

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.11.2016

PRONOUNCED ON: 01.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.950 of 2010

M.Jambunathan

Plaintiff

Vs

- 1.Southern India Cinematographers Association
A Trade Union with Reg.No.453/MDS, by its
General Secretary G.Shivakumar @ G.Shiva
- 2.Film Employees Federation of South India by
its General Secretary G.Shivakumar @ G.Shiva
Chennai-26
- 3.CAM Benefit Trust (Also known as Cinematographers
Association Members Benefit Trust), A Society registered under the
Societies Registration Act, 1860 with Reg.No.288 of 1995
by its
Managing Trustee, Chennai-17
- 4.G.Shivakumar @ G.Shiva Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of
CPC read with Order IV Rule 1 of the Original Side Rules
for the reliefs as stated therein.

For Plaintiff :Mr.Satish Kumar for Mr.R.Parthasarathy

For Defendants : Mr.C.P.Palanichamy

JUDGEMENT

This civil suit has been filed to pass a judgement
and decree, against the Defendants:-

- a)declaring that the resolution passed by the
General Body of the 1st Defendant on 1.8.2010
and the consequential order dated 4.8.2010,
removing the Plaintiff from the primary

- membership of the 1st Defendant Association are null and void.
- b) declaring that the order of non-cooperation dated 27.7.2010 against the Plaintiff issued by the 2nd Defendant is null and void.
 - c) granting permanent injunction, restraining the Defendants 1 and 2 from interfering with the rights of the Plaintiff to carry on his profession as a Cinematographer in the Film Industry in South India, without any interference whatsoever.
 - d) directing the Defendants 1 and 2 to jointly and severally pay to the Plaintiff damages valued at Rs.5,00,000/- caused to the Plaintiff on account of loss of business and livelihood and mental agony.
 - e) granting mandatory injunction directing the 1st Defendant to produce its books of accounts duly audited for the period from 1.4.2007 till date.
 - f) granting mandatory injunction directing the 3rd Defendant to produce all its statement of accounts duly audited, with effect from 1.4.2002 till date.
 - g) directing the Defendants 1, 2 and 4 to jointly and severally pay the costs of the suit to the Plaintiff.

2. The Plaintiff is a Cinematographer by profession and is a member of the 1st Defendant Association. The 2nd Defendant is the controlling Association of about 22 Associations, dealing with the film industry in Southern India. The 2nd Defendant Association controls all other Associations, like the 1st Defendant Association, Producers Association, Directors Association, Musicians Association, Lightmen Association, etc. Each of these 22 Associations, like the 1st Defendant Association, have their own bye-

laws, rules and regulations. The Plaintiff's membership number is 00730. Bye-law No.4 of the 1st Defendant Association deals with forfeiture of membership and it reads as follows:-

"4. FORFEITURE OF MEMBERSHIP:-

Every person upon being admitted a member of the Association shall be deemed to agree to abide by the rules of the Association in every respect and to be liable to forfeit membership at any time, if in the opinion of the Executive Committee such member has failed to abide by the rules provided always that before arriving at a decision the Executive Committee has given adequate opportunity to the member concerned to explain his case before the General Body."

Similarly, bye-law no.19 relates to members and interest of the Union. It deals with removal of a member and it reads as under:-

"19. MEMBERS AND INTEREST OF THE UNION:

Any office bearer or member of the Union found working against the interests of the Union may be removed from the Union or otherwise punished on a resolution to that effect passed at a General meeting of the Union provided the members concerned is given previous intimation of the action proposed to be taken."

The Plaintiff has claimed in this suit that he had been wrongfully removed as a member of the 1st Defendant Association. He has further stated that the 2nd Defendant Association, which is the controlling Association, has issued a non-cooperation letter, calling upon all 22 Trade Unions not to engage the services of the Plaintiff in their production activities. This has virtually lead to economic

death of the Plaintiff. The 3rd Defendant Trust had been created by the 1st Defendant Association for taking care of the interest of the families of the Cinematographers, education of children and the expenses of the dependants. They also give pension to the Cinematographers. It had been created by a Trust Deed dated 16.3.1995. The circumstances leading to the dismissal of the Plaintiff were that in March 2010, he came to know that huge amounts were diverted by the 4th Defendant, who is the Secretary of both the Defendants 1 and 2, from the 1st Defendant to the 3rd Defendant and after such diversion, the 4th Defendant withdrew the amounts in his personal name and by his associates, thereby acting detrimentally to the interest and welfare of the members of the 1st Defendant Association. The Plaintiff had, therefore, raised objections and also asked questions regarding diversion of funds from the 1st Defendant to the 3rd Defendant and subsequent withdrawal of those funds by the 4th Defendant in his personal capacity.

