

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

C.R.P.NO.4728 OF 2015

ORDER

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Heard Mr. Adrain D.Rozario and Dr. Ch.Adams learned counsel for the petitioners and Mr. P.Venugopal and Mr. K.Ramakrishna Reddi, learned Senior Counsel and Mr. K.Vivek Reddy, Mr. Pratik Reddy and Mr.Nagaraju Naguru for the contesting respondents 1 to 3. No representation for other respondents.

2. The petitioners herein are defendants 1, 2, 5, 6 and 9 in the suit. The respondents 1 to 3 herein are the plaintiffs and respondents 4, 5, 6 and 7 are defendants 3,4, 7 and 8 in the suit.

3. For the sake of convenience, the parties would be referred to as per their array in the original suit.

4. The matter pertains to Church of South India and it is officially represented by its Moderator, who is elected by 2/3rd majority of the members of the Synod, which is the Apex body in the governance of the church. In that process, the 9th defendant is the present Moderator. The facts would disclose that the then Moderator – 3rd defendant of Church of South India (CSI), in exercise of the jurisdiction under Rule 2(e) of the Constitution of the Church of South India (CSI), appointed ten persons as additional members of the Synod, and announced the appointment of additional members, including defendants 5 and 6 in the 34th session of the Synod held between the 11th to 14th of January 2014 at Vijayawada. Among the said additional members, defendants 5 and 6 got elected as the General Secretary and Treasurer, respectively in the said session of the Synod for the period 2014- 2016. The plaintiffs claiming to have common interest along with other members of the CSI Synod, filed the suit in O.S.No.1060/2015 on the file of Principal Senior Civil Judge's Court, Vijayawada, alleging *inter alia* that defendants 5 and 6 are holding their office unlawfully and unconstitutionally, as grave violations were

committed in the election process at the 34th Sessions of the Synod held at Vijayawada from the 11th to 14th of January, 2014. Therefore, sought the following reliefs:

1. To pass a decree declaring the appointment of defendants 5 and 6 as additional members of the CSI Synod at 34th session of the CSI Synod as null and void being violative of constitution of Church of South India Synod,
2. To pass a decree declaring the election of 5th 6th and 9th defendants as General Secretary, Treasurer and Moderator respectively of the CSI Synod for the period 2014-2016 being conspirators and perpetrators of fraud and corrupt practices at the election held at the 34th Session of the CSI Synod as null and void.
3. To grant permanent injunction restraining the defendants Nos. 5, 6 and 9 from functioning as General Secretary, Treasurer and Moderator of CSI Synod during the period 2014-16 including communications given by them pertaining to CSI constitutional amendments and bye-laws,
4. To grant mandatory injunction directing the 2nd defendant to appoint the 7th and 8th defendant as ad hoc General Secretary and Treasurer respectively of the CSI Synod for the period 2014-2016 being qualified persons to be appointed as such,
5. To award the costs of the suit and
6. To pass such other order/orders as this Hon'ble High Court deems fit and proper in the circumstances of the case to render justice.

5. Pending the suit, the plaintiffs filed interlocutory application in

I.A.No.1186/2015 in O.S.No.1060/2015, seeking the following relief:

“to grant ad interim temporary ex parte injunction restraining the respondents 5, 6 and 9 (defendants 5, 6 and 9) from functioning as General Secretary, Treasurer and Moderator of CSI Synod during the period 2014-16 including communications given by them pertaining to CSI Constitutional amendments and bye-laws till disposal of the suit in the interest of justice.”

6. By order and decree dated 27.10.2015, the trial court granted the ad interim temporary ex parte injunction as sought for. Aggrieved by the same, the defendants 1, 2, 5, 6 and 9 filed the present revision. This court while ordering notice before admission on 5.11.2015 in the revision, passed the following interim order in CRP.MP.No.6224/2015 in CRP.No.4728/2015:

The petitioners herein are defendants 1, 2, 5, 6 and 9 in the suit filed by the plaintiffs, who are respondents 1 to 3 herein, in O.S.No.1060 of 2015 on the file of Principal Senior Civil Judge at Vijayawada filed for declaring inter alia the election of defendants 5, 6 and 9 as General Secretary, treasurer and moderator, as null and void and to grant permanent injunction restraining them from functioning as

General Secretary, Treasurer and Moderator respectively of CSI Synod during the period 2014 to 2016. They filed an interlocutory application in I.A.No.1186 of 2015 in O.S.No.1060 of 2015 to grant ad interim temporary ex parte injunction restraining them from functioning in the said capacity including communications given by them pertaining to CSI Constitutional amendments and bye-laws till the disposal of the suit.

The trial court by docket order dated 27.10.2015 granted ex party ad interim injunction and the relevant portion of the order reads as under:

“When it is seriously contended by the plaintiffs and also 3rd party affidavits of the regular members filed along with this petition also vehemently showing that 5th, 6th and 9th respondents herein are not at all members of the Society and if they were allowed to do so, the very purpose of filing of this suit will be defeated.

Hence, ad interim injunction is granted and respondents 5, 6 and 9 are restrained from functioning as General Secretary, Treasurer and Moderator of CSI Synod during the period 2014-16 including the compuncions given by them pertaining to the CSI constitutional amendment and bye laws till 16.11.2015.”

Aggrieved by the above ad interim injunction the defendants 1, 2, 5, 6 and 9 filed the present revision and sought this matter to be taken up by way of lunch motion and the same was granted on 4.11.2015 and taken up today i.e., 5.11.2015 and the name of the caveator is printed in the cause list.

The learned counsel appearing for the petitioner submitted that the elections were held in January, 2014 and the above said defendants/petitioners were elected and functioning as General Secretary, Treasurer and Moderator since then and all of a sudden, the plaintiffs filed the suit and without any notice to them, the trial court granted *ex parte* ad interim injunction. He submitted that because of the impugned order, the administration of the 2nd petitioner/defendant has come to a stand still. In the grounds of revision, he pointed out that the very same election of defendants 5 and 6 has been challenged by defendants 7 and 8 in a suit in C.S.No.64 of 2014 before the High Court of Madras and in the said suit, filed an interlocutory application in O.A.No.73/2014 in C.S.No.64/2014 for an interim injunction to restrain the defendants 5 and 6 from functioning as General Secretary and Treasurer respectively of the CSI Synod for the period of 2014-2016 and the same has been declined by the High Court of Madras and another application in O.A.No.396/2015 was filed against the Special Synod on the 8th and 9th of April, 2015 with reference to the bye-laws/constitutional amendments and bifurcation as proposed to be made and the same was also declined by the High Court of Madras by a detailed order dated 6.4.2015. Suppressing these facts, the present suit is filed and based solely on the contentions of the plaintiffs and third party affidavits, without notice and opportunity to the present petitioners/defendants, the trial court granted ad interim injunction, without recording its opinion that the object of granting the injunction

would be defeated by delay, as required under the proviso to Order 39, Rule 3 of CPC. With these contentions inter alia, the learned counsel for the petitioner sought to grant interim suspension of the impugned order.

