

KIN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:07.11.2017

CORAM

The Hon'ble Mr.Justice M.V.MURALIDARAN

CRP.No.2979 of 2007

and

M.P.No.1 of 2007

The President (No.340/SAT)
E.I.D.Parry Labour Union,
Nellikuppam.

... Petitioner

vs.

1.M.Velayudham
2.G.Selva Cruz
3.Lakshmanan

4.The General Secretary (No.340/SAT)
E.I.D.Parry Labour Union,
Nellikuppam.

5.The Treasurer (No.340/SAT)
E.I.D.Parry Labour Union,
Nellikuppam.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair order and decretal order of the learned Subordinate Judge, Panruti, allowing I.A.No.72/2006 in O.S.No.40 of 2004 dated 16.02.2007.

For Petitioner :Mr.D.Baskar

For Respondents :No Appearance

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O R D E R

This petition is filed against the order of the learned Subordinate Judge, Panruti, in allowing I.A.No.72/2006 in O.S.No.40 of 2004 dated 16.02.2007.

2. The contention of the learned counsel for petitioner is that this petitioner and the respondents 4 and 5 herein have filed a suit in O.S.No.40 of 2004 against the respondents 1 to 3 herein before the learned Subordinate Judge, Panruti. The

suit was filed by the Office bearers of the E.I.D Parry (I) Ltd., Labour Union, Nellikuppam. The President is the head of the office bearers of the Labour Union. The petitioners have nowhere stated in the affidavit about their designations as office bearers. It is true that the election was conducted and new office bearers were elected. This respondent alone was re-elected as President and so he continues the same post.

3. The learned counsel for the petitioner further states that in the affidavit itself the respondents 4 and 5 (plaintiffs 2 and 3) have stated that they wanted to withdraw the suit, so their clear intention is to support the respondents 2 to 4. The case is to recover the amount due to the Union. The alleged resolution is a false and it is not binding on the members. It is an illegal decision by the office-bearers. The present office bearers will repeat what was done earlier, i.e., spent from Association funds for contesting general or other elections, which will be a bad precedent as well. Respondents had no authority to utilise the funds of the Union for election purpose. The sanction and release of funds are illegal, ultravires the bye-laws and unauthorised. The application will not lie and is malafide and mischievous. Proof affidavit of this respondent as P.W.1 was filed on 17.11.2005 and thereafter he was not cross examined till date. This application has been filed only to drag-on the proceedings and to delay the end of the suit. The suit has been filed in the capacity of President, General Secretary and Treasurer. If the respondents 4 and 5 (plaintiffs 2 and 3) are not willing to conduct the suit as plaintiffs, it is open to them to get transposed as defendants, but they can neither withdraw the suit nor transpose this petitioner (1st plaintiff) as defendant in the suit. Hence, he prays this Court to set aside the order passed by the court below.

4. I heard Mr.D.Baskar, learned counsel for the petitioner and even though notice served, no one represented on behalf of the respondents and perused the materials available on record.

5. Considering the facts and circumstances of the case, since the suit was filed by the Labour Union in the capacity of President, General Secretary and Treasurer for going into enquire about the misappropriation of the Union Funds and for recovery of money. and as the present President, who was also the earlier President, has not attended the meeting while passing resolution, this Court is of the view that the suit cannot be withdrawn by any of the plaintiffs and any of the plaintiffs cannot be transposed as defendants.

6. Since the suit has been filed by the Office bearers of the Union for recovery of Union accounts, now the respondents 4 and 5 who are the plaintiffs 4 and 5 cannot go back and withdraw the suit based on the resolution passed by the defendants who are the new office bearers. Even the 1st plaintiff has not elected as the new President, he also no legal right to withdraw the suit but the same can be proceed by this Court with an ordinary member of the union, since the issue involved in this suit is in respect of union fund.