3. It had been further stated that the Plaintiff had sent a notice dated 26.10.2009, a letter dated 2.6.2010 and another letter dated 24.6.2010. The Plaintiff was assisted by one Peer Hussaien, another Cinematographer, who also raised these issues relating to the 1st Defendant.

When this was the situation, a letter was also sent to the

Commissioner of Labour, Vikatan Group and Secretary, Human Rights and Vigilance Organisation. These actions of the Plaintiff infuriated the 4th Defendant and on 7.7.2010, the Plaintiff received a cover from the 1st Defendant and when he opened the said cover, he found only a white blank paper inside it. The Plaintiff had also received a threatening phone call from a BSNL No.24988087. He, therefore, lodged a police complaint dated 12.7.2010 and another complaint dated 19.7.2010 for protection. He has also alleged that financial irregularities had been committed by the 4th Defendant, who was the Secretary of the Defendants 1 and 2, who used the 3rd Defendant Trust for this purpose. The 2nd Defendant had formed a Committee called 'Dispute Committee', consisting of R.K.Selvamani, the Secretary of Directors Union, Rajaramani, Secretary of Stunt Union, M.Ramadurai, Art Directors Union, Mari, Secretary of Dancers Union and Guna, Secretary of Writers Union. This Committee had examined the books of accounts of the 1st Defendant and stated that it was in order. Thereafter, the 2nd Defendant issued a notice dated 27.7.2010, asking all its affiliated Unions not to cooperate with the Plaintiff. Thereafter, an urgent General Body Meeting of the 1st Defendant was called on 1.8.2010 and in this, the Plaintiff was removed as a member. Challenging the said act, stating that the actions of the Plaintiff does not warrant removal

and moreover, the procedure adopted to actually remove was also against the procedures given in the bye-laws, the Plaintiff has filed this suit.

4. The Plaintiff has also given details about the diversion of funds by the 4th Defendant and among such incidents, he had mentioned about the diversion of funds from the Group Insurance Scheme with the Life Insurance Corporation of India and withdrawals through cheques by the 4th Defendant and his nominees from the 3rd Defendant's account nearly 54 times, diversion of funds given by Fuji Film Corporation for payment of pension of Rs.1000 per month to the Cinematographers, diversion of funds of about Rs.75 lakhs towards production of a film 'Dhanam' which was produced by the wife of the 4th Defendant, diversion of funds for purchase of distribution rights for the film called 'Thittakudi' amounting to Rs.1 crore by the 4th Defendant from the 3rd Defendant and diversion of funds of the subscription amounts. It had been further stated that it was only because of these incidents that the Plaintiff had raised a voice and unfortunately, he had been dismissed without following the proper procedure. It had been further stated that the 1st Defendant represented by the 4th Defendant had filed OS.No.8044 of 2010 in the City Civil Court, Chennai, seeking permanent injunction against the Plaintiff and his friend Peer Hussaien from demanding

accounts from the 1st Defendant. A legal notice was also sent from the 2nd Defendant, calling upon the Plaintiff and the said Peer Hussaien to pay a sum of Rs.30 lakhs towards loss of name and reputation. In the said circumstances, the Plaintiff had filed the suit seeking the reliefs as stated above, challenging his removal, non cooperation letter dated 27.7.2010, for injunction to carry on his profession as a Cinematographer, for damages of Rs.5 lakhs and other reliefs.

