

A.Nos.2898 & 2899 of 2017  
O.A.Nos.475 & 476 of 2017 in  
C.S.No.354 of 2017

V.PARTHIBAN, J.

The above captioned applications have been filed, praying to vacate the interim order dated 5.5.2017 granted in O.A.Nos.475 & 476 of 2017.

2. The brief facts and circumstances which necessitated for filing of the suit, original applications and the present applications, are set out as hereunder:

2(i). The original applicant in O.A.Nos.475 & 476 of 2017, is the plaintiff in the suit and the applicants in A.Nos.2898 and 2899 of 2017 are the defendants 2 to 4 in the suit and respondents 2 to 4 in the O.As (hereinafter referred to 'the respondents'). The 5th respondent in the O.As., is the 5th defendant in the suit. For the sake of convenience, the parties will be hereinafter referred to as narrated in the original applications.

2(ii) The plaintiff in the suit, herein referred to as original applicant/plaintiff, is from Hostel Donar family and the member of the Executive Council (E.C.) of Shri Vallabacharya Vidya Sabha (in short, "V.V.Sabha"). The said V.V.Sabha is a society registered under the Tamil Nadu Societies Registration Act, 1925. The society runs several educational institutions and one amongst which, is D.G.Vaishnav College. As per Memorandum of Association of V.V.Sabha, certain rights and privileges were conferred on the members of the Hostel Donar family in the E.C. of V.V.Sabha.

2(iii) The original applicant/plaintiff is admittedly a member of the Executive Council by virtue of being from the family of the Hostel Donor.

2(iv) Earlier on 28.1.2014, an Annual General Body Meeting (in short, 'AGM') of V.V.Sabha was convened for election to the Executive Council. In the said election, 20 members were elected to the Council, of which, 17 members were not permanent members and 3 members including the

original applicant were treated as permanent members of the Executive Council. Thereafter, on 2.1.2016, a notice was issued by the first respondent/first defendant calling for AGM scheduled to be held on 23.1.2016 at 5.00 p.m. *inter alia* with an agenda for election to the E.C. of the Sabha. In pursuance of the above, another notice was issued on 12.1.2016 for conducting election of the E.C. scheduled to take place on the same day, i.e. on 23.1.2016 at 6.00 p.m.

2(v) On 23.1.2016, due to bereavement in the family, the original applicant/plaintiff could not be present. According to him, even the Chairman of the Sabha did not attend for the same reason. After the AGM and election to the E.C. on 23.1.2016, respondent No.1 issued a notice of meeting dated 16.11.2016, calling for a meeting of the E.C. of the Sabha to be held on 26.11.2016 at 4.30 p.m. As per the said notice, a meeting of the E.C. which was adjourned on 23.1.2016, was being reconvened on 26.11.2016 for the purpose of election of Office Bearers of V.V.Sabha and its various units as enumerated in the notice dated 12.1.2016. One of the units notified in the said notice as

Sl.No.5, was D.G.Vaishnav College, which was purported to be issued in view of the fact that on 23.1.2016, the original applicant/plaintiff could not attend the meeting due to bereavement in the family. As per the notice dated 16.11.2016, the meeting of E.C. was held on 26.11.2016 chaired by the respondent No.5. Apart from the election of Office Bearers of V.V.Shabha, one other agenda which was included in the meeting held on 26.11.2016, was the circulation of the minutes of the meeting held on 23.1.2016. According to the original applicant/plaintiff, the defendant No.5 was not authorized to chair the meeting on 26.11.2016 as the elected Chairman Govind Das Purushotham Das was in fact, present in the said meeting and he was duly elected as per the minutes of the earlier meeting dated 9.5.2015.

2(vi) Subsequent to the meeting held on 26.11.2016, the original applicant/plaintiff addressed a letter dated 16.12.2016, raising certain objections as per the conduct of the meeting particularly in regard to the chairing of the meeting by a different person namely, the 5th defendant. Thereafter on

26.12.2016, 12 members of General Body of V.V.Sabha, addressed a letter to the Secretary of the Sabha, informing that no election was conducted to the E.C. of the Sabha as per the Memorandum of Association and requested the Secretary to call for Extraordinary General Body meeting (EGM) immediately, failing which, the members of the General Body of the Sabha would go ahead with the EGM on their own. In the said communication, it appears that the members (12 in number) had also informed that EGM would be convened on 30.1.2017 at 5.00 p.m. in D.G.Vaishnav College premises. On the same day, another letter seemed to have been issued by six members of V.V.Sabha to the Secretary disputing the election of 5th defendant as Chairman of Executive Council. It also appears that the original applicant/plaintiff, by the said communication, had objected to the Secretary of V.V.Sabha that the meeting which was held on 26.11.2016 was a truncated meeting and any decisions/resolutions taken in the same meeting were not bona fide one. Since there was no valid response to the requisition letter dated 26.11.2016 by 12 members of the General Body, the Extraordinary General Body meeting called for in the said letter,

was convened on 30.1.2017 as proposed and the said meeting witnessed participation of 34 members. However, the meeting could not take place as proposed inside the premises of D.G.Vaishnav College since the gates of the college were closed at the instance of the respondents, preventing them from convening the Extraordinary General Body meeting. After election to the Executive Council on 30.1.2017, meeting of the Executive Council was held on 8.2.2017 and 21.2.2017 in and by which, the first applicant/plaintiff was elected as the Secretary of D.G.Vaishnav College along with one C.Ramesh Bhatt as the Secretary of the Sabha, among other things. Thereafter, a letter dated 15.2.2017 was sent to the District Registrar of Societies by the newly elected Secretary Shri Ramesh Bhatt, which is a covering letter for submitting Form VII in terms of the provisions of the Tamil Nadu Societies Registration Act, 1925. Further on 27.3.2017, the original applicant/plaintiff addressed a letter to the Director of Collegiate Education, Chennai, informing him that he has been nominated as the Secretary of D.G.Vaishnav College, Arumbakkam, Chennai by the educational agency with effect from 20.2.2017. The letter sought for approval of Form VII

submitted for the said purpose. Since the persons who got elected in the Extraordinary General Body meeting held on 30.1.2017 including the original applicant/plaintiff were prevented from functioning as elected office bearers by the respondent, they were constrained to approach this Court, seeking various reliefs in the plaint, which are extracted as under:

"(a) For a Declaration that Manoj Kumar Sonthalia has forfeited his rights to remain as the Secretary of the 1<sup>st</sup> defendant on account of his malfeasance, misfeasance, misappropriation of funds and breach of trust and thereby incurred the disqualification and disabilities to continue as Secretary of the 1<sup>st</sup> defendant and consequently for a Mandatory Injunction directing removal of the existing Secretary of the 1<sup>st</sup> defendant Manoj Kumar Sonthalia and appoint in his place a Retired High Court Judge or a Retired Senior District Judge as Administrator of the 1<sup>st</sup> defendant;

(b) For a Declaration that there was no valid meeting of the 1<sup>st</sup> defendant convened and held on 09.05.2015 in accordance with the

Constitution of Shri Vallabhacharya Vidya Sabha and declare the same as illegal, invalid, non-est in the eyes of law and the same shall not be binding upon the members of the 1<sup>st</sup> defendant.

(c) For a Declaration that the amendment to the Bye-laws and the Rules and Regulations of the 1<sup>st</sup> Defendant and addition of Rule 13(a) and 13(b) of the 1<sup>st</sup> defendant is ultra vires of the Constitution, illegal, invalid and non-est in the eyes of law and consequently the same shall not be binding upon the Members of the 1<sup>st</sup> defendant;

(d) For a Declaration that any amendment effected contrary to the Societies Registration Act, 1860, the Tamil Nadu Societies Registration Act, 1975 and the Tamil Nadu Registration Rules, 1978 as ultra vires, illegal, invalid, non-est in the eyes of law and consequently declare those amendment as bad in law and consequently restrain the 1<sup>st</sup> Defendant from implementing any of those amendment.

(e) For a permanent injunction restraining the 1<sup>st</sup> Defendant and the Office Bearers from enforcing or invoking the alleged amended Rule 13(a) and 13(b) of the 1<sup>st</sup> Defendant Society as against the Members of the 1<sup>st</sup> Defendant, since the same is illegal, invalid, non-est in the eyes of law and consequently not be binding on the Members;

(f) For a declaration that the proposed alleged amendment 13(a) and 13(b) of the 1<sup>st</sup> Defendant Constitution with regard to the age limit shall not be applicable to the Chief Donor Family and consequently restrain the 1<sup>st</sup> and 5<sup>th</sup> Defendants from giving effect to the alleged amendment, assuming without conceding it to be valid;

(g) For a Permanent Injunction restraining the 1<sup>st</sup> Defendant from interfering with the functioning of the Chief Donor's Office Bearers holding offices, except in accordance with law;

(h) For a Permanent Injunction restraining the 3<sup>rd</sup> and 4<sup>th</sup> Defendants from functioning as Co-opted Members of the Executive Council of the

1<sup>st</sup> Defendant, and  
(i) Costs of the suit."

3. The case of the respondents is as follows:

3(a) On 23.1.2016, an Annual General Body meeting was convened at 5.00 p.m. in pursuance of the notice of the meeting dated 02.01.2016 and election to Executive Council meeting was also held on the same day at 6.00 p.m. in pursuance of another notice of meeting dated 12.01.2016. After the election of the Annual General Body meeting, election to the Executive Council meeting was held at 6.00 p.m. and respondents 2 and 3 herein who are the defendants 2 and 3 were co-opted to the Executive Council. Thereafter for election to the V.V.Sabha and its various units was postponed and on 16.11.2016, a notice was issued by defendant No.1 for E.C. meeting to be held on 26.11.2016 for the said purpose. On 26.11.2016, minutes of the meeting dated 23.1.2016 was circulated and election to various office bearers of V.V.Sabha and its units had taken place. This was confirmed by their letter dated 20.12.2016 by circulating the minutes of E.C. which was held on

26.11.2016. As per the minutes, 5th respondent has been elected as the Chairman of the Sabha and the first respondent as the Secretary. This position was also informed to members who requested through letter dated 26.12.2016 for calling for Extraordinary General Body meeting by a communication dated 21.1.2017 of the first respondent. In the said letter, it was mentioned that the AGM had been held on 23.1.2016. Moreover, it was also stated that the election to E.C. had also been conducted on 23.1.2016. Further in respect of the election held on 23.1.2016, Form VII was also submitted to the authority in terms of the provisions of the Tamil Nadu Societies Registration Act. In Form VII, which was filed along with the covering letter on 27.1.2017, name of the respondents 2 and 3 had been shown as new appointment with effect from 23.1.2016. It is also the case of the respondents that the 4th respondent was elected as Secretary of D.G.Vaishnav College, Arumbakkam. This fact was also informed to the Director of Collegiate Education vide letter dated 27.3.2017. Thereafter, it appears that the Director of Collegiate Education, by proceedings dated 25.1.2017 recognizing the appointment of the 4th respondent as Secretary

of the College for a period of three years from 11.1.2017 to 10.01.2020. The Secretary/4th respondent, by virtue of the proceedings of the Director of Collegiate Education, has been functioning as the Secretary of the College.

