and the said order is under challenge in the writ appeal pending before this Court and no interim orders have been granted. Referring the single judge order in this order should not be taken as expression on merits of the single judge order and the appeal will be decided on its own merits. The reference about the single judge order is only to make clear the status of the dispute and for disposal of civil revision petition.

12. When the decks have been cleared for the conduct of Annual General Body Meetings and the Elections, now, like a bolt out of the blue, the 1st respondent has filed the suit in O.S. No. 36 of 2016 before Sub Court, Vellore, which according to the petitioner, is without jurisdiction. At this juncture, it would be appropriate to look into the cause of action pleaded by the 1st respondent/plaintiff before the Sub Court, Vellore for filing the suit and the relevant portion, at paragraph NO.17 of the plaint is extracted as follows:

"17. The cause of action for the suit arose on 31.03.2011 when the Reserve Bank of India passed an order rejecting the approval for the alienation for the shares in favour of the 3rd and 4th defendants and

on 16.12.2014, the Enforcement Department given a complaint and on 17.12.2014 when the show cause notice was issued against the 3rd and 4th defendants and on 12.12.2015, when the notice for the Annual General Meeting was issued by the 1st respondent and subsequent days when the 3rd and 4th defendants are trying to voting the Annual General Body Meeting at Thoothukudi and the plaintiff is residing at which is situate within the jurisdiction of this Hon'ble Court."

13. A reading of the said paragraph would reveal that no cause of action has arisen within the jurisdiction of Sub Court, Vellore. Possessing/Having shares by a person cannot give rise to cause of action in the place where he resides. According to the 1st respondent/plaintiff, since he is one of the shareholders of the Bank viz. 2-shares bearing Nos.113927-113928 and he is a resident of Vellore, the Vellore Court has got jurisdiction to entertain the suit. If the contention of the 1st respondent/plaintiff is accepted, the shares, wherever they are carried, would give rise to cause of action. The averments in the plaint at paragraph No.17, which has been extracted above, do not give rise to any cause of action at Vellore to file the suit. Even the place of residence of the plaintiff is left blank and it would only fortify the contention of the petitioner that the suit has been filed before the Court which lacks jurisdiction. As rightly pointed out by the learned counsel for the petitioner, the 1st respondent/plaintiff should be a person set up by the petitioner in W.P. No. 12543 of 2013 to prevent the conduct of Annual General Meetings convened for purposes including the conduct of election by over reaching the orders of this Court. The Honourable Supreme Court in R. Viswanathan and Others V. Rukn-ul-Mulk Syed Abdul Wajid and others reported in AIR 1963 SC 1 held that "the situs of the shares in question between the Company and the holders thereof is the registered office of the Company". In the judgment rendered in Morgan Stanley Mutual Fund V. Kartick Das reported in (1994) 3 Company Law Journal 27 (SC) , the Honourable Apex Court held that "cases against Companies should be filed only where the registered office of the Company is situate and Courts outside the place where the registered office is located, if approached, must ensure that the plaintiff comes to Court well in time so that notice may be served on the defendant/s before any interim order is passed." Paragraph 50 of the judgment is extracted as follows:

"50. As far as India is concerned, the residence of the Company is where the registered office is located. Normally, cases should be filed only where the registered office of the Company is situate. Courts outside the place where the registered office is

located, if approached, must have regard to the following:

Invariably, suits are filed seeking to injunct either the allotment of shares or the meetings of the Board of directors or again the meeting of general body. The court is approached at the last minute. Could injunction be granted even without notice to the respondent which will cause immense hardship and administrative inconvenience. It may be sometimes difficult even to undo the damage by such an interim order. Therefore, the Court must ensure that the plaintiff comes to court well in time so that notice may be served on the defendant and he may have his say before any interim order is passed...."

Therefore, the place or residence of the plaintiff cannot confer any jurisdiction to maintain the suit.