5. The 4th Defendant has filed a written statement, which was adopted by filing a separate memo by the Defendants 1 to 3. In the written statement of the 4th Defendant, it had been stated that the Plaintiff was the member of the 1st Defendant Association, but since he did not pay subscription from 1981, he had ceased to be a member. Thereafter, he again became a member in the year 2002. The Plaintiff unsuccessfully had contested the election in the year 2003 and also the election in the year 2008 for the post of General Secretary against the 4th Defendant. The suit has been filed because he lost elections against the 4th Defendant. It had been further stated that the Plaintiff was always in the habit of issuing notices, pamphlets and anonymous letters, containing false matters to various authorities and Unions under the 2nd Defendant, complaining that the 4th Defendant

and the Office Bearers of the 1st Defendant are attempting to cause danger to his life. The 1st Defendant had to file OS.No.8644 of 2010 in the City Civil Court, Chennai against the Plaintiff from interfering with the administration of the Association. A show cause notice dated 6.7.2010 was issued and it was served on 7.7.2010. Subsequently, on 1.8.2010, in the General Body Meeting, the Plaintiff was removed from the primary membership of the 1st Defendant. The 4th Defendant specifically denied the allegations in the plaint and stated that the notice of the General Body Meeting was sent to all the members by letters and SMS. It was also displayed in the Notice Board from 17.7.2010 onwards. He had further stated that the Plaintiff had been issuing defamatory notices against the Office Bearers of the Defendants 1 and 2. The 2nd Defendant has, therefore, constituted the Dispute Committee to look into the affairs of the 1st Defendant and they did not find any irregularity in the said accounts. The 4th Defendant denied that he had diverted the amounts particularly for production of Tamil Film 'Dhanam' which was produced by his wife along with another partner or for purchasing distribution rights for the film 'Thittakudi'.

6. It had been further stated in the written statement that the Plaintiff was not at all working as a Cinematographer and therefore, the non cooperation letter

issued by the 2nd Defendant would have no effect on the Plaintiff. It had been further stated that if any member was involved in on going production and if such a letter had been issued, request would be made to withdraw the said letter from the Producers or the Directors Association. The 2nd Defendant did not receive any such request from any Association. The Plaintiff has been aggrieved by his unsuccessful attempts to damage the reputation of the 1st and 2nd Defendants' Associations and consequently, had filed this suit on false grounds. It had been further stated that he had also given false police complaints which lead to the filing of the suit in the City Civil Court, Chennai. The Defendants stated that they have no personal animosity against the Plaintiff. Therefore, it is prayed that the suit should be dismissed.

7. On perusal of the pleadings of the parties, by order dated 06.12.2013, the following issues were framed:-

1. Whether the 1st Defendant Union has complied with all its bye-laws in removing the Plaintiff from its primary membership or not?
2. Whether the Defendants 1 and 3 are duty bound to produce the accounts to the Plaintiff and whether the accounts were earlier in the 1st Defendant's Office for the perusal of the members?
3. Whether the Plaintiff is entitled to question the audited accounts placed before the General Body and approved by the General Body Meeting on 26.10.2008?

4. Whether the Plaintiff is entitled to claim

damages from the Defendants 1 and 2 on account of loss of his business, livelihood and mental agony?

5. Whether the Plaintiff is entitled to the reliefs prayed for?

6. To what other relief the Plaintiff is entitled to?

8. On the side of the Plaintiff, to substantiate the issues raised, the Plaintiff examined himself as PW.1 and marked Exs.P1 to P28. On the side of the Defendants, one ACK.Rajan, one of the members of the Executive Committee of the 1st Defendant Association, was examined as DW.1 and Ex.D1 to D17 were marked through him.

9. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

10. Issues (1), (2) and (3) :- The Plaintiff is the member of the 1st Defendant Association, namely, Southern India Cinematographers Association. He has filed the receipts for payment of subscription as Ex.P1 and also his Identity Card. Ex.P2 is the copy of the bye-laws of the 1st Defendant Association. The Plaintiff has claimed, in this suit, that as a member of the 1st Defendant Association, he had inherent right to question the accounts and also to seek copies of all the account books. In the plaint, the Plaintiff has stated that the 4th Defendant, who was the General Secretary of the 1st Defendant

Association, had diverted the funds from the 1st Defendant Association to the 3rd Defendant Trust and thereafter, withdrew the amounts from the 3rd Defendant Trust. Alleging these acts of the 4th Defendant amounted to embezzlement of funds, which were meant for the benefit of the Cinematographers and their family members, the Plaintiff started to write letters, questioning the same.

