

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .06.2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. PD Nos.1599 & 1600 of 2017

Judgment reserved on 09.06.2017	Judgment pronounced on .06.2017
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1. M/s.Coimbatore Cosmopolitan Club
Having office at 200, Race Course
Rep.by its President V.Rajendran

2. M/s.Coimbatore Cosmopolitan Club
Having office at 200, Race Course
Rep.by its Secretary
Mr.Vidhyasagar Ramda

... Petitioners /defendants
in both CRPs

Vs

A.V.Karthikeyan

... Respondent / Plaintiff
in both CRPs

Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 28.03.2017 passed in I.A.261 of 2017 & I.A.No.910 of 2012 in O.S.No.726 of 2012 on the file of Principal Sub-Judge, Coimbatore.

For Petitioners : Mrs.Chitra Sampath,
in both CRPs Senior Counsel for
Mr.T.S.Baskaran

For Respondent : Mr.ARL.Sundaresan,
in both CRPs Senior Counsel for
Mr.K.S.Karthik Raja

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal order dated 28.03.2017 passed in I.A.Nos.910 of 2012 & 261 of 2017 in O.S.No.726 of 2012 on the file of the Principal Sub-Judge, Coimbatore.

2. In both the Civil Revision Petitions, the petitioners herein are the defendants in O.S.No.726 of 2012, respondents in I.A.No.261 of 2017 and petitioners in I.A.No.910 of 2012. The respondent herein is the plaintiff in O.S.No.726 of 2012, petitioner in I.A.No.261 of 2017 and respondent in I.A No.910 of 2012 on the file of the Principal Subordinate Judge, Coimbatore.

3. The respondent filed suit for declaration that the proposed resolution mentioned in Item No.V in the notice given for 122nd Annual General Meeting of the members of the petitioner to be held on 14.09.2012 as illegal and void and for other reliefs. The respondent filed two applications in I.A.Nos.811 & 812 of 012 for interim injunction and both the applications were dismissed. CMA Nos.48 & 49 of 2012 filed by the respondent before the III Additional District Judge, Coimbatore were also dismissed on 01.06.2016. Thereafter, the

respondent filed revision before this Court as against the order passed by the III Additional District Judge, Coimbatore in both the appeals. The revisions filed against the order of dismissal passed in CMAs before this Court are still pending. While so, the petitioners filed I.A.No.910 of 2012 under Order 7 Rule 11 CPC to reject the plaint in O.S.No.726 of 2012 on the ground that the said suit is barred in view of Article 58 of Articles of Association of petitioner and after due enquiry and after giving opportunity to the petitioner for removing his membership in the proposed resolution was sought to be placed on 14.09.2012 in the 122nd Annual General Body Meeting of petitioners. On that date, resolution was passed and suit itself has become infructuous.

4. The respondent filed counter and denied all the averments and contended that the petitioners club is violating principles of natural justice and recommendation of resolution for expelling the respondent from membership is arbitrary and ultra virus and the court has ample power to interfere in the act of of petitioners' club. At the time of hearing, the learned counsel for the respondent has also submitted that the reasoning given by the petitioners are not reasons as contemplated under Order 7 Rule 11 CPC. The respondent has prayed

for declaration to declare the proposed resolution No.V as illegal and void and for other reliefs and therefore subsequent passing of resolution will not make the suit infructuous.

5. The learned Judge, considering the averments in the plaint, affidavit, counter affidavit and materials on record, by order dated 28.03.2017 dismissed the application holding that whether the suit is barred by Article 58 of Articles of Association of petitioners' Club cannot be decided in I.A. filed to reject the plaint and whether the suit is barred by law is a mixed question of law and fact which can be decided only by letting in evidence by parties and in view of the relief sought for in the suit, the subsequent resolution passed on 14.09.2012 will not make the suit as infructuous.

6. Against the order of dismissal dated 28.03.2017 made in I.A.No.910 of 2012 in O.S.No.726 of 2012, Civil Revision Petition No.1600 of 2017 is filed before this Court.

7. The respondent filed I.A.No.261 of 2017 under Order 6 Rule 17 for amending the plaint for declaration that the resolution passed on 14.09.2012 is illegal, void and is not binding on the respondent.