Sri Nagaraju Naguru, learned counsel for the respondents submitted that though they filed caveat no papers have been served on them and that some time may be granted for filing counter.

The facts on record would reveal that the elections were conducted during January, 2014 and the present petitioners, who are defendants 5, 6 and 9 are functioning since then. Further, in the impugned order, no satisfactory reasons have been recorded for granting ad interim injunction as required under the proviso to Order 39, Rule 3 of CPC. In these circumstances, prima facie I am of the considered view, that the impugned order requires to be suspended and the respondents may be granted time to file counter affidavit.

There shall be interim suspension as prayed for.

7. Aggrieved by the said order, the contesting respondents in the revision, filed appeal before the Hon'ble Supreme Court of India in SLP ©.No.32319/2015. By order dated 11.12.2015, the Apex Court remitted the matter this court and the said order reads as under:

“Application seeking exemption from filing certified copies of the impugned judgment are allowed.

Having heard learned senior counsel, Mr. Gopal Subramaniam, Dr. Abhishek Manu Singhvi, Mr. K.K.Venugopal, Mr. P.Chidambaram, Mr. Salman Khurshid and Mr. Gopal Jain appearing for the parties, we find that as against an ex parte interim order granted by the trial court, the High Court has chosen to entertain the revision, passed an interim order suspending the order passed by the trial Court and also posted the case for further hearing. Therefore, we are not inclined to entertain this Special Leave Petition. We want the High Court itself to examine the whole issue and dispose of the revision early preferably before 11th January, 2016. We specifically mention the date as 11th January, 2016, inasmuch as the main grievance of the petitioners before us is with reference to certain amendments stated to have been carried out in the Bye-Laws during the pendency of the ex parte order granted by the trial court and the impugned order passed by the High Court. It is also stated that such amendments to the Bye-Laws will take effect only from 11th January, 2016 and not before. In fact, in the course of the submissions, Mr. Gopal Subramaniam, learned senior counsel for the petitioner expressed that insofar as that part of the order of the High Court by which suspension of the order of the trial court which granted interim injunction restraining respondent Nos. 5, 6 and 9 before him from functioning as General Secretary, Chairman and Moderator of C.S.I., Krishna Godavari Diocese during the period 2014-2016, the petitioners are not aggrieved and are prepared to agitate the issue before High Court and work out their remedy. Their grievance is in respect of the suspension ordered by the High Court in regard to the latter part of its order which specifically included the injunction to operate against communications given by the respondents pertaining to the C.S.I. constitutional amendment and Bye-Laws till 16th

November, 2015. Insofar as the said part of the order is concerned, it is now revealed that certain amendments have already been brought into effect to the Bye-Laws. In the circumstances, it is stated that even while maintaining the impugned order to remain and as per our request to the High Court, the main Civil Revision Petition is to be disposed of early i.e. on or before 11th January, 2016, any such amendments introduced subsequent to the order of the trial court shall not be acted upon till 11th January, 2016. We fully appreciate the said stand of the petitioners. We also make it clear that if for any reason the High Court is not able to dispose of the Civil Revision Petition before 11th January, 2016, until such time final orders are passed in the Civil Revision Petition the said amendments shall not be acted upon. It is imperative that the petitioners and the respondents should cooperate with the High Court in the early disposal of the Revision Petition.

In order to enable the High Court to fix any date for hearing of the revision, let the Revision be listed for hearing on 15th December, 2015.

Parties are directed to appear before the High Court and seek for appropriate date for hearing of the Revision and enable the High Court to proceed with the same without asking for any adjournment on the date of the said hearing.

The Special Leave Petitions are disposed of on the above terms.”

8. After remand, the matter was posted on 15.12.2015 and after undergoing two adjournments on 21.12.2015 and 29.12.2015, on 31.12.2015 the respective learned counsel concluded their arguments and the matter was reserved for orders.

9. On behalf of the petitioners, additional affidavit is filed. The learned counsel for the petitioner, reiterated the averments made in the said additional affidavit and submitted that the 3rd defendant who was the then Moderator, in exercise of jurisdiction under Rule 2(e) of the Constitution of the Church of South India (CSI), appointed ten additional members of the Synod with the consultation of other officers of the Synod and the same was announced in the 34th sessions of the Synod held between 11th to 14th of January, 2014 at Vijayawada and the additional members including the defendants 5 and 6 participated and got elected as General Secretary and Treasurer respectively of the Synod. They were functioning as such since then and in October, 2015 i.e., after a period of about 21 months, the present plaintiffs, filed the suit and sought the ad interim temporary ex parte injunction and the trial court without

giving opportunity, passed the impugned order. The learned counsel stated that there are other additional members in the Synod and they were not impleaded and the plaintiff No.1 was removed as member of the Church at the 32nd Sessions of the Diocesan Council in 2013, the 2nd plaintiff is not a member of the CSI Synod and the 3rd plaintiff is not a member of Vijayawada dioceses. The learned counsel further contended that the defendants 7 and 8 challenged the election of defendants 5 and 6 before the High Court of Madras in C.S.No.64/2014 and also filed an interlocutory application in O.A.No.73/2014 for an interim injunction restraining the defendants 5 and 6 herein from functioning as General Secretary and Treasurer respectively of the CSI Synod for the period 2014-16 and after contest, no injunction was granted and the suit is pending. The said defendants also filed another interlocutory application in O.A.No.396/2015 against the Special Synod on the 8th and 9th of April, 2015 with reference to the bye-laws / constitutional amendments and bifurcation as proposed to be made and by a detailed order dated 6.4.2015, the High Court of Madras declined to grant the relief sought therein, by categorically holding that as long as they are holding the office, the plaintiffs (defendants 7 and 8) cannot seek the present interim relief restraining the defendants from conducting / holding special Synod meetings fixed on 8.4.2015 and 9.4.2015 at 9.30 a.m. The learned counsel submitted that by following the procedure laid down under Rule 2 of Chapter XIII of the CSI, the amendments were presented as early as in the meeting of the Synod Executive Committee held on 12 and 13th of March 2015 at Chennai and the necessary resolution was passed vide EC:2015-08 as contemplated in Rules 2(a) and 3 of Chapter XIII of the CSI Constitution and thereafter a special Synod Meeting was convened on 8.4.2015 at Chennai in view of the resolution for the amendments of the said constitution having to be passed by two-thirds majority of the Synod and the bye-laws having to be approved by the Synod and accordingly they were approved in terms of Rule 2(b) of the said chapter and the 3rd plaintiff and the defendants 7 and 8 participated and never