11. Before going into the actual allegations raised by the Plaintiff, the bye-laws of the 1st Defendant Association has to be examined. The bye-laws has been marked as Ex.P2. In the bye-laws, the 1st Defendant had been called as the 'Southern India Cinematographers Association'. The main aim and objects of the said Association were to organise and unite the Cinematographers and Assistants, engaged in motion picture industry to secure fair conditions of service, work and wages to redress grievances and settle disputes. The Association was also involved in providing relief due to sickness, old age, unemployment and death. It also provides legal assistance. It also gives aid during strike or lock out. The said Association has as its members, any person engaged in the motion picture, as Cinematographers called as the Director of Photography, First Assistant Cameraman or Second Assistant Cameraman. The eligibility for membership is given in bye-law no.3. The forfeiture clause is given

in bye-law no.4. The rights and privileges of the members have been given in bye-law no.9 and according to the same, every member has a right to participate and vote in the meetings and enjoy protection and benefits of the Association. It has also been mentioned in bye-law no.10 that the individual members should not go on strike by themselves. Bye-law no.12 relating to office stipulates that a Register of members, account books and prescribed registers and books shall be kept at the registered office of the Union and they should be open for inspection by any office bearer or a member of the Union on all working days between 9.00 a.m. to 1.00 p.m., except on Tuesdays, which is a weekly holiday and on festival holidays.

12. Bye-law no.14, dealing with the duties of the office bearers, deals with the duties of the President, Vice President, General Secretary, Joint Secretary and Treasurer. With respect to the duty of the General Secretary, it has been given as follows:-

"(a) The General Secretary shall convene all meetings, conduct all correspondence, keep all accounts and maintain record of minutes of meetings, exercise supervision over the affairs of the Union, prepare a Balance Sheet annually showing clearly every item of receipt and expenditure.

(b) He shall be responsible submitting to the Registrar of Trade Unions, all returns, notices that should be sent to that Officer under the Trade Unions Act, 1926.

(c) He shall have power to engage, in
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consultation, with the President and subject to the approval or confirmation of the Executive Committee or General Council any assistants for Organising the clerical purposes he considers necessary and all such assistant shall be under the control of the General Secretary."

13. Bye-law no.17 deals with the meeting of the General Body and it has been stipulated that in the month of August every year, an Annual General Body Meeting has to be conducted to adopt and consider the audited statement of accounts of the previous year and report of auditors and for election of office bearers. In this connection, it is the specific stand of the Plaintiff that from 2004, the General Body has not at all been convened and the accounts have not at all been presented.

14. Bye-law no.19 deals with the members and interest of the Unions and it reads as under:-

" 19. MEMBERS AND INTEREST OF THE UNION:

Any office bearer or member of the Union found working against the interests of the Union may be removed from the Union or otherwise punished on a resolution to that effect passed at a General meeting of the Union provided the members concerned is given previous intimation of the action proposed to be taken "

15. Bye-law 21 deals with the general funds and utilisation of the said funds. It deals with subscription, payment of salaries, expenses, allowances to members or the dependants, provision of educational, social or religious benefits for the members.

16. In pursuance of the right given to each member

to inspect the books of accounts as given in bye-law no.12, the Plaintiff had, exercising his right as a member, started asking difficult questions, regarding the accounts of the 1st Defendant Association. He had sent a letter dated 24.1.2012, which was marked as Ex.P5, under the Right to Information Act to the 4th Defendant in capacity as the General Secretary of the 1st Defendant Association. In the said letter, he had sought for details as to whether whether any amendments have been made in the bye-laws of the 1st Defendant, as to in how many banks does the Defendants 1 and 3 had bank accounts, details regarding receipt of subscriptions towards group insurance scheme, the amount disbursed towards the benefit of the cinematographers and also the total amount available in the bank accounts of the Defendants 1 and 3. To this, the 4th Defendant, in his capacity as General Secretary, had sent a reply dated 18.6.2010, marked as Ex.P6 that the information cannot be provided. Thereafter, the Plaintiff had sent another letter Ex.P5 along with his friend K.S.Peer Hussaien addressed to all the executive members of the 1st Defendant Association and once again, reiterating the demand and also the fact that through Ex.P6 information that was asked has been refused. This letter of the Plaintiff has been marked as Ex.P7. By Ex.P8, the Plaintiff wrote yet another letter again to the 4th

Defendant representing the 1st Defendant Association once again reiterating the same demands made in his letter, but this time addressing the letter under Section 20 the Trade Union Act asking for an answer within 10 days. A copy of this letter was also marked to the 2nd Defendant. This is Ex.P8.