4. From the above narrated facts, it can be seen that there are two sets of Office Bearers of V.V.Sabha, Executive Council and the Secretary of D.G.Vaishnav College, Arumbakkam. One on the basis of election held on 23.1.2016 and 26.11.2016 and another one on the basis of the EGM which was held on 30.1.2017.

5. The bone of contention as between the parties is, which one of the meetings is *prima facie* valid for the purpose of granting interim order and for its continuation pending adjudication of the issues raised in the suit.

6. In the background of the above, the arguments advanced by the learned counsels appearing for the parties need to be examined and appreciated for rendering a decision in the

present applications.

7. Shri A.L.Somayaji, learned senior counsel appearing for the original applicant/plaintiff, at the outset, has drawn attention of this Court to the notice dated 2.1.2016, calling for AGM to be held on 23.1.2016 at 5.00 p.m. and also further notice dated 12.1.2016, calling for a meeting of E.C. at 6.00 p.m. on the same date. The meeting which was held on 23.1.2016 was not attended by the original applicant/plaintiff due to bereavement in the family and a request was made for postponing the business to be transacted on that day.

8. According to the learned senior counsel, the agenda fixed on that day, i.e. 23.1.2016 was, election to the E.C. and election of office bearers of V.V.Sabha and its various units. He would submit that though the meeting was held on that date, i.e. 23.1.2016, no election did take place and the meeting was simply adjourned without transacting any business. But to the surprise of the original applicant/plaintiff, the minutes of the meeting which was held on 23.1.2016 was circulated only on 21.01.2017

as enclosure to letter dated 21.01.2017 to the first defendant, wherein, it was mentioned that the election had taken place to E.C. on 23.1.2016 and the respondents 2 and 3 had been co-opted in the said meeting.

9. Learned senior counsel would further submit that on 26.12.2016, 12 members of the General Body have requested for convening EGM on 30.1.2017 and according to him, there was no response to this requisition by the members and therefore, the proposed EGM was held on 30.1.2017 outside the premises of D.G.Vaishnav College. He would submit that at the instance of the respondents, college gates were deliberately closed under the pretext of observing Martyrs' Day, but actually intended to prevent any meeting to be conducted against the interest of the respondents. In the said circumstances, the EGM as proposed was conducted outside the gates of the college, attended by majority of the members and election to the office bearers of the E.C. and society was conducted, in which, several office bearers were selected. Thereafter, further steps were taken in terms of the provisions of the Tamil Nadu Societies Registration Act and

according to the learned senior counsel, the meeting which took place on 30.1.2017 was valid in the eye of law as against the election said to have been conducted on 23.1.2016 and 26.11.2016. According to the learned senior counsel, the original applicant/plaintiff was elected as the Secretary to the College in the meeting which was held on 30.1.2017. According to him, a letter was also sent to the Director of Collegiate Education on 27.3.2017 along with a copy of the resolution dated 21.2.2017 informing him that the original applicant/plaintiff has been nominated as the Secretary of the D.G.Vaishnav College, Arumbakkam, Chennai by the educational agency with effect from 20.2.2017 and by virtue of renomination, the original applicant/plaintiff has been functioning as the Secretary of the College. According to the learned senior counsel, the meeting which was held on 23.1.2016 could not have conducted any election to the E.C. in view of the absence of the plaintiff and the Chairman of V.V.Sabha. Therefore, so-called election which took place on 23.1.2016 and the minutes which were circulated on 26.11.2016, cannot be valid and the same was contrary to the facts. It is further submitted that E.C.meeting which was held on

26.11.2016 chaired by 5th defendant was also invalid for the reason that the originally elected Chairman Shri Govind Das Purushotham Das, whose chairmanship was still in force, had been prevented from acting as the Chairman. Therefore, any decision/resolution taken in the said meeting cannot be countenanced both on facts and in law.

10. In the same breadth, it was also contended that the co-option of respondents 2 and 3 in the so-called meeting which was held on 23.1.2016 cannot be countenanced in law for more than one reason. The election to E.C. factually did not take place on 23.1.2016 in view of the postponement of the meeting at the instance of the original applicant/plaintiff and the Chairman of the Sabha, who were unable to attend the meeting on that day due to bereavement in the family. This position is fortified by the fact that after 23.1.2016, election to V.V. Sabha and its various units has been postponed and held on 26.11.2016 and therefore, the co-option of the respondents 2 and 3 could not have taken place in isolation. Moreover, co-option is not permissible in law as the same was not authorized by the provisions of the Tamil Nadu

Societies Registration Act. According to the senior counsel, such co-option is contrary to Section 15(3) of the Act and Rules thereunder and election is alone contemplated under the provisions of the Act. In such situation, the co-option of respondents 2 and 3 into the E.C., is per se illegal and cannot be allowed to stand. In the above circumstances, the learned senior counsel would submit that the election of the original applicant/plaintiff as the Secretary to D.G.Vaishnav College is required to be protected since he has been validly elected in the EGM which did take place on 30.1.2017, particularly, when the election was not questioned at all by any party including the respondents herein. Since the co-option of the respondents 2 and 3 is contrary to the provisions of the Tamil Nadu Societies Registration Act, their continuation in the E.C. cannot be allowed and in such circumstances, they need to be restrained from functioning as members of the E.C. or Office Bearers of the E.C. of V.V.Sabha or its units.