objected and they came into effect from 8.4.2015 and the resolution so passed was to be ratified by not less than two –thirds of the Diocesan Councils of the Church under rule 2(c) of the same chapter. Therefore, the contention of the petitioners is that there is no question of Synod making amendments to the CSI Constitution on 8.4.2015 as the same could be made only after the ratification by the required Diocesan Councils. The learned counsel further stated that the 3rd plaintiff filed a suit in C.S.No.396/2015 on the file of High Court of Madras in respect of the proposed amendments and the bye-laws and filed interlocutory applications in O.A.Nos.511 and 512 of 2015 for interim injunctions with reference to the bye-laws and amendments respectively and no interim injunction was granted and the High court observed that any appointment made during the interregnum, is subject to the result of the said applications and that another application was filed by the defendants therein to reject the plaint and the same is also pending. Suppressing these facts, the plaintiffs filed the present suit. It is further stated that the CSI consists of 24 dioceses and 16 Diocesan Councils, which constitute 2/3rd majority, as envisaged under Chapter XIII of CSI Constitution, met on different dates. In the additional affidavit filed by the petitioners, the dates on which the various dioceses meet on different dates was mentioned. The required majority of the dioceses ratified the amendments as on 12.11.2015 without violating the impugned order in any manner whatsoever and ultimately the Synod working Committee which met on 16.11.2015 examined the ratifications and authorized the General Secretary to declare that the amendments shall come into force from the date of such communications as set out in WC:2015-15 and the General Secretary issued the necessary communication on the same date, signifying the fact of the amendments coming into force from such date. The Synod working committee also discussed the implementation of the amended constitution as to the term and directed that such amendments shall extend the term of all those bodies which are in force and having not completed three years as on the date of the amendments coming into force. He submitted that this constitutes the law of the church

and includes the present Synod whose term shall stand extended to January, 2017 by virtue of the said amendments. The learned counsel further contended that there is no challenge to the bye-laws and the proposed constitutional amendments as such, but the plaintiffs have collaterally sought for an injunction in connection therewith and they are not entitled to the same in any event, especially when the alleged cause of action for the suit wholly arose at Chennai. The plaintiffs have not filed the bye-laws or amendments and have misquoted the amendments actually made by the Synod for reasons best known to them. He stated that the plaintiffs must aver clearly facts necessary to enable them to obtain a decree and must produce documents under Order VII, Rule 14 of the CPC, on which the cause of action is based. And, in the event of the plaintiffs failing to do so, the plaint is liable to be rejected according to the ratio laid down by the Apex Court in CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL CHARITABLE SOCIETY vs. PONNIAMMAM EDUCATIONAL TRUST^[1]. It is further stated that either the impugned election or even the bye-laws and the proposed constitutional amendments, each and every activity of the institutional defendants represent the collective decision or wisdom of the majority in tune with the doctrine of internal management and not those exclusively of the defendants 5, 6 and 9, as made to appear in the pleadings. The right to form an association is recognized as a fundamental right under Article 19(1)(c) of the Constitution of India and the impugned bye-laws and the amendments are in furtherance of such right. In fact, the individual right of any member gets submerged in the collective right of the church and the plaintiffs cannot have any grievance as individual members. A member of the church has no independent right qua the church and it is the church that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the CSI constitution and the bye-laws as he has his right under the same and is subject to its operation. He stated that as per the plaint averments, the plaintiffs have no dispute over the Synod following the prescribed procedure for the amendments/bye-laws and the

civil courts will not have jurisdiction to decide on the merits thereof by a private association as held by the Hon'ble Supreme Court in the case of T.P.DAVER vs. LODGE VICTORIA AND OTHERS^[2]. The learned counsel further contended that the trial court has not followed the guidelines laid down by the Apex court in MORGAN STANLEY MUTUAL FUND vs. KARTICK DAS^[3] before granting ad interim ex parte temporary injunction. He stated that the impugned order is a non-speaking order and merely based on the plaint averments and the third party affidavits, the interim suspension has been granted without giving opportunity to the contesting defendants, who are working since January, 2014 and this is contrary to Order 39 Rule 3 of C.P.C. He stated that the interim injunction granted against the defendants 5, 6 and 9 restraining them from functioning as General Secretary, Treasurer and Moderator of the CSI Synod during the period 2014 – 2016 would amount to decreeing the suit even before the framing of issues and a trial in respect thereof. This would be evident from that the 3rd prayer in the suit and the prayer for interim injunction are one and the same. Therefore, the trial court is not justified in granting the same relief in an interlocutory application. In support of this contention, the learned counsel relied on the judgment of the Apex Court in SUPREME COURT BAR ASSOCIATION AND OTHERS vs. B.D.KAUSHIK^[4]. With regard to suits filed by some of the defendants before the Courts at Miryalguda and Warangal, in connection with the subject matter, as argued by the learned counsel for the contesting respondents, the learned counsel for the petitioners submitted that there are no pleadings in the plaint and as no opportunity was given to them, there was no occasion for the petitioners to controvert the contentions in this regard before the trial court. With regard to maintainability, the learned counsel submitted that the plaintiffs had no prima facie case and the balance of convenience is with the institutional defendants 5, 6 and 9 and that irreparable loss and hardship that would be caused to them is lost sight of in the impugned order. He stated that the very suit is not maintainable and therefore, there was no question of

granting any interim relief. He contended that the impugned order is the result of the trial court exercising a jurisdiction, even presuming it was available, in a manner not permitted by law and it resulted in failure of justice or grave injustice has occasioned thereby and therefore, this court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, has to set aside the impugned order and that the parties may not be relegated to avail the appellate remedy under Order 43 or to approach the same court. In support of these contentions, the learned counsel relied on the judgments of the Apex Court in SURYA DEV RAI vs. RAM CHANDER RAI AND OTHER^[5] and SHAIL vs. MANOJ KUMAR^[6]. He submitted that the Apex also in the appeal filed by the contesting defendants in SLP © No.32319/2015 dated 11.12.2015 sought this court to examine the whole issue and dispose of the revision. Therefore, the petitioners cannot now raise the issue of jurisdiction. With these submissions, the learned counsel sought set aside the impugned order.