17. By Ex.P9, the friend of the Plaintiff, K.S.Peer Hussaien sent a letter to the 1st Defendant Association represented by General Secretary, again asking for details regarding accounts, bank accounts and subscriptions details for the group insurance scheme. The Plaintiff received a cover Ex.P10 and according to him, the said cover had a blank white paper. Thereafter, the Plaintiff, by Ex.P11, had given a complaint to the Commissioner of Police, seeking protection because he received a life threat. He has specifically mentioned that several crores of amounts had been siphoned from the 1st Defendant Association and he had mentioned the names, G.Shiva, ACK.Rajan, P.Primosdoss, K.S.Selvaraj, S.Audhi @ Adhikesavalu and K.Raju. He has further stated that he had complained about their activities to the 2nd Defendant Association represented by its President V.C.Guganathan, but no action was taken. This complaint had been marked as Ex.P11. Thereafter, by Ex.P12 dated 12.7.2010, the Plaintiff again wrote yet another letter to the

Commissioner of Police. He had again alleged that huge amounts of money had been siphoned from the 1st Defendant Association, diverted to the 3rd Defendant and finally withdrawn by the 4th Defendant and his associates. He also addressed a letter dated 13.12.2008 to the 2nd Defendant and also to the Human Rights and Vigilance Organisation.

18. In this connection, the Plaintiff has given specific details of the said diversion of funds in the plaint as below:-

S.No	Date	Name	Cheque No.	Amount (Rs)
1	18/1/2007	RAJAN		15000
2	18/1/2007		468020	20000
3	21/1/2007	Raju	468024	20000
4	27/1/2010	George	468025	20000
5	01/12/06	CAM	426955	14000
6	08/12/06	Rajan	426999	25000
7	14/12/2006	M.S	427010	25000
8	20/12/2006	M.S	427012	80000
9	29/12/2006	Rajan	427013	15000
10	15/11/2006	Raju	390024	35000
11	22/11/2006	George	426953	10000
12	13/10/2006	Aadhi	381654	25000
13	04/10/06	CAM	281653	14000
14	04/10/06	Rajan	389981	10000
15	16/10/2006	Rajan	390009	35000
16	23/10/2006	Rajan	390011	10000
17	30/10/2006	Nagarajan	390012	60000
18		Raju	390013	10000
19		K.Raju	397591	100000
20		K.Raju	357593	100000

S.No	Date	Name	Cheque No.	Amount (Rs)
21	090507		694567	20000
22	120507		680972	55000
23	25/5/2007		694576	5000
24	050407	CAM	621196	15000
25	090407	ACK	621211	30000
26	090407	ACK	621219	50000
27	090407	ACK	621209	9000
28	100407	ACK	621224	15000
29	17/4/2007	ACK	630951	12000
30	25/4/2007	ACK	680953	20000
31	120307	ACK	621164	10000
32	13/3/2007	ACK	621170	10000
33	21/3/2007	ACK	621172	50000
34	010207	Raju		20000
35	020207	Rajan	468045	6000
36	050207	Rajan	496733	20000
37	070207	Rajan	496743	30000
38	100207	Rajan	496753	40000
39	14/2/2007	Rajan	496760	40000
40	16/2/2007	Rajan	496762	16000
41	030107	CAM	427024	60000
42	060107	Rajan	468005	10000
43	120107	Rajan	468004	50000
44		Rajan	66207	15000
45			800199	5000
46	29/8/2007	Rajan	830600	29000
47	29/8/2007			29000
48	31/8/2007		6211281	29000
49			510016	31000
50		M.S	800197	5000
51	25/6/2007	ACK	694577	50000
52		KS.Prabakar		10000
53			680956	15000
54		ACK	680971	75000

19. In the written statement, with respect to the above specific allegation in the plaint, the Defendants had merely stated that the accounts and the financial statements had been placed in the General Body Meeting held in the year 2008 and since the Plaintiff had contested the election and lost the same to the 4th Defendant, he had raised all these allegations. In fact, there is no specific denial with respect to the details given above. When there is no such denial, this court can legitimately presume that there is an implied admission on the part of the Defendants. This would further lead to a conclusion that the 4th Defendant had actually diverted the funds in his name and in the name of his associates.