11. Per contra, Shri Venkatavardhan, learned counsel appearing of the respondents 2 to 4 would vehemently contend

that the suit itself is not maintainable since the same has been filed by the plaintiff in his individual capacity though the substantial prayer which is sought for in the suit is in relation to V.V.Sabha which is a society registered under the Tamil Nadu Societies Registration Act. Since the original applicant/plaintiff did not file the suit in a representative capacity in terms of the relevant provisions under CPC, the plaintiff is not entitled to maintain the suit and therefore, he is not entitled to any relief as prayed for in the plaint or any relief as sought for in the original application. The learned counsel for the respondents 2 to 4 would also contend that the original applicant/plaintiff is also not entitled to any relief as he has not approached the Court with clean hands as already, a similar suit had been laid before the City Civil Court in O.S.No.325 of 2017 and the reliefs in both the suits are almost similar in nature. Though the original applicant/plaintiff was not a party in the suit before the City Civil Court, but the plaintiff in that suit had espoused the case of the plaintiff herein and this fact is writ large in the averments contained in the plaint filed in O.S.No.325 of 2017 regarding the rights of donor's family of the Sabha. According to the learned

counsel, the original applicant/plaintiff, having failed to get any interim orders from the City Civil Court and as an attempt of forum shopping, he invoked the original jurisdiction of this Court and in such circumstances, he is not entitled to be shown any indulgence particularly, in the form of an interim order obtained by him from this Court on 5.5.2017.

12. The learned counsel has drawn the attention of this Court elaborately on the so-called two meetings held on 23.1.2016 and 26.11.2016 and contended that the original applicant/plaintiff was fully aware of the decisions/resolutions taken in such meetings and all along, there was no complaint or objection raised by the original applicant/plaintiff in regard to election of the original applicant, members of the E.C. and to the Sabha and to its various units. In fact, only objection which was raised by the plaintiff was in regard to conduct of the meeting which was held on 26.11.2016 by the 5th respondent through his letter dated 16.12.2016. According to the learned senior counsel, an objection raised by the plaintiff is not directly in issue as far as above two Original Applications are concerned and therefore, the

plaintiff is not entitled to assail the decisions/resolutions of the E.C. meetings which took place on 23.1.2016 and 26.11.2016 as being illegal or otherwise. The learned counsel would strongly contend that the original applicant/plaintiff has clearly suppressed the material fact and not appraised true facts while obtaining the interim order from this Court. The learned counsel would submit that on the day when the interim was obtained, he was not acting as the Secretary of the College and it was 4th respondent who was actually working as the Secretary by virtue of the proceedings of the Director of Collegiate Education as stated supra. This fact would very well be supported by submission of Form VII under the provisions of the Tamil Nadu Private Colleges Regulations/Rules in which, the original applicant/plaintiff accepted that he was being nominated as the Secretary of the College for a period of three years with effect from 12.5.2017. According to the learned counsel, after obtaining the interim order in O.A.No.475 of 2017, the original applicant/plaintiff misused the order to his advantage and reinstated himself as the Secretary of the College as if the Court has granted him mandatory injunction to restore his position. Form VI signed by

the original applicant/plaintiff would clearly demonstrate the fact in an impeachable term that the 4th respondent was the Secretary of the College till 11.5.2017 and he is assuming office only from 12.5.2017 onwards on the basis of this Court's order dated 5.5.2017 as indicated in Column Nos.3, 5 and 15 of Form VI. According to the learned counsel, the original applicant/plaintiff misused the order by addressing letters to the Principal of D.G.Vaishnav College and bank officials as if this Court has ordered his appointment as the Secretary and other office bearers of Sabha by various communications. This clearly shows that the original applicant/plaintiff is guilty of highhanded action by twisting the facts by using the interim order passed by this Court obtained on basis of suppression of material facts or by submission of incorrect facts before this Court.

13. As regards the contention against the co-option of respondents 2 and 3 is concerned, it is submitted that such co-option has been done continuously for many years in the past and the original applicant/plaintiff was also a party to such co-option earlier and there was no protest whatsoever from the side

of the plaintiff for such co-option. This fact was not disputed by the original applicant/plaintiff. The learned counsel would submit that in the absence of *locus standi* on the part of the plaintiff is concerned, as regard the issues raised in the present original application, the issue of co-option cannot be questioned by him and whether such co-option is permissible under law or authorized by memorandum of association is a matter for adjudication in the suit and the same need not be gone into at the present stage. The learned counsel also drawn attention of this Court on the factum of such co-option to E.C. earlier in 2011 and 2014 etc., and such act is actually not prohibited by repugnant to the provisions of the Tamil Nadu Societies Registration Act itself.

14. The sum and substance of the arguments of the learned counsel for the respondents 2 to 4 is that the meeting which was held on 23.1.2016 cannot be assailed as invalid meeting since Mr.Ramesh Bhutt and others who attended the so-called E.C.meeting, had in fact, attended the meeting on 23.1.2016 and were also party to the decision taken by the AGM

and the EC meeting which was held after the AGM. Moreover, the E.C.meeting which was held 26.11.2016 was attended by the original applicant/plaintiff as well as the plaintiff in O.S.No.325 of 2017 and no objections whatsoever were put forth or raised about the validity of the meeting held on 23.1.2016. If they had any semblance of objection on the meeting held on 23.1.2016 and the decisions/resolutions taken in that meeting seemed to have been raised immediately on receipt of notice dated 16.11.2016 calling for meeting on 26.11.2016, in the absence of any iota of objection both on and after 16.11.2016 and 26.11.2016, the conduct of the original applicant/plaintiff alleging the validity of the said meetings, does carry any conviction.