14. Moreover, the plaintiff approached the Court either suppressing or pretending ignorance of the order passed by this Court in W.P.Nos. 12543 of 2013 etc. He cannot plead ignorance of the fact that Annual General Body Meetings as well as the conduct of election were sought to be done pursuant to the order of this Court dated 26.11.2015. In fact, the 1st respondent/plaintiff himself has annexed the notice dated 21.12.2015 regarding Annual General Body Meetings of the Bank on 29.01.2016. When the notice dated 26.11.2015 has been filed as document No.5 in the suit, the plaintiff should have made necessary pleading about the notice and its contents. Lack of pleading with regard to contents of notice should be deliberate with malafide motive to procure order fraudulently. A perusal of the said notice dated 21.12.2015 filed as plaint document No.5 before the Trial Court, would reveal that the 2nd respondent Bank made a reference about the orders passed by this Court on 26.11.2015. The first paragraph of the said notice is extracted as follows:

"NOTICE is hereby given that the 88th to 93rd Annual General Meetings (AGMs) pertaining to years 2010 to 2015, respectively, of the members of Tamilnad Mercantile Bank Limited will be held on Friday, the 29th January, 2016 from 10.00 a.m. onwards at Manickam Mahal, 1/1A, Tiruchendur Road, Thoothukudi - 628 003 to transact the business mentioned in the Notices convening the said AGMs. The AGMs are being convened pursuant to an order passed by the Hon'ble High Court of Madras on November 26, 2015 vacating an earlier order of the said Court staying conduct of AGMs in a

Writ Petition No. 11159 of 2011 filed by a shareholder."

15. If really, the 1st respondent/plaintiff was not aware of the proceedings in W.P.No.11159 of 2011, he should have approached this Court for a suitable direction or could have filed appeal against the said order. It is seen that the first respondent in the guise of filing O.S.No.36 of 2016 before the Sub-Court, Vellore, in fact he ventured to challenge the heirarchy of the judiciary and the power of the highest court of the State. This practice has to be deprecated and prevented, failing which dangerous consequences of over reaching the higher court's order in inevitable creating chaos in the justice delivery system. By getting orders from the Sub Court, the plaintiff/1st respondent only attempted to overreach the order passed by this Court. It is nothing but abuse of process of the court. Therefore, the plaint in O.S. NO. 36 of 2016 itself is liable to struck off.

16. As rightly pointed out by the learned counsel for the petitioner, the allegations made in paragraph Nos. 8, 9 and 10 of the plaint are repetition of paragraph Nos. 5 and 6 of the affidavit filed in support of W.P. No. 12543 of 2013. Therefore, this Court cannot brush aside the contention of the learned counsel for the civil revision petitioner that the 1st respondent/plaintiff has been set up by the petitioner in W.P. No. 12543 of 2013, namely, Mr.P.S.P.K. Maragatharaja Pandian, who failed to obtain favourable orders from this Court. Approaching the Civil Court to overcome the orders passed by this Court is a fraudulent Act. The parties are expected to approach the Court with clean hands. If any of the parties abuse the forum, the said proceedings are liable to be struck off as held by the Honourable Supreme Court in K.K.Modi V.K.N. Modi and others reported in 1998 3 SCC 573. The Honourable Apex Court, in the said judgment, held that "Relitigation is an abuse of process of Court" and paragraph 44 of the said judgment is usefully extracted as follows:

"44. One of the examples cited as an abuse of process of the court is relitigation. It is an abuse of process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of

the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

17. This Court, in *Suguna Poultry Farm Limited and others V. Arul Mariamman Textiles Limited and others* reported in (2004) 4 CTC 197 and in *Aruvipuram Dharma Paripalan Yogam and others V. K. Karunakaran* reported in 2012 1 LW 252 held that, "under Article 227, a suit can be struck off to prevent abuse of process of law, to prevent miscarriage of justice, grave injustice and to establish both administrative and judicial powers of the High Court." The above judgments have been decided following the judgment of the Honourable Supreme Court in *Surya Dev Rai V. Ram Chander Rai and others* reported in 2003 6 SCC 675.