According to the respondent, the rights of the parties stand crystalised soon after filing of the suit and court has power to order the suit as prayed for. In view of the subsequent event, for better appreciation of the facts and issues involved in the suit, it is just and necessary to amend the plaint so as to include the subsequent event that took place after filing of the suit. The respondent is seeking amendment for separate relief to declare the subsequent event as illegal, invalid and not binding on the respondent.

8. The petitioners filed counter and after narrating the sequence of event, contended that the proposed amendment is barred by limitation. The resolution was passed on 14.09.2012 and respondent was expelled from the primary membership and same was communicated to the respondent.

9. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record and judgments relied on by both the parties, allowed the application holding that the amendment sought for is with regard to subsequent event and does not create any new cause of action and cause of action is continuing one and there is no change in the nature of the suit and cause of action.

10. Against the order dated 28.03.2017 passed in I.A.No.261 of 2017 in O.S.No.726 of 2012, Civil Revision Petition No.1599 of 2017 is filed before this Court.

11. The learned Senior Counsel for the petitioners submitted that when the respondent's membership was suspended from the club for three months, he filed O.S.No.1228 of 2012 and application for interim injunction. When no interim order was granted, respondent has filed present suit for declaration that proposed resolution mentioned in Item No.V in the notice given for 122 Annual General Meeting of the Member of Petitioner proposed to be held on 14.09.2012 is illegal and void.

12. The learned Senior Counsel for the petitioners submitted that as per Article 58 of Articles of Association of the petitioner club, the plaint is barred and the learned Judge ought to have rejected the plaint. The learned Judge erred in holding that the cause of action survives in the suit and ought to have held that in view of subsequent event, the relief sought for has become infructuous. The learned Senior Counsel for the petitioners further submitted that if CRP

No.1599 of 2017 is allowed, the petitioners will not be pressing CRP No.1600 of 2017.

13. As far as CRP No.1599 of 2017 is concerned, the learned counsel for the petitioner submitted that the resolution was passed on 14.09.2012 and respondent has filed application for amendment only in the year 2017 and that the amendment sought for is barred by limitation as per Article 136 of Limitation Act as the petitioner has not filed application for amendment within three years. The learned Judge erred in holding that the subsequent event is only a continuous cause of action and will not create any new cause of action. The learned Judge ought to have seen that the resolution passed on 14.09.2012 by the petitioners' club is different and independent cause of action and necessary pleadings are to be made in the plaint which will change the nature of the suit when the resolution was passed on 14.09.2012 and that the relief sought for in the suit by the respondent has become infructuous.

14. The learned Senior Counsel for the petitioners relied on the following judgments -

**(i) 2008 (15) SCC 610 [Ashuthosh Chaturvedi v. Prano Devi
Alias Parani Devi and Others]**

13. Limitation Act 1963, by Article 97, provides for one year's limitation for claiming such a right. The suit was filed in the year 1990. The sale deeds, during the pendency of the suit, were executed on 8.6.1990 and 18.6.1990. The application for amendment was filed 13 years after the filing of the suit. A suit claiming preferential right was required to be filed ordinarily within the prescribed period of limitation.

(ii) 2016 (1) SCC 332 [L.C.Hanumanthappa v. H.B.Shivakumar]

29.There can be no doubt that on an application of Khatri Hotels Private Limited (supra), the right to sue for declaration of title first arose on the facts of the present case on 16th May, 1990 when the original written statement clearly denied the plaintiff's title. By 16th May, 1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal

right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed.

(iii) 2001 (3) LW 514 [Chennai Kancheepuram Tiruvallore District Film Distributors Association rep. By its Secretary v. Chinthamani S.Murugesan & others]

5. The Executive Committee of a voluntary association cannot be put on par with a Court or a Tribunal when dealing with the disciplinary matters concerning the membership of the Body. They have a very wide latitude in deciding as to when disciplinary action is warranted, and the extent to which the powers vested in them under the Rules or byelaws should be exercised while penalizing the members for the misconduct which the appropriate Body within the association empowered to decide that question, considers him to be guilty. The procedure to be followed by such an association also cannot be that which is normally expected to be followed in a Court, or a Tribunal. Every letter written by the Executive Committee of an association to its member calling for an explanation is not to be judged under a lens to find out the possible defects therein for the purpose of holding that the action that followed was not in consonance with the principles of natural justice. Even principles of natural justice are not required to be applied with the same degree of

rigour as they would be in the case of adjudication before a Court or a Tribunal.