15. Even in the requisition letter dated 26.12.2016 by 12 members of the Association, there was no specific objection raised in regard to the election which took place on 23.1.2016 and on 26.11.2016. In fact, the requisition letter dated 26.12.2016 has evoked an effective response from the respondents and the same was answered by their communication dated 21.1.2017. In the same letter, it was clearly mentioned

that the election to E.C. had already been conducted at AGM on 23.1.2016 and calling for EGM for election to the E.C. once again was untenable and the same was construed as flippant request. As regards the factum whether the original applicant/plaintiff was acting as Secretary on the date when the order obtained from this Court, the learned counsel would emphasis the fact that by communication dated 12.5.2017 to the Director of Collegiate Education, the plaintiff himself has admitted that he has taken charge as Secretary only from forenoon of 12.5.2017. It is also the contention of the learned counsel that the original applicant/plaintiff and office bearers who were supposed to have been elected in the so-called EGM held on 30.1.2017, in fact have not pursued the position to the logical end. In fact, when a meeting notice was issued on 12.4.2017, in which 4<sup>th</sup> respondent was shown as the Secretary of the College, there was no protest whatsoever by the original applicant/plaintiff. Therefore, from the very conduct of the plaintiff ought to be construed that the plaintiff himself at that point of time did not seriously think that he was validly elected Secretary of the College. Only after obtaining the interim orders from this Court, the first

applicant/plaintiff had ingenuously exploited the order to his unjust and illegal advantage and reinstated himself as the Secretary of the College. In the said circumstances, the interim orders which were passed in the above said Original Applications are required to be vacated as no further indulgence need to be shown to the original applicant/plaintiff.

16. Shri Vijaya Raghavan, learned counsel appearing for the first respondent would submit that the injunction being an equitable remedy, cannot be granted to a person whose conduct was questionable. The learned counsel would rely on Section 41(i) of the Specific Relief Act, which reads as follows:

41(i). when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court”

17. Therefore, the plaintiff's conduct as explained supra, has clearly dis-entitled him to seek assistance of this Court. In such event, the interim orders passed by this Court, are liable to be vacated.

18. Shri Arvind Pandian, learned senior counsel appearing for the 5<sup>th</sup> respondent would submit that his client 5<sup>th</sup> defendant was appointed as the Chairman of the Sabha on 26.11.2016 when the meeting of the E.C. had taken place. He would submit that the election of 5<sup>th</sup> respondent as Chairman of the Sabha is valid. However, this Court is of the view that the election of the 5<sup>th</sup> respondent is valid or otherwise is not the subject matter of the present Original Applications and therefore, the same is not being dealt with.

19. Considering the totality of the submissions made on behalf of the learned counsels appearing for the parties and on perusing the entire relevant records, this Court has, prima facie, reached at the following conclusions:

20. At the outset, it ought to be seen that the substantive reliefs claimed by the original applicant/plaintiff are in relation to the Society, viz., V.V.Sabha. The contention raised on behalf of the respondents 2 to 4 who are the vacate stay applicants, that no permission has been obtained from this Court

to sue in a representative capacity in terms of Order 1 Rule 8 CPC and therefore, filing of the present suit in individual capacity is not maintainable and hence forth, no interim relief can be granted to the original applicant/plaintiff. There is some merit in the contention of the learned counsel appearing for the respondents 2 to 4 in the Original Application. Several declaratory reliefs are sought for in the plaint relating to the affairs of the society and such a prayer could be asked only in a representative capacity, but not in any individual capacity.

21. Even though his re-appointment as Secretary of D.G.Vaishnav College is in question as claimed by the original applicant/plaintiff, but the prayer includes larger relief than which touching upon the entire affairs of the society in regard to the subject matter of the suit. Admittedly, the leave was not obtained from this Court by the original applicant/plaintiff to sue.

22. Another legal contention as regards to the maintainability is with regard to laying of the suit before the City Civil Court in O.S.No.325 of 2017 though not by the plaintiff

himself, but by other members of the General Body who sought for similar relief before the City Civil Court. They, having failed in their attempt to get any interim order protecting the interest of the present original applicant/plaintiff, the present suit has been laid by the plaintiff before this Court, which amounted to forum shopping and therefore, the suit is not maintainable on the same cause of action. In fact, in the counter affidavit filed on behalf of the respondents 2 to 4 in the Original Application, the prayers in both the suits have been extracted, however, this Court is of the view that all the prayers in both the suits are not similar and identical and the prayers sought for in the present suit are more comprehensive and exhaustive and therefore, this Court is of the view that the suit cannot be dismissed at the threshold of being not maintainable on this score. The other contention raised on behalf of the respondents who are opposed to the plaintiff was that there was a deliberate suppression of material facts and the original applicant/plaintiff indulged in suppressing and misleading the Court while obtaining the orders from this Court on 5.5.2017. According to the learned counsel for the respondents herein, the plaintiff himself had acknowledged the fact that he had been

reinstated as the Secretary of the College only on 12.5.2017 by virtue of the order passed by this Court on 5.5.2017, however, managed to obtain orders from this Court as if he had been continuing as the Secretary even as on 5.5.2017. As stated supra, this Court's attention was drawn to the document dated 12.5.2017 in which, the plaintiff himself has written to the Director of Collegiate Education that he was being nominated as Secretary of the College for further period of three years with effect from 12.5.2017 and for disclosing the said fact, Form No.VI was also enclosed along with the said document, under the provisions of the Tamil Nadu Private Colleges Regulations/Rules, 1976. In the Form itself, the plaintiff has clearly admitted that the change of Secretaryship had taken effect from 12.5.2017 and he also quoted the order passed by this Court. The other details furnished in the Form VI would unequivocally demonstrate that the original applicant/plaintiff himself was clear in his mind that he was not the Secretary in-charge as on 5.5.2017. Therefore, without disclosing the correct facts as to the status of the Secretaryship as prevailed on 5.5.2017, the orders from this Court had been obtained. After obtaining the orders, the original

applicant had misused the same as if he had obtained the mandatory injunction for reposting him in the said post.