10. The 1st petitioner in the revision filed an additional affidavit inter alia stating that the amendments committee was appointed in the year 2006 at Mysore and that the present Moderator was in position of Deputy/Moderator and the amendments cannot be attributed to the present moderator.

11. On the other hand, the learned Senior counsel for the contesting respondents vehemently opposing the above contentions of the learned counsel for the petitioner, have taken serious objection with regard to the maintainability of the revision under Article 227 of the Constitution of India. They contended that revision under Article 227 of the Constitution of India, is not maintainable as the impugned order is an appealable order under Order 43 Rule 1 of CPC. Relying on the decisions reported in SHIV SHAKTI v. SWARAJ DEVELOPERS^[7], and GAYATRI DEVI v. SHASHI PAL SINGH^[8], they contended that the filing of the revision under Section 115 of CPC is barred since the impugned

order does not finally dispose of the suit or other proceedings. The learned Senior Counsel further relying on the judgments reported in A.VENKATASUBBIAH NAIDU v. S.CHELLAPPAN^[9], MOHD YUNUS v. MOHD BUSTAQIM^[10], SHAHABHANU v. SAVAL SAKHARAM^[11], ICICI BANK LIMITED v. V.T.PRAKASH^[12], contended that when there is an appellate remedy available, jurisdiction of the High Court under Article 227 of the Constitution of India cannot be invoked. The learned counsel further submitted that the judgment of the Apex Court in Surya Devi Rai (5 supra), relied on by the counsel for the petitioner, has been overruled by a larger bench in RADHEY SHYAM v. CHHABI NATH^[13].

The learned counsel further submitted that as a learned single Judge of this court in Shahbhanu's case (11 supra), has refused to entertain a civil revision petition under Article 227 of the Constitution of India on the ground that the interim injunction granted by the lower court is appealable under Order 43, Rule 1 of CPC, and that if this court is inclined to take a different view, the settled principle is that the revision may be referred to a Division Bench and in support of this contention, the learned counsel relied on the judgments reported in LAL SHRI BGHAWAN v. RAM CHAND^[14], MAHADEAO LAL KANODIA v. THE ADMINISTRATOR^[15], JAISRI SAHU v. RAJDEWAN DUBEY^[16], P.SUSEELA v. UNIVERSITY GRANTS COMMISSION^[17], and STATE OF A.P. v. V.C. SUBBARAYUDU^[18].

Counter affidavit is filed on behalf of respondents 1,2 and 3. The learned counsel appearing for these respondents reiterating the averments made in the counter affidavit contended that the present revision petitioners filed the revision solely on the ground that the answering respondents do not have locus standi. It is stated that the present suit is filed in a representative nature under Order 1 Rule 8 of C.P.C. and hence the personal standing of the plaintiffs stands subsumed by the interests of the members of the church, which is the larger group, represented by the plaintiffs. In such a scenario, the question of locus

standi does not arise. Without prejudice if the plaintiffs were to be non-suited for want of locus standi, the suit would not abate and would continue. Further, subsequent to the institution of the present suit, several other interested parties have filed third party affidavits either partly or completely supporting the plaintiffs/respondents. Therefore, the personal standing of the answering respondents is irrelevant. For this reason alone, the revision deserves to be dismissed in limine.

12. He further submitted that the proposed amendments to the CSI constitutional bye-laws are illegal and affect the basic structure of the CSI Constitution and bye-laws. By the said amendments the tenure of the Synod of the CSI has been increased from 2 to 3 years. By the said amendments, the retirement age of the Bishop has been increased from 65 to 67 years. The said amendments also drastically changed the election procedure to the Synod thereby making the Synod as an undemocratic body. By virtue of the said amendments, all the members of the synod will be appointed by search committee rather than being elected by the members of the Synod. Therefore, the proposed amendments to the CSI Constitution and bye-laws were challenged in the present suit and also in various suits filed by other members of CSI.

13. The learned counsel contended that the present suit from which the revision arises, is not only confined to the irregularities in the election, but also encompasses several other illegal acts of the petitioners herein including attempting to carry out illegal amendments to the Constitution of CSI with a view to entrenching their power. They submitted that lot of irregularities of the petitioners with regard to constitutional amendments and bye-laws, including actions that could amount to contempt of court have been brought to light by the answering respondents and some other persons who have filed affidavits supporting the answering respondents. It is stated that the fraudulent conduct of the respondents may be seen from their conduct pursuant to the so called passing of the resolution of the synod. The General Secretary of Synod, as respondent No.3 vide letter dated 14.4.2015 communicated to all the

Bishops heading the dioceses, falsely stating that the Synod had passed certain proposed constitutional amendments and bye-laws in its special session held on 8.4.2015 and informed that the diocesan councils were required to ratify or reject the said amendment and report the matter to the General Secretary. Three members of the Church of South India, from the Miryalguda Pastorate viz., Mr. K.Devachitham, Mr. M.Steven and Mr. S.Solomon had filed a suit being O.S.No.5/2015 on the file of VIII District Judge at Miryalaguda, Nalgonda District on 6.4.2015 seeking a perpetual injunction restraining the Church of South India from carrying out amendments to the Constitution of CSI. The plaintiffs in the said suit also filed an interlocutory application seeking temporary injunction restraining the Church of South India and its office bearers from carrying out any amendments to the constitution. By interim order dated 6.4.2015 the said court restrained the defendants therein, who are the petitioners herein from carrying out any amendments to the CSI Constitution till next date of hearing viz., 15.4.2015. On 15.4.2015, an affidavit, in response to the said interlocutory application was filed by the petitioner No.5 Moderator, on behalf of the petitioner No.1 church of South India and on behalf of himself and also on behalf of the General Secretary. The Moderator in the said affidavit, stated on oath inter alia that no constitutional amendments and bye-laws had been carried out in the Synod Council meeting on 7th and 8th of April, 2015. In addition to the counter, the petitioner No.2 CSI, Petitioner No.5, Moderator and petitioner No.3 General Secretary have filed a memo stating that the provision under Chapter 13 of the CSI Constitution is being followed without any deviation. In the said memo, it was further stated that they did not make any amendments to the CSI Constitution on 8th/9th April, 2015. Based on the said memo, the court of VIII Additional District Judge, Miryalguda on 15.4.2015 recorded the memo filed by the petitioners 2, 3 and 5 and directed that the respondents 1 to 4 therein shall follow Chapter 13 of CSI Constitution without any deviation for carrying out any amendments / alterations. The court also recorded the undertaking of petitioners 2, 3 and 5 that they did not make