18. In view of the above, it is very clear that to overreach the order of this Court, in spite of having knowledge about the order passed by this Court dated 26.11.2015 in W.P. No. 12543 of 2013, which has also been informed to the 1st respondent/plaintiff, as per the notice dated 21.12.2015 regarding conduct of Annual General Body Meetings of the Bank on 29.01.2016, the 1st respondent/plaintiff, with unclean hands, fraudulently, obtained an order of interim injunction from the Trial Court. The 1st respondent did not approach the Court with bona fide intention and it is only to overreach the order passed by this Court, that too, without any cause of action, he has filed the suit before Sub Court at Vellore. Therefore, the interim order passed by the Trial Court dated 25.01.2016 and extended subsequently is liable to set aside. Likewise, the plaint in O.S. No. 36 of 2016 has to be struck off for lack of cause of action and also for want of jurisdiction.

19. It is also disheartening to note that the learned Sub Judge, without even verifying as to whether the suit is maintainable or not, mechanically, passed an interim order under Order 39 Rule 1 & 2 CPC. He ought to have examined all the documents very meticulously before granting interim injunction. If the learned Judge had looked into the notice dated 21.12.2015 regarding conduct of Annual General Body Meetings on 29.01.2016, Document NO.5 in the plaint, he would not have granted interim injunction. The Hon'ble Supreme Court in *A Shamugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai sangam* reported in 2012 (6) SCC 430

insisted about the finding out truth from the pleading and documents. Para-24 of the judgment reads as follows:

"Entire journey of a Judge is to discern the truth

24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in Dalip Singh v. State of U.P.⁴ observed that: (SCC p. 116, para 1)

"1. ... Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell the truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system.""

20. Even otherwise, it is elementary rather rudimentary to look into the cause of action for the maintainability of the suit. No such attempt seems to have been made by the learned Sub Judge and therefore, this Court, by order dated 10.02.2016, directed the Registry to put up the matter on the Administrative Side for taking note of the manner in which the said suit has been entertained and interim injunction has been granted and extended. The order of the Highest Court of the State cannot be overreached by an order passed by a Subordinate Court, that too, at the instance of a person, who has tried to misuse and abuse the process of law. Even the numbering of the suit should not have been done by the officials of the Subordinate Judiciary and thus, there is every reason to suspect malpractice in the numbering of the suit. Therefore, the learned District Judge concerned is directed to take appropriate action against the person, who passed the suit and numbered it as O.S.No.36 of 2016 on the file of Sub Court, Vellore within 16 weeks and file a report.

21. As stated above, the 1st respondent/plaintiff has abused and misused the judicial forum and obtained an interim order from the Sub Court to overreach the order passed by this Court, which cannot be allowed. There should be a strong message sent to persons, who try to act smart to circumvent this Court's order by approaching the Lower Court. This is not the only case in which the order of the Highest Court of the State or even Supreme Court is sought to be overreached by approaching the Subordinate Judiciary. Such practice should be checked and deprecated failing which the justice delivery system would be shaken and there would not be any finality to any litigation. Moreover, the Indian Psychology is inclined towards prolonging a

litigation, unable to accept defeat at the hands of the other side. The Honourable Supreme Court in Rakesh Kumar Goel and others V. U.P. State Industrial Development Corporation and others reported in 2010 AIR SCW 4050 held that "Court is not for manipulators, speculators and landgrabbers and litigation in the Court is not like buying a lottery ticket". Paragraph No.41 of the said judgment is extracted as follows:

"41. But this case certainly calls for exemplary costs to the appellants. We wish to make it absolutely clear that this Court is not for manipulators, speculators and land grabbers. The litigation in this Court is not like buying a lottery ticket that, if luck favours, might bring a windfall (even though illegitimate) but would cost no more than the expenses of litigation. That is not the way of this Court. We, accordingly, impose cost of Rs.2 lakhs on each of the two appellants. The amount of cost must be paid to the Supreme Court Legal Aid Committee within 12 weeks from today. In case receipts showing payment of the cost is not filed within the time as directed, the amounts of cost shall be realised from the appellants as fine under the provisions of the Code of Criminal Procedure."