20. Even though the 4th Defendant had not challenged the allegations in the plaint, this court has to examine whether the actions of the plaintiff in seeking the details of the accounts invite a cause to terminate him from the membership of the 1st Defendant Association. It has to be further determined that whether proper procedure was adopted while effecting such termination. It is seen that as per the clauses of the bye-laws of the 1st Defendant Association, the Annual General Body Meeting must be held in every August of every successive year. Elections must be held every year. However, the Annual General Body Meeting had not been held consistently from

2004-2007 and the report was filed only in 2007. Moreover, the audited report was not filed either before the Income Tax Department or the Labour Department in E-Form. It is also evident that the Group Insurance amount premiums were not paid to the LIC of India. In the plaint, it had been also mentioned that the donation of Rs.24 lakhs given by Fugli Films had been transferred to the 1st Defendant Association and then diverted by the 4th Defendant for personal use. It is evident from the documents filed by the Plaintiff, particularly, the information received in Ex.P24, that the life insurance premiums to the LIC of India were received only upto December 2005 and no premiums were paid between the years 2005 to 2010.

21. It is also seen from Ex.P25 that the 3rd Defendant Association had not been registered in the Office of the Registrar of Societies, Chennai South. It is further seen from Ex.P26 that the audited accounts have not been submitted by SICA after 2007 in E-Form. It is further evident from Ex.P27 that the Income Tax Department had copies of the balance sheet, income and expenditure account and receipts and payment account, only for the assessment years 2001-02 to 2005-06. Further, the accounts for further periods were not available. These issues have been raised by the Plaintiff, who is the member of the Association.

22. It is also seen from Ex.P18 that the 3rd

Defendant Association had given its registration number as 288/1995 under the Societies Act in its receipts, but this has to be contrasted with the statement in Ex.P20 that the 3rd Defendant was not at all a registered Association. Moreover, the 4th Defendant had not entered into the witness box to give evidence. The allegations were directly imputed against him. He has not chosen to grace the witness the box. It is clear that he did not appear only because he did not want to answer the legitimate questions, raising issues of financial irregularities. On the other hand, the Defendants had examined ACK.Rajan. This name strikes a chord with the averments in the plaint wherein specific details with cheque numbers have been given as amounts misappropriated, in which there is a name Rajan, repeating itself 16 times, as the person who withdrew the amounts from the 3rd Defendant Trust and yet another name with initials ACK having withdrawn the amounts on nine occasions. It is, therefore, seen that the 4th Defendant, who had not come to the witness box, has not denied the claims of the Plaintiff directly and the witness, who actually came to the witness box, was also charged with the financial irregularities as an associate of the Plaintiff.

23. During the cross examination of DW.1 on 24.8.2015, he had stated as under:-

"It is to be stated that the Association has not conducted any Annual General Meeting for

the previous financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014. I hereby admit that the Association has not conducted any General Meeting for the past seven years from 2008 to 2014. Before 2008 the Association had conducted Annual General Meeting only in the year 2002. It is to be admitted that in the past 15 years the Association has conducted the Annual General Meeting only three times i.e. 2002, 2008 and 2015. The bye-law is clear that the Annual General Meeting of the Association shall be conducted every year but the Association had not conducted the General Meetings as per the bye-laws. It is admitted that the agenda of the General Meeting would be to adopt the reports of the Audited accounts of the previous year and the report of the Auditor and also to elect the office bearers and other members of the Association."

Further, he had also stated as under:-

"The Association has got three bank accounts, namely, the first account is with the Indian Bank at T.Nagar Panagal Park Branch in the name of Southern India Cinematographer Association for which the account number is not known to me. The second bank account stands in the name of South Indian Cinematographer Association in Indian Bank at T.Nagar Panagal Park Branch for which also the account number is not known to me. The third account stands in the name of Cam Benefit Trust, third Defendant herein for which also the account number is not known to me."

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It is, therefore, seen that the 1st Defendant has two accounts, namely, one in the name of Southern India Cinematographer Association and another in the name of South India Cinematographer Association, which itself shows that the financial affairs of the 1st Defendant Association require probe and it is just this which the

Plaintiff has done. Moreover, during the further cross examination, DW.1 has stated as follows:-

"I hereby state that the minutes books for the D1 and D3 are not available in the office of the D1 and D3 respectively as they have been taken away by some members of the Association during the absence of the Executive Committee Members."

This also means that the minutes books have also been taken away. It is, therefore, seen that the accounts of the Defendants 1 and 3 were not in proper form. Hence, the reasons given by the Defendants for removing the Plaintiff from the membership of the 1st Defendant Association cannot be sustained.