10. As regards the alleged violation of the principles of natural justice, the Court, if satisfied that there has been broad fairness must refrain from interfering with the action taken by the voluntary association of which the plaintiff chose to become a member of his own volition. Natural justice in the conduct of such associations would not have the same degree of rigour, as those principles would have in matters which are required to be adjudicated upon before Courts and Tribunals.

(iv) 2004 (11) SCC 168 [Shipping Corporation of India Ltd. v. Machado Brothers and others]

20. From the above, it is clear that if there is no specific provision which prohibits the grant of relief sought in an application filed under Section 151 of the Code, the courts have all the necessary powers under Section 151 CPC to make a suitable order to prevent the abuse of the process of court. Therefore, the court exercising the power under section 151 CPC first has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the Court will consider whether such power should be exercised or not on the basis of facts mentioned in the application.

25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

15. Per contra, the learned Senior Counsel for the respondent submitted that the application for rejection of plaint filed under Order 7 Rule 11 CPC could be decided only by considering the averments in the plaint and contentions of the respondents and documents relied on by them cannot be considered at this stage. Plaint can be rejected only if the respondent satisfies the ingredients of Order 7 Rule 11 CPC. In the present case, the reasons given by the petitioner to reject the plaint is not as per Order 7 Rule 11 CPC. The question whether the suit is barred as per Article 58 of Articles of Association of the petitioners' club could be decided only after conclusion of trial by appreciating evidence let in by the parties.

16. As far as CRP No.1599 of 2017 is concerned, the learned Senior Counsel for the respondent submitted that amendment sought for does not introduce any new cause of action or changes the nature of the suit. It is only a continuation of cause of action mentioned in the plaint and no new cause of action or new case has been introduced. The question of limitation is a mixed question of law and fact and can be decided only after the conclusion of trial, after appreciating the evidence let in by the parties.

17. The learned Senior Counsel for the respondent submitted that the respondent has filed suit for declaration and permanent injunction and it is not only for bare injunction. When interim injunction is not granted, the suit will not become infructuous in view of subsequent event. The resolution passed in the Annual General Body Meeting on 14.09.2012 merged with the original prayer for declaration and the amendment sought for present declaration based on resolution passed is only due to continuous cause of action. The case of the respondent is that petitioner has not followed the rules while suspending the respondent from membership for three months and issuing notice and convening General Body Meeting to be held on

14.09.2012, placing the item No.V in the Agenda for removal of the respondent and passing of the resolution on 14.09.2012. The petitioners, having knowledge of pendency of suit filed by respondent, ought to have deferred, considering the item No.V in the Agenda to remove the respondent permanently from membership and would have waited for outcome of the suit filed by respondent. The respondent is entitled to let in evidence to show that his suspension calling for Annual General Body Meeting and placing item no.V in the Agenda to remove the respondent from membership are irregular, illegal and in violation of by-laws and principles of natural justice.

18. The learned Senior Counsel for the respondent submitted that the judgment reported in **2001 (3) LW 514, cited supra**, relied on by the learned Senior Counsel for the petitioners is not applicable to the facts of the present case. The Division Bench of this Court did not hold that a society need not follow the principles of natural justice. The learned Senior Counsel for the respondent submitted that judgment reported in **2008 (15) SCC 670 cited supra** is also not applicable to the facts of the present case as in the present case, the amendment sought for is based on original cause of action and cause of action is continuous and respondent is not introducing any new

cause of action and new case.

19. The learned Senior Counsel for the respondent relied on Paragraphs 6 & 7 of the judgment of this Court reported in **2016 (1) SCC 332 cited supra**, and submitted that when the amendment is allowed, the petitioner has a right to file additional written statement raising a plea of limitation and necessary issues will be framed and decide the suit based on the evidence let in by parties. The learned Senior Counsel relied on Para 9 of the judgment of Hon'ble Apex Court reported in **2002 (7) SCC 559 [Sampath Kumar v. Ayyakannu and Another]** and submitted that the respondent has filed application for amendment before commencement of Trial. **The relevant portion is extracted hereunder.**

9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial

amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

A pre-trial amendment must be considered liberally and otherside will not be prejudiced by such amendment as opposite party will have opportunity to put forth their objection.