23. Prima facie there appears to be merit in the contention of the learned counsel appearing for the respondents in the original applications. The original applicant/plaintiff though alleged to have been elected as the Secretary of the College subsequent to EGM dated 30.1.2017 nevertheless, was not sure of his election and therefore, his subsequent communication of E.C.meeting held on 19.4.2017, no objection was raised. This fact is fortified by the document dated 19.4.2017 when a protest was made for the meeting held on 12.4.2017 and one Ramesh Bhatt who was supposed to have been selected as the Secretary of the Sabha, who is none other than the first respondent/defendant, addressed a letter to the Secretary of the Sabha. Therefore, it appears that the so-called EGM held on 30.1.2017 and the subsequent action purportedly taken under the resolutions passed in the said meeting cannot lend credence to the version of the original applicant/plaintiff that he was the actual Secretary of the College on the date when the interim order was obtained

from this Court.

24. Be that as it may, as regards the validity of two sets of elections which held on 23.1.2016/26.11.2016 and 30.1.2017, the same has to be seen with reference to the conduct of the parties and the exchange of correspondence between the parties during the relevant period.

25. As contended by the learned counsels appearing for the respondents in the Original Application, nowhere, the applicant/plaintiff raised any objection as to the election conducted on 23.1.2016 to the E.C. and the election conducted on 26.11.2016 to V.V.Sabha and to its various units. Even in the requisition letter dated 26.12.2016 signed by some members of the Association who were actually parties in the Original Suit No.325 of 2017 filed before the City Civil Court, there was no whisper or protest about the election scheduled to have been happened on 23.1.2016 and 26.11.2016. Moreover, in his letter dated 20.12.2016, the original applicant/plaintiff protested in regard to certain other issues and not the controversy relating to

the present Original Application which is being adjudicated now. Further, when a notice dated 16.11.2016 was issued calling for the meeting to be held on 26.11.2016, the same did not evoke any protest wherein a notice of meeting has only indicated election to the Sabha and to its various units. If only the original applicant/plaintiff was aggrieved by the invalid election and co-option of E.C.members, he could have protested when the notice issued on 16.11.2016 since the notice communicated only agenda apart from circulation of minutes of the meeting held on 26.11.2016 regarding election of office bearers and members of V.V.Sabha and to its various units, the 3rd agenda of the meeting is only for authorization of bank accounts. In the said circumstances, it is very clear and unequivocal that the original applicant/plaintiff had accepted the factum of election to E.C. on 23.1.2016 and subsequent appointment of office bearers of V.V.Sabha and to its various units on 26.11.2016.

26. It is also to be seen that in response to the protest and requisition letter dated 26.12.2016 signed by some members of the General Body, the first respondent/defendant Secretary

has given a clear reply on 13.1.2017 in which, it is clearly explained as to how the meeting conducted on 26.11.2016 by following procedure as envisaged. As per this communication, the original applicant/plaintiff is one of the recipients of the same.

27. In regard to the Secretaryship of the College, it has to be seen that on 11.1.2017 and 1.2.2017, a communication was addressed to the Director of Collegiate Education, enclosing Form VI seeking approval of the appointment of the Secretary with effect from 11.1.2017. In response to the same, the Director of Collegiate Education has also issued a communication on 23.2.2017, approving the appointment of the 4th respondent as the Secretary of the College for a period of three years from 11.1.2017 to 10.01.2020. If all these facts cumulatively taken into consideration, it would clearly point out the fact that the Original Applicant/plaintiff was not actually or factually acting as the Secretary of the D.G.Vaishnav College, Arumbakkam as on 5.5.2017.

28. As regards the other contention raised by the

original applicant/plaintiff was co-option of respondents 2 and 3, which according to the original applicant/plaintiff, was not permissible in terms of the Tamil Nadu Societies Registration Act, it should be noted as submitted by the respondents that such co-option did take place in the past which was not seriously disputed by the plaintiff. However, the learned senior counsel would only submit that an illegality committed need not to be perpetuated in the name of practice/convention and once such co-option is contrary to the provisions, particularly Section 15(3) of the Tamil Nadu Societies Registration Act, the same is liable to be set aside.

29. Per contra, it is the contention of the respondents that the same plaintiff was a party to the co-option in the past and even thereafter on 22.2.2016, the plaintiff was one of the signatories for co-option in recommending three persons from Gujarath as members. In such view of the matter it does not lie in the mouth of the original applicant/plaintiff to assail the co-option of the respondents 2 and 4 in the original application. In any event, *prima facie*, it shows that co-option appears to be not

completely prohibited and this Court did not take a call on the validity or otherwise of co-option particularly at the instance of the original applicant/plaintiff who has no *locus standi* to question the same. The legal issue whether co-option can always be decided by this Court at the later point of time when the suit is ripe for trial. For the present, the co-option of the respondents 2 and 3 in the original application need not be disturbed, pending final decision of the suit.