24. It is further seen that the Plaintiff had raised questions by Ex.P5, but answers were not given by Ex.P6. The Plaintiff was constrained to give police complaints Ex.P11 and Ex.P12. It is further seen that the 2nd Defendant had issued a non cooperation letter even before the 1st Defendant took steps to remove the Plaintiff. It is seen from the bye-laws that a member has to be issued with a show cause notice, explanation has to be received and opportunity has to be granted. He could be removed by the General Body alone and not by the Executive Committee. Moreover, such a meeting has to be called with 7 days prior notice to all the members with a specific agenda that there will be an enquiry against a particular

member. It is also to be seen that the said resolution has to be passed with 2/3rd majority. Moreover, the minutes of this meeting has to be recorded and communicated to the Labour Office. In this case, none of the above steps were taken. A show cause notice is said to have been issued dated 6.7.2010. It has been stated that a false propaganda was being initiated by the Plaintiff without giving the details as to the nature of the false propaganda. It is not known under what authority the Dispute Committee was formed. The letter dated 27.7.2010 issued by the 2nd Defendant, directing non cooperation by all the associated members as regards the Plaintiff has been issued without offering any opportunity to the Plaintiff to give explanation. The letter dated 27.7.2010, which had been marked as Ex.P15, refers to a letter dated 21.7.2010 given by the 1st Defendant, which has not been produced before this court. Moreover, it has been stated that the 1st Defendant requested for action against the Plaintiff. The General Body Meeting, in which the Plaintiff was terminated, was held on 01.08.2010. But, even before the General Body Meeting was held, the 1st Defendant had already decided to take action against the Plaintiff by issuing the letter dated 21.7.2010 and the 2nd Defendant, by Ex.P15, had already caused economic death of the Plaintiff, effectively making him a persona non grata from

all the Associations coming under it. It is also to be noted that the proceedings of the Dispute committee had also not been produced.

25. The Plaintiff had been terminated on 1.8.2010, but the minutes have not been produced. They were affixed in the Notice Board only on 4.8.2010. In this connection, DW.1, during his cross examination, had stated as follows:-

"I hereby admit that from the recordings of the minutes books since 2008 to 2010 the allegations against the Plaintiff would have been recorded by the Executive Committee."

Moreover, he had further admitted in his cross examination as follows:-

"Hence, the second Defendant passed a resolution against the Plaintiff and circulated to other Associations not to cooperate with the Plaintiff as he gave a false complaint. The resolution of the second Defendant constituting the Dispute Committee and resolution of the Dispute Committee initiating action against the Plaintiff by issuing non cooperation letter dated 26.7.2010, have not been filed before this Hon'ble Court."

He further stated as follows:-

"I have not filed any document related to the bank account maintained separately for the Group Insurance and their functions. I deny the suggestion that the group insurance amount was misappropriated by the first and fourth Defendants. I admit that I have not filed any document establishing the proper utilisation of funds given by Fuji Film Corporation for the welfare of the members as alleged by the Plaintiff. I hereby state that I have not

furnished the 16 documents mentioned in the written statement."

It is, therefore, clear that not only were the reasons attributed for removing the Plaintiff, not acceptable by this court, but also the procedure adopted in terminating the Plaintiff is also not acceptable by this court. Therefore, this court holds that the Plaintiff has been illegally terminated from the 1st Defendant Association and moreover, the 2nd Defendant Association, even before the General Body Meeting of the 1st Defendant Association, which was actually held on 1.8.2010, by issuing non cooperation letter dated 27.7.2010 Ex.P15, has also violated the principles of natural justice and directly affected the rights of the Plaintiff to continue his profession as a Cinematographer. Therefore, this court holds that the 1st Defendant has not complied with its by-laws in removing the Plaintiff from his primary membership and though the 1st and 2nd Defendants were duty bound to produce the accounts to the Plaintiff, the accounts were not available in the Office of the 1st Defendant for perusal of its members and therefore, this court holds that the Plaintiff is entitled to question the audited accounts placed before the General Body and approved by the General Body Meeting held on 26.10.2008. Accordingly, the issues

(1) to (3) are answered in favour of the Plaintiff.