any amendments on 8th/9th December. Further, the members of the CSI Church has filed a suit against the petitioners 3, 4 and 5 being O.S.No.616 of 2015. In the said suit, interlocutory application No.1100 of 2015 was filed, wherein the court issued ad-interim injunction restraining the petitioner Nos.3 to 5 herein from acting as Moderator, General Secretary and Treasurer of CSI Synod pending disposal of the suit. Despite the said order, the petitioners 3, 4 and 5 are still acting as Moderator, General Secretary and Treasurer of CSI Synod. This fact should have been disclosed to the Hon'ble Supreme Court, but the same has been suppressed. It is further stated that some other two members of the CSHI have filed a suit against the petitioner No.5 Moderator, petitioner No.3 – General Secretary of the CSI Synod in O.S.No.1176/2015 on the file of V Additional Junior Civil Judge, Warangal and in the said suit, by orders in I.A.No.2151/2015, petitioners 3 and 5 were restrained from implementing or taking any steps pursuant to the amendments / bye laws proposed or passed by CSI Synod on 8th /9th of April, 2015 till the next date. The respondent No.1 believes that the said order has been extended till 28.1.2016. Even this order has been suppressed from this court. The petitioners have not taken steps for setting aside the orders passed by the courts at Miryalguda and Warangal and hence, the same are existing as on today. It is further stated that in terms of Clause 2(iii) of Chapter XIII of the CSI Constitution, the proposition can be submitted to ratification for the Diocesan councils only after the resolution is passed by a three quarter majority of the Synod Council. No such voting having been validly conducted, the propositions could not have been referred to the diocesan councils. However, in the diocesan councils also no proper voting mechanism was followed. In many Diocesan councils the resolution was deemed ratified by the Bishops and other powerful persons without putting the proposition to vote. Notwithstanding these, the diocesan councils falsely communicated to the Synod that the proposition has been ratified. It is further stated that the 1st plaintiff in the suit is in the process of challenging his illegal removal from the membership of the church. The membership of the other two members in

the church is not even contested by the petitioners. The Synod Membership of plaintiff No.3 is not even contested by the petitioners. It is irrelevant to the present proceedings as to whether plaintiff no.3 is from Vijayawada or not. From a bare perusal of the plaint in O.S.No.1060/2015 it is evident that the jurisdiction of the courts at Vijayawada is sought not because of the residence and convenience of the parties, but because the 34th session of the Synod, during which the election impugned in the said suit was held, which is within the territorial jurisdiction of the court of the Senior Civil Judge at Vijayawada. Further, as stated in the preliminary objections, the present suit filed is in the nature of representative suit under Order 1, Rule 8 of CPC and therefore, it is submitted that the personal standing of any or all of the plaintiffs is irrelevant. With these contentions, the impugned order is sought to be sustained and the revision be dismissed.

14. Both the parties raised contentious issues, and the contesting respondents raised the issue with regard to maintainability of the revision. The case of the petitioners, inter alia, is that the Church of South India, Synod is an unregistered body and is governed by its own constitution and all the members of the CSI are bound to obey its constitution. That the amendments were carried out strictly in accordance with their own constitution under chapter XIII, Rule 2, and the suit is filed without invoking the provision under Order 1, Rule 8 of C.P.C., which is mandatory for filing a suit against an unregistered body and hence the suit itself is not maintainable and as the suit is not maintainable, interim orders cannot be passed. Further the material on record produced by both the parties discloses institution of simultaneous proceedings before the High Court of Madras, which has got original jurisdiction. The respondents also pointed out in the counter affidavit with regard to institution of the suits before the courts at Miryalguda and Warangal. But in the plaint pleadings, there are no references to these proceedings. These are all the matters which require to be considered in the suit based on the evidence to be lead by the parties. In the revision, this court is mainly

concerned with the issues viz., (1) whether the trial court is justified in granting ad interim ex parte temporary injunction based on the plaint averments and the third party affidavits, when admittedly, the elected members in 34th Sessions at Vijayawada in January, 2014, were functioning since then and (2) whether the revision under Article 227 of the Constitution of India is maintainable?

15. Order 39, Rule 3 of C.P.C. is the provision dealing with temporary injunctions and interlocutory orders and the relevant provision under Rule 3 is extracted as under for better appreciation:

3. Before granting injunction, Court to direct notice to opposite party:-- the court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant:

....

16. A reading of the above provision would make it clear that normally the courts before granting an injunction direct notice of the application to be given to the opposite party and where it appears to the court that the object of granting the injunction would be defeated by the delay and proposes to grant an injunction without giving notice of the application to the opposite party, shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay. In other words, the court is empowered to grant ex parte interim injunction by recording reasons.

17. The Apex Court in Morgan Stanley Mutual Fund vs. Kartick Das (3 supra) laid down the principles for grant of an ex parte injunction. The relevant portion is as under:

36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—

- (a) whether irreparable or serious mischief will ensue to the plaintiff;
- (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.

18. Before granting the ex parte injunction, the court has to satisfy the above principles and record reasons thereof. Coming to the impugned order, the trial court held that *"When it is seriously contended by the plaintiffs and also 3rd party affidavits of the regular members filed along with the petitioner also vehemently showing that 5th, 6th and 9th respondents hereina re not at all members of the Society and if they were allowed to do so, the very purpose of filing of this court will be defeated. Hence, ad interim injunction is gdranted and respondents 5, 6 and 9 are restrained from functioning as General Secretary, Treasurer and Moderator of CSI Synod during the period 2014-16 including the communications given by them pertaining to the CSI constitutional amendment and bye laws till 16.11.2015."* The factors laid down by the Apex Court are not discernable in the impugned order.