22. The Hon'ble Apex Court in A Shamugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai sangam reported in 2012 (6) SCC 430 castigated dishonest and unscrupulous litigants, who have no place in law Courts. Para 43.2 is extracted as follows:

"Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law Courts"

23. Similarly, the Honourable Supreme Court in the judgment rendered in State of Uttaranchal V. Balwant Singh Chaufal and others reported in 2010 3 SCC 409 also held that exemplary costs can be awarded.

24. Though the counsels are expected to safeguard the interest of their client, they cannot identify themselves with their client, that too, to obstruct the justice delivery system from doing justice. This is evident from filing of O.S.No.36 of 2016 before the Sub Court, Vellore, without any jurisdiction. Place of practice of the counsel seems to be the criteria or cause of action. The duty of the counsel as an officer of the Court to see as to whether cause of action arises or not and accordingly advise the party to file the proceedings before proper forum. Lawyers are officers of Court and they have got three responsibilities, the first one is to the party, the second to the Court and the third is to the society. Nowadays,

it has become a routine for the counsels to safeguard only the interests of their client by hook or by crook, leaving the other important duties, namely, to the Court as well as to the society, in the lurch. The need of the hour is change in the mindset and in the attitude of counsels, without which the justice delivery system would not be able to render justice in an effective manner. It is only to express this Court's anguish and displeasure, the above observations are with regard to the situation prevailing as on date.

25. Therefore, this Court holds that:

(a) O.S.No.36 of 2016 on the file of Sub Court, Vellore has been fraudulently filed without any cause of action at Vellore to over reach the order passed by this Court dated 26.11.2015.

(b) The suit is not maintainable for lack of jurisdiction and is liable to be struck off.

(c) Learned Judge without even applying his mind meticulously and analysing the pleadings and documents, passed the interim orders contrary to law, without examination as to whether the suit is maintainable before Sub-Court, Vellore or as to whether the plaintiff is entitled to interim order as prayed for and the said order is liable to be erased.

(d) The attempt of the petitioner, without properly making pleadings with regard to the order dated 26.11.2015 passed by this Court even though it is reflected in the notice dated 26.12.2015 issued by the bank (filed as document No.5), to file the suit is deliberate to obtain an interim order.

(e) Filing of suit and getting interim order from the Sub-Court to over reach the order passed by the Highest Court of the State is abuse of process of law by playing fraud and hence the suit is struck off invoking Article 227 of the Constitution of India.

(f) Lawyers are officers of the Court and they should analyse the facts and documents properly and file the case so that truth can be found out by the Courts and for the sack of parties, incomplete, wrong and misleading allegations, should not be made and complete facts should be pleaded, without any suppression. Whereas in this case, deliberately the direction given by this Court has been suppressed in the pleadings, which has been obviously prepared by the learned counsel for the plaintiff before the Trial Court.

(g) This Court finds the impugned proceedings are abuse of process of law. Therefore, the suit filed in O.S.No.36 of 2016 on the file of the Sub-Court, Vellore, is struck off and the order dated 25.1.2016 made in I.A.No.53 of 2016 and extended

subsequently in the above suit is erased for abusing and misusing the Judicial Forum

(h) To over reach the Court's order exemplary costs of Rs.1,00,000/- (Rupees one lakh only) is awarded against the petitioner to be paid to Tamil Nadu State Legal Services Authority, Chennai within two weeks from the date of the receipt of a copy of the order.