30. The contention put forth on behalf of the respondents truly merit consideration for the simple reason that several documents were filed and the Court's attention was drawn in and by which, first and fourth respondents were shown as Secretary of the Sabha and D.G.Vaishanv College respectively and in respect of which, no protest has been made either by the original applicant/plaintiff or other members. The relevant documents, viz., the communication dated 11.1.2017 addressed to the Director of Collegiate Education and the reply of the Director of Collegiate Education dated 25.1.2017, the communication to the Registrar of Societies dated 27.1.2017,

communication dated 1.2.2017 addressed to the Director of Collegiate Education enclosing Form VI filed before the Registrar of Societies and the reply letter dated 23.2.2017 of the Director of Collegiate Education, etc., would prima facie demonstrate that the respondents were elected as office bearers in the meeting held on 23.1.2016 and 26.11.2016 and also co-option of respondents 2 and 3 as E.C.members. In such view of the matter, it raised no doubt in the mind of this Court about the factual position in regard to the issues raised in the original application, that the original applicant/plaintiff was not validly acting as the Secretary as on 5.5.2017 as claimed by him and the co-option of the respondents 2 and 3 in the original application, cannot be conclusively held that their election to E.C. was invalid, but the circumstances would favour the respondents that their election as of now is construed to be valid.

31. In the background of the above facts and circumstances, it ought to be seen that whether the EGM which was conducted on 30.1.2017 can be a valid one in the circumstances of the case?

32. From the above mentioned facts and the documents, it must be seen that the so-called meeting conducted on 30.1.2017 can be construed as valid or not? In fact, the members who got nominated/elected in the so-called meeting, themselves were not sure about the election which could be seen by their subsequent conduct. In the correspondence and in the notice circulated subsequent to the election on 30.1.2017, nowhere, the members who got elected in the said meeting, had protested about the validity of other election held on 23.1.2016 and 26.11.2016, but in fact, as stated supra, that all actions which had taken by the Committee which got elected pursuant to 23.1.2016 and 26.11.2016 seemed to have gone uncontested barring a protest in respect of certain other things and not bearing on the issues which the Court was called up to decide at present.

33. In view of the above prima facie finding of this Court about the validity of meeting held on 23.1.2016 and 26.11.2016, subsequent meeting alleged to have been held

outside the gates of D.G.Vaishnav College on 30.1.2017 prima facie appears to be invalid exercise by the disgruntled members of the society.

34. Now coming to the decision relied upon by the learned senior counsel for the original applicant/plaintiff, reported in AIR SC 2448(1) (***M/s.Best Sellers Retail (India) Pvt.Ltd. versus M/s.Aditya Birla Nuvo Ltd. & others***), wherein, it has been held in para 12 as under:

"12. It is not necessary for us to deal with the contentions of learned counsel for the parties based on the provisions of [Sections 14, 41 and 42](#) of the Specific Relief Act, 1963 because [Section 37](#) of the said Act makes it clear that temporary injunctions are to be regulated by the CPC and not by the provisions of the [Specific Relief Act](#), 1963. In fact, the application for temporary injunction of respondent no.1 before the trial court is under the provisions of Order 39 Rules 1 and 2 read with Section 151 of the CPC. It has been held by this Court in [Kishoresingh Ratansinh Jadeja v. Maruti Corporation & Ors.](#) (supra) that it is well established that while

passing an interim order of injunction under Order 39 Rules 1 and 2 CPC, the Court is required to consider (i) whether there is a prima facie case in favour of the plaintiff; (ii) whether the balance of convenience is in favour of passing the order of injunction; and (iii) whether the plaintiff will suffer irreparable injury if an order of injunction would not be passed as prayed for. Hence, we only have to consider whether these well-settled principles relating to grant of temporary injunction have been kept in mind by the trial court and the High Court."

Since the finding is against the original applicant/plaintiff, the above ratio laid down by the Supreme Court and relied upon by the learned senior counsel cannot be made applicable to the case on hand.

35. In 2015(4) LW 336 (***Mr.Tim Boyd, International President, C/o The Theosophical Society versus Mr.Kesiraju Krishna Phani & others***), in para 35, it has been held by this Court as under:

"35. Further, it is contended by the

learned counsel appearing for the applicant/D10 that the present suit is not filed as a representative suit, as no permission was sought for or obtained under Order 1 Rule 8 CPC. I do not think that such question would arise in this case, in view of the fact that this Court has already found in the above referred to decision in O.A.No.411 of 2015, etc., that a voter or a member can maintain the suit challenging the election in respect of a Society/Association. Even otherwise, as rightly pointed out by the learned Senior Counsel appearing for the respondents 1 and 2/plaintiffs, such permission under Order 1 Rule 8 CPC can be obtained at any time and at any stage of the suit proceedings. Moreover, it is a curable defect and hence cannot be fatal to the case of the plaintiffs."

The learned senior counsel relied upon the above ratio because of the fact that this Court has held that Order 1 Rule 8 CPC does not arise since a voter or a member can maintain the suit, challenging the election of the society/association. However, in this case, the challenge is not merely an election of the office bearers E.C. of Sabha, but also several declaratory reliefs,

affecting the very affairs of the society and touching upon the activities of the society. Therefore, this is not one off relief sought for by the original applicant/plaintiff and hence, the above decision is not applicable to the facts of the present case.