19. Before this court, the contention of the petitioners is that the defendants 7 and 8 herein have approached the High Court of Madras in C.S.No.64 of 2014 against the election of the defendants 5 and 6 and also filed interlocutory application in O.A.No.73 of 2014 for an interim injunction restraining them from functioning as General Secretary and Treasurer respectively of the CSI Synod for the period 2014 – 16 and they also filed other interlocutory applications in O.A.No.396 of 2015 against the Special Synod on the 8th and 9th of April, 2015 with reference to the bye-laws, constitutional amendments and bifurcation as proposed to be

made. After contest, the High court of Madras declined to grant any order and by order dated 6.4.2015, held that as long as they are holding the office, the plaintiffs cannot seek the present interim relief restraining the defenatns from conducting / holding Special Synod meetings fixed on 08.04.2015 and 09.04.2015 at 9.30 p.m. It is further stated that the 3rd plaintiff herein and another filed a suit in C.S.No.396 of 2015 on the file of the High Court of Madras challenging the proposed constitutional amendments and the bye-laws and in the said proceedings, they also filed interlocutory applications in O.A.Nos.511 and 512 of 2015 for interim injunctions with reference to the bye-laws and amendments respectively, but could not obtain any positive orders. Further, the contention of the learned counsel for the petitioners is that the petitioners have not challenged the constitutional amendments and they only sought to declaring the appoint of 5th and 6th defendants as additional members in the CSI Synod at 34th session of the CSI Synod as null and void and also the election of the 5th 6th and 9th defendants as General Secretary, Treasurer and Moderator respectively of the CSI Synod for the period 2014-16 and also to grant permanent injunction restraining them to function in the said capacity, including the communications given by them pertaining to CSI constitutional amendments and bye-laws and to grant mandatory injunction directing the 2nd defendant to appoint the 7th and 8th defendants as ad hoc General Secretary and Treasurer respectively of the CSI Synod for the period 2014-16. A reading of the suit relief would disclose that the elections in CSI Synod at 34 the session, were held in January 2014 and in October, 2015, the plaintiffs approached the court and sought ex party ad interim injunction and the trial court granted the said relief. The contention of the counsel for the petitioners is that without challenge to the proposed constitutional, consequential relief of seeking injunction of the communications given by them pertaining to CSI constitutional amendments and by-laws, ought not to have been granted and in support of this contention, the learned counsel south to rely on Super Court in SUPER CASSETTEES INDUSTRIES LTD v. MUSIC

BROADCAST (P) LTD ^[19] The further case of the petitioners is that alleged cause of action in connection with bye-laws and the proposed constitutional amendments arose at Chennai and hence, the trial court has no jurisdiction. The other aspect as stated by the counsel is that the defendants 7 and 8 already initiated proceedings at the High Court of Madras in C.S.No.64/2014 challenging the election of defendants 5 and 6 and also with reference to the bye-laws / constitutional amendments and bifurcation as proposed. But could not obtain any orders. The 3rd plaintiff also initiated similar proceedings in C.S.No.396 of 2015 on the file of the High Court of Madras, in respect of the proposed constitutional amendments and the bye-laws and also filed interlocutory applications in O.A.Nos.511 and 512 of 2015, but no interim injunction was granted. In these circumstances, whether the 3rd plaintiff is justified in filing the present suit seeking the incidental relief, which he could not obtain in the High Court of Madras is the matter requires to be considered. Further, as noted above, the defendants 7 and 8 also filed C.S.No.64/2014 challenging the election of defendants 5 and 6 and could not obtain any orders. The 3rd plaintiff who filed C.S.No.396/2015, in the present suit, is seeking appointment of the defendants 7 and 8 as ad hoc General Secretary and Treasurer respectively of the CSI Synod for the period 2014-16. These are all the issues to be considered during the trial. A reading of the plaint would disclose that they have not mentioned about the filing of the proceedings before the Courts at Miryalguda and the Warangal. The case of the petitioners is that there is no violation of the any of the interim orders. The further case of the petitioners is that the then Moderator – 3rd defendant, in exercise of his jurisdiction under Rule 2 (e) of the Constitution of the church of South India (CSI), has appointed ten additional members in the 34th Sessions of the Synold held between 11th to 14th January, 2014 at Vijayawada with ‘due consultation’ as required in Rule 2(e) of the Chapter IX of, which is in contradistinction with the term ‘due consensus’. The further case of the petitioners is that by following the procedure laid down un chapter XIII, Rule 2 and without

violation of the impugned order in any manner, the two-thirds of the diocesan councils have ratified the amendments and they have come into force with effect from 16.11.2015. In the light of these facts and circumstances, I am of the considered view, the disputed issues requires to be considered after trial based on evidence to be let in by the parties. Admittedly, the defendants 5, 6 and 9 are functioning since, 2014 and after a period of 21 months, the contesting respondents /plaintiffs approached the trial court and without notice and without recording any reasons with weighting the factors laid down by the Apex Court in Morgan Stanley's case (3 supra), passing of the impugned order, in my considered view, is not permitted by law and had resulted in failure of justice. So in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the same needs to be interfered with.

20. There is no dispute as contended by the learned counsel appearing for the petitioners that filing of the appeal under Order 43, Rule 1 of C.P.C. or approaching the same court seeking vacation of the said order, is a rule, but having regard to the exceptional circumstances appearing in the present case, where the plaintiff No.3 and defendants 7 and 8 are pursuing simultaneous litigation before different courts on the same cause of action and without mentioning the same in the plaint pleadings and where the trial court based on such pleadings and without notice to the other side, passes ex parte interim injunction restraining the contesting defendants, who are admittedly functioning in their capacity after contesting the elections, since 2014, in my considered view, this court, under supervisory jurisdiction under Article 227 of the Constitution of India, needs to interfere with the same.

21. The Apex Court in SURYA DEV RAI v. RAM CHANDER RAI (5 supra) while considering the facts therein, which are to the effect that the plaintiff therein filed a suit for permanent injunction based on title and possession and could not obtain interim injunction and also remained unsuccessful both before the trial court and before the lower appellate court and in those circumstances, invoked the writ jurisdiction under

Article 226 of the Constitution of India before the High Court, which summarily dismissed and in the appeal before the Apex court, while allowing the appeal, the Apex Court held that the power of the High Court under Articles 226 and 227 of the Constitution is always in addition to the revision jurisdiction conferred on it. The curtailment of the revisional jurisdiction of the High court under Section 115 of CPC by Amendment act 46 of 1999 does not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court, nor is the power of superintendence conferred on the High court under Article 227 of the constitution taken away or whittled down. The power exists, untrammelled by the amendments in Section 115 CPC, and is available to be exercised subject to rules of self-discipline and practice which are well settled.

22. The correctness of the law laid down in SURYA DEV RAI's case (5 supra) holding that an order of civil court was amenable to writ jurisdiction under Article 226 of the Constitution of India, was referred to a three judge bench of the Apex Court in RADHEY SHYAM v. CHHABI NATH {(2015)5 SCC 423}. The referred issue and the relevant conclusions are extracted as under for better appreciation:

“This matter has been placed before the Bench of three Judges in pursuance of an order dated 15-4-2009¹ passed by the Bench of two Hon'ble Judges to consider the correctness of the law laid down by this Court in *Surya Dev Rai v. Ram Chander Ra*² that an order of the civil court was amenable to writ jurisdiction under Article 226 of the Constitution. The reference order, inter alia, reads: (*Radhey Shyam case*¹, SCC p. 624, paras 30-33)

“30. ... Therefore, this Court unfortunately is in disagreement with the view which has been expressed in *Surya Dev Ra*² insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned.

31. Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.

32. The essential distinctions in the exercise of power between Articles 226 and 227 are well known and pointed out in *Surya Dev Ra*² and with that

we have no disagreement. But we are unable to agree with the legal proposition laid down in *Surya Dev Ra²* that judicial orders passed by a civil court can be examined and then corrected/reversed by the writ court under Article 226 in exercise of its power under a writ of certiorari. We are of the view that the aforesaid proposition laid down in *Surya Dev Ra²*, is contrary to the ratio in *Mirajkar³* and the ratio in *Mirajkar³* has not been overruled in *Rupa Ashok Hurra⁴*.

33. In view of our difference of opinion with the views expressed in *Surya Dev Ra²*, matter may be placed before His Lordship the Hon'ble the Chief Justice of India for constituting a larger Bench, to consider the correctness or otherwise of the law laid down in *Surya Dev Ra²* on the question discussed above.”

4. With reference to the observations in *Surya Dev Ra²* for not following the conclusion in *Mirajkar³*, the referring Bench inter alia observed: (*Radhey Shyam case¹*, SCC pp. 622-24, paras 25-30)

“25. In our view the appreciation of the ratio in *Mirajkar³* by the learned Judges, in *Surya Dev Ra²*, with great respect, was possibly a little erroneous and with that we cannot agree.

26. The two-Judge Bench in *Surya Dev Ra²* did not, as obviously it could not overrule the ratio in *Mirajkar³*, a Constitution Bench decision of a nine-Judge Bench. But the learned Judges justified their different view in *Surya Dev Ra²*, inter alia on the ground that the law relating to certiorari changed both in England and in India. In support of that opinion, the learned Judges held that the statement of law in *Halsbury*, on which the ratio in *Mirajkar³* is based, has been changed and in support of that quoted paras 103 and 109 from *Halsbury's Laws of England*, 4th Edn. (Reissue), Vol. 1(1). Those paras are set out below:

‘103. *The prerogative remedies of certiorari, prohibition and mandamus: historical development.*—Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court into the King's Bench for review or to remove indictments for trial in that court; mandamus was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs....

* * *

109. *The nature of certiorari and prohibition.*—Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities.’

The aforesaid paragraphs are based on general principles which are older

than the time when *Mirajkar*³ was decided are still good. Those principles nowhere indicate that judgments of an inferior civil court of plenary jurisdiction are amenable to correction by a writ of certiorari. In any event, change of law in England cannot dilute the binding nature of the ratio in *Mirajkar*³ and which has not been overruled and is holding the field for decades.

27. It is clear from the law laid down in *Mirajkar*³ in para 63 that a distinction has been made between judicial orders of inferior courts of civil jurisdiction and orders of inferior tribunals or court which are not civil courts and which cannot pass judicial orders. Therefore, judicial orders passed by civil courts of plenary jurisdiction stand on a different footing in view of the law pronounced in para 63 in *Mirajkar*³. The passage in the subsequent edition of *Halsbury* (4th Edn.) which has been quoted in *Surya Dev Ra*² does not show at all that there has been any change in law on the points in issue pointed out above.

28. The learned Judges in *Surya Dev Ra*² stated in SCC para 18, p. 687 of the Report that the decision rendered in *Mirajkar*³ was considered by the Constitution Bench in *Rupa Ashok Hurra v. Ashok Hurra*⁴ and wherein the learned Judges took a different view and in support of that, the following para from *Rupa Ashok Hurra*⁴ has been quoted: (*Surya Dev Rai case*², SCC pp. 687-88, para 18)

‘(i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by a superior court to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can the writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme.’

29. We are constrained to point out again that in *Rupa Ashok Hurra*⁴ the Constitution Bench did not take any view which is contrary to the views expressed in *Mirajkar*³. On the other hand, the ratio in *Mirajkar*³ was referred to with respect and was relied on in *Rupa Ashok Hurra*⁴. *Mirajkar*³ was referred to in SCC para 8, p. 399 and again in SCC para 11 on p. 402 and again in SCC para 59, p. 418 and also in SCC para 60, p. 419 of *Rupa Ashok Hurra*⁴. Nowhere even any whisper of a divergence from the ratio in *Mirajkar*³ was expressed. Rather passages from *Mirajkar*³ have been quoted with approval.

30. In fact the question which was referred to the Constitution Bench in *Rupa Ashok Hurra*⁴ is quoted in para 1 of the judgment and it is clear from the perusal of the said paragraph that the question for consideration in *Rupa Ashok Hurra*⁴ was totally different. Therefore, this Court unfortunately is in disagreement with the view which has been expressed in *Surya Dev Ra*² insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned.”

10. In *T.C. Basappa v. T. Nagappa*⁹, question before this Court was as to the scope of jurisdiction under Article 226 in dealing with a writ of certiorari against the order of the Election Tribunal. This Court considered the question in the background of principles followed by the superior courts in England which generally formed the basis of decisions of the Indian courts. This Court held that while broad and fundamental norms regulating exercise of writ jurisdiction had to be kept in mind, it was not necessary for Indian courts to look back to the early history or procedural technicalities of the writ jurisdiction in England in view of express constitutional provisions. Certiorari was meant to supervise “judicial acts” which included quasi-judicial functions of administrative bodies. The Court issuing such writ quashed patently erroneous and without jurisdiction order but the Court did not review the evidence as an appellate court nor substituted its own finding for that of the inferior tribunal. Since the said judgment is followed in all leading judgments, the relevant observations therein may be extracted: (*T.C. Basappa case*⁹, AIR pp. 443-44, paras 5-11)

“5. The principles upon which the superior courts in England interfere by issuing writs of ‘certiorari’ are fairly well known and they have generally formed the basis of decisions in our Indian courts. It is true that there is lack of uniformity even in the pronouncements of English Judges, with regard to the grounds upon which a writ, or, as it is now said, an order of ‘certiorari’, could issue, but such differences of opinion are unavoidable in Judge-made law which has developed through a long course of years.