26. **Issue (4) :-** It is clear that the Plaintiff is a member of the 1st Defendant Association. He has produced his Identity Card and receipts for the payment of subscription. He has been illegally removed without any justifiable cause from the 1st Defendant Association. Even prior to the 1st Defendant removing him, the 2nd Defendant Association had issued a non cooperation letter dated 27.7.2010 Ex.P15. The said letter is extracted as below:-

“சம்மேளத்தில் இணைக்கப்பட்ட சங்கங்களுக்கு எல்லா சங்கங்களுக்கும் வேறு பல அமைப்புகளுக்கும் திரு.ஜம்புநாதன், திரு.பீர் உசேன் ஆகிய இருவர் SICA மீது புகார் கடிதம் கொடுத்திருந்தனர்.

21.07.2010 அன்று SICA கொடுத்த கடிதத்தின் பேரில் பெப்சி டிஸ்பியூட் கமிட்டி, அச்சங்கத்துக்கு சென்று விசாரணை மேற்கொண்டது. அவர்களின் விசாரணை அறிக்கையில் குற்றச்சாட்டுகள் பொய்யானவை என்றும் அதற்கு எந்த ஆதாரமும் இல்லை என்றும் அந்த சங்கம் சரியாக நடப்பதாகவும் குற்றச் சாட்டுகள் தனிப்பட்ட விரோதம் காரணமாக கமத்தப்பட்டவை என்றும் கூறப்பட்டிருக்கிறது. மேலும் இதைப்போல் சங்கங்களுக்கு விரோதமாக செயல்படுபவர்கள் மீது கடுமையான நடவடிக்கை எடுத்து மற்ற சங்கங்களுக்குள் இந்நிலை ஏற்படாமல் பெப்சி காப்பாற்ற வேண்டும் எனவும் வேண்டுகோள் வைக்கப்பட்டது.

25.07.2010 அன்று SICA திரு.M.ஜம்புநாதன் (உ.எண்.730) திரு.K.S.பீர் உசேன் (உ.எண்.1039) ஆகியோர் மீது நடவடிக்கை எடுத்து அதனை அமல் படுத்த கேட்டுக் கொண்டது. 26.07.2010 அன்று "பெப்சி" பொதுக்குழுக் கூட்டப்பட்டது. டிஸ்பியூட் கமிட்டியின் தீர்மானத்தின் படியும் SICA செயற்குழுவின் முடிவை ஆமோதித்தும் "பெப்சி" பொதுக்குழு ஏகமனதாக மேற்கண்ட இருவருக்கும் தொழில் ஒத்துழைப்பு இன்று முதல் கொடுப்பதில்லையென (Non Cooperation) ஏகமனதாக முடிவெடுத்தது. 23 சங்கங்களுக்கும் இ தனை இன்று முதல் செயல்படுத்தும் படி கேட்டுக் கொள்ளப்படுகிறது."

This letter had effectively damaged the reputation of the Plaintiff and it has directly affected his livelihood. The result of this letter is that the none of the 22 Associations associated with the 2nd Defendant Association can avail the services of the Plaintiff as a Cinematographer. The Plaintiff has practically suffered a terminal financial sickness from which he could never recover. He only knows how to work as a Cinematographer and that work has been effectively barred by the 2nd Defendant. It is also brought to the notice of this court by the 2nd Defendant that before issuing this letter, they had not issued notice to the Plaintiff and that they have not given him any opportunity to show cause against this drastic letter. The Plaintiff was simply thrown out by the 1st Defendant Association without any regard for basic human dignity and the 2nd Defendant Association, still worse, has issued directions that no Association can utilise the services of the Plaintiff. Therefore, this court holds that the Plaintiff is certainly entitled for damages. The Plaintiff has claimed a sum of Rs.5 lakhs and there being no evidence on the side of the Defendants that he is not entitled for damages, this court holds that the Plaintiff is entitled for the entire damages as claimed by him to a sum of Rs.5 lakhs on account of the loss of business and livelihood and mental agony and this court

directs that this amount is recoverable from the Defendants 1 and 2. Accordingly, issue (4) is answered in favour of the Plaintiff.

27. With respect to the reliefs (e) and (f), it is stated by the learned counsel for the Defendants that in the recent elections conducted for the Defendants 1 and 2 Associations, the audited accounts had been submitted and consequently, these prayers will not survive.

28. In the result, this civil suit is decreed in respect of the reliefs (a), (b), (c), (d) and (g) with costs and this civil suit is dismissed in respect of the reliefs (e) and (f).

sd/.C.V.K.J
01.12.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/06.04.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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