20. The learned Senior Counsel for the petitioners, in reply, submitted that amendment sought for is barred by limitation as, on the date of filing of application for amendment, the respondent could not have filed fresh suit and submitted that the learned Judge failed to consider this aspect while allowing the application for amendment. The learned Senior Counsel for the petitioner relied on Para 7 of the judgment reported in **2002 (7) SCC 559 cited supra**, which was

relied on by the learned Senior Counsel for the respondent, wherein it has been held as follows -

7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was one to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

21. Heard the learned Senior Counsel for the petitioners and respondents, perused the materials available on record and the judgments relied on by the learned Senior Counsel for the parties.

22. As far as CRP No.1599 of 2017 is concerned, the respondent prayed for declaration that proposed resolution mentioned in Item No.V in the notice given for 122nd Annual General Body Meeting is

illegal and void and not binding on the respondent. He prayed for interim injunction also. No interim order was granted in the application filed by the petitioner. The petitioners proceeded to consider the said proposed resolution and the same was passed by the General Body on 14.09.2012. The respondent has filed applications for amendment in the year 2017 to amend the plaint to include the relief that the resolution dated 14.09.2012 removing the respondent from primary membership is illegal and not binding on the respondent.

23. The objection of the petitioners for allowing the amendment is that the same is barred by limitation and that the resolution is independent and new cause of action. The said objections of the petitioners are untenable. The respondent has prayed for declaration on proposed resolution as illegal, void and not binding on him. The petitioners proceeded to consider the said resolution as there was no injunction restraining them from considering the said resolution. Whether passing of said resolution creates independent new cause of action or it is a continuous cause of action as stated by the respondent and whether amendment sought for introduces new cause of action, changes the nature of the suit and barred by limitation can be decided only after appreciating the evidence let in by both the parties.

24. As far as CRP No.1600 of 2017 is concerned, it is well settled law that the plaint can be rejected only if averments in the plaint does not disclose any cause of action or barred by any law and for the grounds mentioned in Order 7 Rule 11 CPC . To decide the said application, only the averments mentioned in the plaint can be considered and contentions of the respondent in the written statement or documents filed by the respondent and averments in the application filed in support of the application to reject the plaint are not a criteria for deciding the issue. For the present, the contention of the petitioner is that the suit is barred by Article 58 of the Articles of Association of petitioners' club and it is not open to the respondent to challenge the cause of action of the General Body in Civil Court and no cause of action has arisen in the suit. These contentions of the petitioners cannot be considered and decided in the application filed under Order 7 Rule 11 CPC. These issues can be decided only by appreciating the evidence let in by both the parties.

25. The Courts cannot dismiss all the applications for amendment considering the question of limitation. In the facts and circumstances of the cases, in certain cases, question of limitation can

be decided when amendment is sought for can be decided based on the facts and circumstances of the case and evidence let in by the parties. When any pre-trial amendment is sought for, a party seeking amendment must be given an opportunity to let in evidence to prove that amendment sought for is not barred by limitation and Doctrine of relation back applies to the facts of the case. In the present case, originally the respondent sought for declaration that the proposed resolution mentioned in Item No.V in the notice given for 122nd Annual General Meeting of the members of the petitioners to be held on 14.09.2012 as illegal and void. In view of the interim injunction sought for by the respondent was not granted, the petitioners proceeded with the Annual General Body Meeting and passed resolution removing the respondent from membership. The declaration now sought for is with regard to passing of said resolution. Considering the original relief sought for and present additional relief sought for, the contention of the learned Senior Counsel for the respondent that the respondent is not introducing any new cause of action or new case, but the amendment sought for is a continuous cause of action from the original cause of action mentioned in the plaint has considerable force. By amendment, no prejudice would be caused to the petitioners as amendment is a pre-trial amendment and

it is well settled that all the pre-trial amendment must be considered liberally.

26. In view of the above reasons, the judgments relied on by the learned Senior Counsel for the petitioner are not applicable to the facts of the present case.

27. The learned Judge has passed both the orders, after appreciating all the materials on record in a proper perspective manner and has given a cogent and valid reason for allowing the I.A.No.261 of 2017 and dismissing I.A.No.910 of 2012. In the said circumstances, I do not find any illegality or irregularity in the orders warranting interference by this Court.

28. In the result, both the Civil Revision Petitions are dismissed.
No costs.

.06.2017

Speaking/Non-speaking order
Index : Yes/No
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To

The Principal Subordinate Judge,
Coimbatore.

V.M.VELUMANI, J.

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C.R.P. PD Nos.1599 & 1600 of 2017

.06.2017

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