(i) The copy of the order is directed to be sent to the Tahsildar, Vellore to recover Rs.1,00,000/- (one lakh only) from the first respondent/plaintiff by selling his bank shares or one of the properties of the first respondent/plaintiff within four weeks from the date of non-compliance of the order passed by this Court, by the 1st respondent/plaintiff and to pay the amount to Tamil Nadu State Legal Services Authority, Chennai and to file a report before this Court.

26. Therefore, while allowing the civil revision petitions by setting aside the interim order passed in I.A. No. 53 of 2016 as well as striking off the plaint in O.S. No. 36 of 2016, this Court imposes a sum of Rs.1 lakh (one lakh) as costs on the 1st respondent/plaintiff, to be paid by him, to Tamil Nadu State Legal Services Authority, Chennai.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Subordinate Judge, Vellore.
2. The Member of Secretary,
Tamilnadu State Legal Services Authority,
Chennai.
3. The Principal District Judge,
Vellore.
4. The Tahsildar,
Vellore.
5. The Section Officer,
C Section,
High Court, Madras.

6.The Section Officer,
C1 Section,
High Court, Madras.

7.The Section Officer,
Judicial Section,
High Court, Madras.

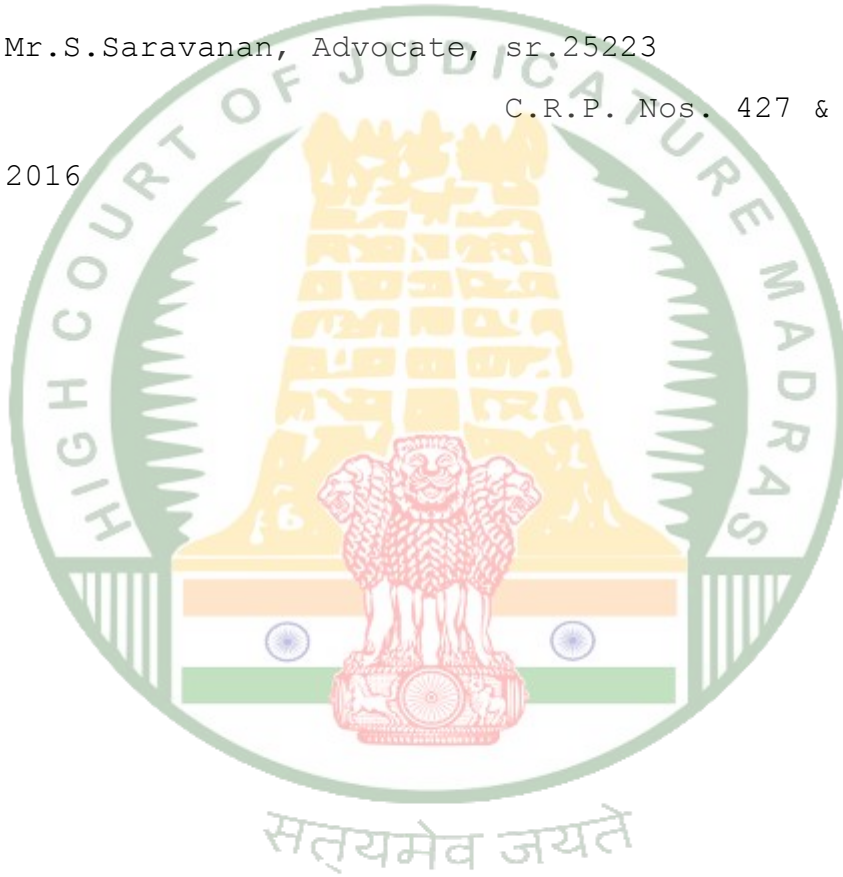
+1 cc to M/s.N.Anand Venkatesh, Advocate, sr.25312

+ 2 ccs to M/s.King & Partridge, Advocates, sr.25201, 25202
(27/4/16)

+2 ccs to Mr.S.Saravanan, Advocate, sr.25223

C.R.P. Nos. 427 & 428 of 2016

ak co
kra 15.06.2016



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