36. In 2015 (5) CTC 17 (***V.Arulkumar & others versus Tamil Nadu Government Nurses' Association, rep. by its President P.Arivukan***), this Court has held in para 20 as under:

"20. Thus, it is evident that the elections have to be conducted only as per the above mandatory procedures and not otherwise. A further perusal of the above said Bye-laws shows that there is no provision prohibiting the members or voters from challenging the elections by filing a suit. In other words, it is not contemplated in the Bye-laws that such elections can be challenged only by way of Election Petition and not otherwise. If the process of elections is by certain procedures which are outside the scope of the Bye-laws and against the specific mandatory procedures contemplated therein for conducting the elections, certainly, the same can be challenged before the Court of Law. It can be at the instance of a voter, even if he is not a contesting candidate. It is needless to say that the voter is a member and not a stranger of an Association and thus, he has every right to protect the interest of the Association and see that the election is conducted as per the Bye-laws of such Association. If the contesting candidate(s)

has/have chosen to keep silent, for various reasons or for any extraneous consideration, it does not mean that such procedures followed in the process of elections, cannot be challenged by any other person, namely the voters/members of the Association. Equally, the Court cannot be a mute spectator to such illegal process of elections and give its seal of approval, merely because the challenge was not made by a contesting candidate. While expressing this view, I am fully conscious of the well-settled principle that the challenge to the elections is not a common law remedy and it has to be specifically provided under the statute. Further, the right to contest the election or to question the election by means of the Election Petition is neither common law nor fundamental right and instead, it is a statutory right regulated by the statutory provisions."

As already stated above, this Court is called upon the validity of the election, the finding and answer given in respect of the above decision will hold good for the present decision also.

37. In AIR 1927 Mad 210 **(Gogineni) Gopayya and others versus (Gogineni) Ankayya)**, this Court has held as under:

"Therefore it is plain from the statute itself that a Court acting under Order 39, Rule 2 can only grant an injunction restraining the defendant from committing injury. It is no answer to such

injunction that in effect the defendant is compelled to perform certain acts which ordinarily would be subject of a mandatory injunction. And if for some reason the Court finds it necessary to issue a temporary mandatory injunction it cannot be said that such an injunction is beyond its inherent power, but it should not act under Order 39, Rule 2. The present case affords a good example of why Order 39, Rule 2 has been restricted to restraining orders, The counter-petitioners only want to enforce their alleged right of drainage and it is immaterial to them how the petitioners carry off the water. Suppose that the petitioners had planted coconuts along this reclaimed channel it would be a most unwarrantable interference with their rights to insist that the water should be carried off in no way except by destroying their plantation. But if it so happened as with the road in [Champsey Bhimji & Co. v. Jamna Flour Mills Co.](#) [1915] 16 Bom. L. R. 566 that the proper restraint could only be caused by the destruction of the defendants' work and he had no alternative method of obeying the injunction it would none the less be enforceable."

The above decision relied upon the learned senior counsel that the Court need not be averse in granting mandatory injunction if it finds it necessary and such an intervention cannot said that such an injunction is beyond its inherent power, but it should not act under O.39 R.2 CPC. However, relying upon the above said decision, this Court cannot lose its sight that the proper facts

were not placed for consideration before obtaining the order from this Court and therefore, the exercise of discretion by this Court without being properly apprised of the factual position, must be seen.

38. In view of the findings as given supra, the other decisions relied upon by the learned senior counsel may not be relevant and to be applied to the factual matrix of the present case on hand and to legal issues raised in the present original applications and the suit.

39. The learned counsel appearing for the first defendant relied upon two decisions, viz., 2012 (6) SCC 430 (***A.Shanmugam versus Ariya Kshatriya Rajakula Vamsthu Madalaya Nandhavana Paripalanai Sangam, rep. by its President***) and the decision of the Hon'ble Supreme Court in ***M/s.Prestige Lights Ltd. versus State Bank of India***).

40. According to the learned counsel for the first respondent/first defendant, the Hon'ble Supreme Court has

categorically held that no one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The Court must effectively discourage fraudulent, unscrupulous and dishonest litigation. In the same breadth, the learned counsel while referring to the earlier decision, wherein, it was held that a person who approaches the Court with unclean hands, cannot be shown any indulgence, would submit that in the present case, the original applicant/plaintiff has approached this Court with unclean hands having suppressed material and obtained interim order, which cannot be continued and liable to be vacated. It is utmost necessity that when a party approaches the Court, he must place all the facts before the Court without any reservation and if there is suppression of material facts or twisted facts have been placed, the Court may refuse to entertain the petition and dismiss it without entering into the merits of the matter.

41. This Court has considered the ratio laid down in the decisions cited by the learned counsel for the first respondent/first defendant. In any event, this Court has found *prima facie* findings against the original applicant/plaintiff and in

such view of the matter, this Court is refrained from making any comments on the conduct of the original applicant/plaintiff as that would severely hamper and prejudice the conduct of further proceedings in the suit before this Court.

42. In the totality of the circumstances as set out, this Court is of the prima facie view that the interim order granted by this Court on 5.5.2017 does not deserve to be continued.

43. Accordingly, the interim order passed on 5.5.2017 in O.P.Nos.475 and 476 of 2017 stands vacated. Consequently, Applications in A.Nos.2898 and 2899 of 2017 are allowed. No costs. The position as prevailed before 5.5.2017 in respect of the parties and their position, shall stand restored forthwith.

List the matter in respect of other application after eight weeks.

suk

23-06-2017

V.PARTHIBAN, J.

suk

Pre-delivery common order  
in A.Nos.2898 & 2899 of 2017

23-06-2017

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