As is well known, the issue of the prerogative writs, within which ‘certiorari’ is included, had their origin in England in the King’s prerogative power of superintendence over the due observance of law by his officials and tribunals. The writ of ‘certiorari’ is so named because in its original form it required that the King should be ‘certified of’ the proceedings to be investigated and the object was to secure by the authority of a superior court, that the jurisdiction of the inferior tribunal should be properly exercised, vide *Ryots of Garabandho v. Zemindar of Parlakimed*¹⁰. These principles were transplanted to other parts of the King’s dominions.

In India, during the British days, the three chartered High Courts of Calcutta, Bombay and Madras were alone competent to issue writs and that too within specified limits and the power was not exercisable by the other High Courts at all. ‘In that situation’ as this Court observed in *Election Commission v. Saka Venkata Subba Rao*¹¹: (AIR p. 212, para 6)

‘6. ... the makers of the Constitution having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs, which the courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States’ sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc. ‘for any other purpose’ being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King’s Bench in England.’

6. The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the

nature of 'habeas corpus, mandamus, quo warranto, prohibition and certiorari' as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of 'certiorari' in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

7. One of the fundamental principles in regard to the issuing of a writ of 'certiorari', is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression 'judicial acts' includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin, L.J. thus summed up the law on this point in *R. v. Electricity Commissioners*¹²: (KB p. 205)

'... Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.'

The second essential feature of a writ of 'certiorari' is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of 'certiorari' the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person, vide per Lord Cairns in *Walsall Overseers v. London and North Western Railway Co.*¹³, AC at p. 39.

8. The supervision of the superior court exercised through writs of 'certiorari' goes on two points, as has been expressed by Lord Sumner in *R. v. Nat Bell Liquors Ltd.*¹⁴, AC at p. 156. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of 'certiorari' could be demanded. In fact there is little difficulty in the enunciation of the principles; the difficulty really arises in applying the principles to the facts of a particular case.

9. 'Certiorari' may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances, vide *Halsbury*, 2 Edn., Vol IX, p. 880. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well

settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess, vide *Bunbury v. Fuller*¹⁵; *R. v. Income Tax Special Purposes Commissioners*¹⁶.

10. A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of 'certiorari' may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of 'certiorari' but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision.

The essential features of the remedy by way of 'certiorari' have been stated with remarkable brevity and clearness by Morris, L.J. in the recent case of *R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw*¹⁷. The Lord Justice says: (KB p. 357)

'It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction when shown.'

11. In dealing with the powers of the High Court under Article 226 of the Constitution, this Court has expressed itself in almost similar terms, vide *G. Veerappa Pillai v. Raman & Raman Ltd.*¹⁸ and said: (AIR pp. 195-96, para 20)

'20. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.'

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of 'certiorari' under Article 226 of the Constitution."

11. It is necessary to clarify that the expression "judicial acts" is not meant to refer to judicial orders of civil courts as the matter before this Court arose out of the order of the Election Tribunal and no direct decision of this Court, except *Surya Dev Ra²*, has been brought to our notice where writ of certiorari may have been issued against an order of a judicial court. In fact, when the question as to scope of jurisdiction arose in subsequent decisions, it was clarified that orders of the judicial courts stood on different footing from the quasi-judicial orders of authorities or tribunals.

18. While the above judgments dealt with the question whether judicial order

could violate a fundamental right, it was clearly laid down that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Articles 226 and 32.

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view¹ of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

23. The quintessence of the above judgment of the Apex court is that the judicial orders of civil courts are not amenable to a writ of certiorari under Article 226 and that a writ of Mandamus does not lie against a private person not discharging any public duty. This view, which is expressed in *SURYA DEV RAI v. RAM CHANDER RAI*, (5 supra) has been overruled. But the other view expressed in *Surya Dev's* case that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction and that when a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High court may step into exercise its supervisory jurisdiction, is not found fault with and at the cost of repetition, the three bench only held that the judicial orders of civil court are not amenable to writ jurisdiction under Article 226 and the challenge to judicial orders could lie by way of statutory appeal or revision or under Article 227, but not by way of a writ under Articles 226 or 32. Therefore in view of the latest decision of the Apex Court, which was not available before the learned single Judge in *Shahabhanu's* case (11 supra), I am of the view that reliance can be placed on the latest judgment of the Apex Court and the matter need not be referred to a Division Bench, as contended by the learned senior counsel appearing for the contesting respondents.

24. Having regard to the above facts and circumstances, I am of the view that the revision under Article 227 of the Constitution of India is maintainable and the objection of the learned Senior Counsel for the

contesting respondents in this regard cannot be sustained.

25. At the culmination of arguments, the learned counsel for the contesting respondents submitted that they are not aggrieved by the order of this court in suspending the impugned order of the trial court in restraining the respondents 5, 6 and 9 from functioning as General Secretary, Treasurer and Moderator respectively of CSI Synod during the period 2014-16. With regard to constitutional amendments, they raised objections and sought to suspend the said amendments. In the preceding paragraphs, this court has found that the ad interim ex parte temporary injunction was passed without assigning any reasons as required under the proviso to Rule 3 of Order 39 of CPC and weighing the principles laid down by the Apex Court in Morgan Stanley Mutual Fund case (3 supra) and considering the facts and circumstances and particularly with regard to pursuing simultaneous litigation on the same cause action before other courts, particularly by the 3rd plaintiff before the High Court of Madras, I am of the considered view that impugned ex parte order resulted in failure of justice and hence the same is amenable to supervisory jurisdiction under Article 227 of the Constitution of India. Therefore, it is for the trial court to consider the whole issue based on evidence.

26. For the foregoing reasons, the impugned order is set aside and the revision is allowed. The matter is remitted back to the trial court to dispose of the I.A. afresh as expeditiously as possible judiciously, by giving opportunity to both the parties.

27. Miscellaneous petitions pending if any shall stand closed. No costs.

G.CHANDRAIAH,J

DATE:05.01.2016

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- [1] (2012)8 SCC 706
- [2] AIR 1963 SC 1144
- [3] (1994)4 SCC 225
- [4] (2011)13 SCC 774
- [5] (2003)6 SCC 675
- [6] (2004)4 SCC 785
- [7] (2003)6 SCC 659
- [8] (2005)5 SCC 527
- [9] (2000)7 SCC 695
- [10] (1983)4 SCC 566
- [11] 2015(4) SCC ALD 30
- [12] 2003(3) ALD 369
- [13] (2015)5 SCC 423
- [14] AIR 1965 SC 1767
- [15] AIR 1960 SC 939
- [16] (1962) SCR 558
- [17] (2015)8 SCC 129
- [18] (1998)2 SCC 516
- [19] (2012)5 SCC 488