7. Therefore, the very filing of the application in I.A.No.72 of 2006 for transpose the 1st plaintiff as 4th defendant is totally non maintainable and the defendants have no right to sought for the relief transpose the 1st plaintiff as 4th defendant. Since the 1st plaintiff, earlier in the capacity of the President of the Union has filed the suit and now he again elected as President. Therefore, there is no necessity to transpose the 1st plaintiff as 4th defendant. If the defendants whose against the suit was filed for recovery of the union amount of Rs.1,93,000/- cannot be permit to transpose as plaintiffs to conduct the case.

8. Therefore, the order passed by the learned Judge in allowing the petition in I.A.No.72 of 2006, dated 16.02.2007 is totally wrong and this Court warranting interference in the order and accordingly it is liable to be set aside.

9. In the result:

(a) The Civil Revision Petition is allowed by setting aside the order dated 16.02.2007 in I.A.No.72/2006 in O.S.No.40 of 2004, on the file of the learned Subordinate Judge, Panruti;

(b) The learned Subordinate Judge is directed to conduct trial on day today basis, without giving any adjournment to either parties, and dispose the suit within a period of three months;

(c) The learned Subordinate Judge is directed to report this Court within a period of ten days from the date of decree of the suit in O.S.No.40 of 2004. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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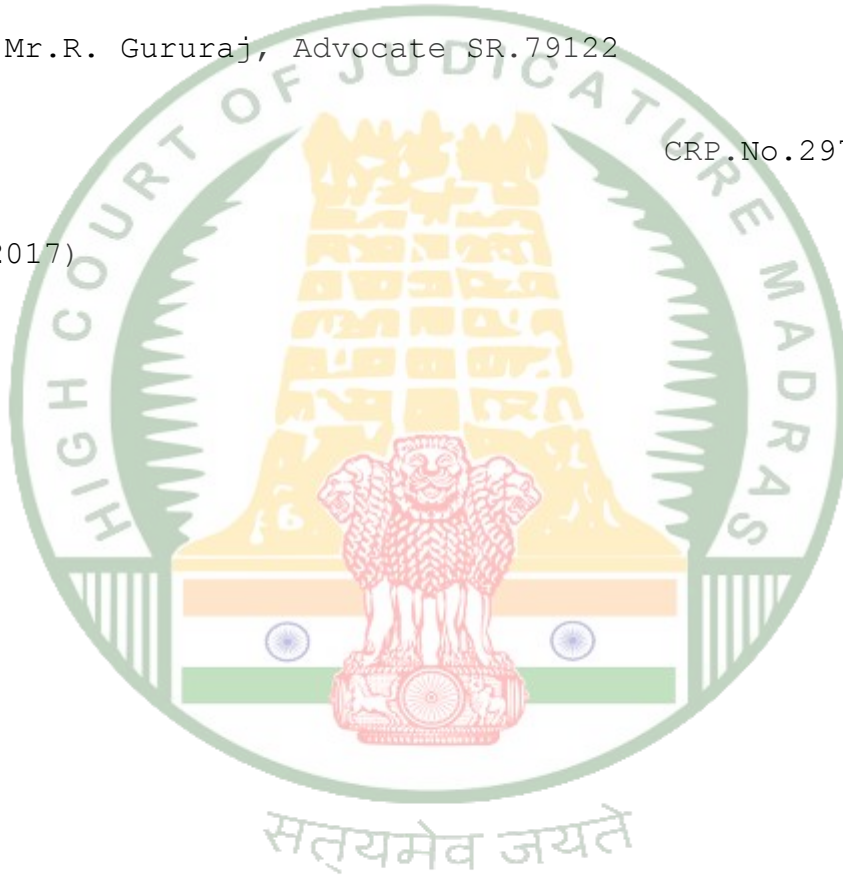
The learned Subordinate Judge,
Panruti.

2. The Section Officer, Judicial Section,
High Court, Madras.(for Reporting Compliance)

+ 1 cc to Mr.R. Gururaj, Advocate SR.79122

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