

IN THE HIGH COURT OF JUDICATRUE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 22ND DAY OF DECEMBER 2017

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A.Nos. 8451 to 8453 of 2017

in

C.S.No.203 of 2017

C.S.No.203 of 2017:

A.No.8451 of 2017:

B.Venkatesh alias
B.Venkatasubramanyam
S/o.K.Balasubramanian
Past President
The Gandhi Nagar Club
(Membership No.V-101)
Residing at
New No.23, Fourth Main Road
The Gandhi Nagar,
Adyar, Chennai-600 020.

..Applicant/Plaintiff

VS

1.The Gandhi Nagar Club
(A club registered under the Societies
Registration Act under Regn.No,12/1951)
Rep by its Secretary
No.73, B.Ramachandra Adhithanar Salai
(Formerly Fourth Main Road)
The Gandhi Nagar, Adyar, Chennai-600 020

2.Sunil Reddy,
(Membership No.S-110)
President, The Gandhi Nagar Club

3.Mohan Raghavan
(Membership No.M-161)
Vice President, The Gandhi Nagar Club

4.Mahesh V Shanbhag,
(Membership No.M-216)
Hony. Secretary , The Gandhi Nagar Club

5.D.Ilamurugu,
(Membership No.I-113)
Hony. Treasurer, The Gandhi Nagar Club

6.T.N.Ananth
(Membership No.A-146)
General Committee Member
The Gandhi Nagar Club

7.K.Balaji
(Membership No.B-173)
General Committee Member
The Gandhi Nagar Club

8.Ganesan Maniyan
(Membership No.G-110)
General Committee Member
The Gandhi Nagar Club

9.R.Natarajan
(Membership No.N-139)
General Committee Member
The Gandhi Nagar Club

10.B.Suresh Kumar
(Membership No.S-165)
General Committee Member
The Gandhi Nagar Club

11.Veluchamy,
Special Officer
The Gandhi Nagar Cooperative Housing Society
Ex-Officio Member of the General Committee
The Gandhi Nagar Club

12.Sudhakar Rajendran
(Membership No.S-139)
Member of Fact Finding Committee
Appointed by The Gandhi Nagar Club

13.V.Ravichandran,
(Membership No.R-232)
Member of Fact Finding Committee
Appointed by The Gandhi Nagar Club

14.George V Joseph
(Membership No.G-167)
Member of Fact Finding Committee
Appointed by The Gandhi Nagar Club

Defendants 2 to 14 having office at
No.73, B.Ramachandra Adhithanar Salai
(Formerly Fourth Main Road)
The Gandhi Nagar,
Adyar, Chennai-600 020

15.P.Ramkumar
 (Membership No.R-127)
 No.14, M.G.R.Road
 Kalakshetra Colony
 Besant Nagar,
 Chennai-600 090.

..Respondents/Defendants

A.No.8451 of 2017:

Application praying that this Hon'ble court be court be pleased to pass an order of interim direction, directing respondents 1-10 to call for an EGM of the 1st respondent club by giving 7 days' notice to all members of the club, for the purpose of considering the Forensic Audit report dated 11.12.2017 in a manner as indicated by the Division Bench of this Hon'ble Court in its common orders dated 15.09.2017 and 11.12.2017 passed in OSA Nos. 231-242, pending disposal of this suit.

A.No.8452 of 2017:

Application praying that this Hon'ble court be court be pleased to appoint an independent person (preferably a retired judge of this Hon'ble High Court) to sit as the Chairman/Presiding Officer of the proposed EGM of the first respondent club to be conducted for the purpose of consideration of the Forensic Audit report dated 11.12.2017.

A.No.8453 of 2017:

Application praying that this Hon'ble court be court be pleased to pass an interim direction, postponing the AGM of the 1st respondent club for the year 2016-2017 scheduled to be held on 31.12.2017, to a convenient date after the recasting/reworking of the accounts for the club for the period from 01.04.2016 to 31.03.2017, in consonance with the Forensic Audit Report dated 11.12.2017 pending disposal of this suit.

These applications coming on this day before this court for hearing the court made the following order:-

These three applications have been filed by the Plaintiff in the suit. The first application has been filed, seeking interim direction, directing the Respondents 1-10 to call for an EGM of the 1st Respondent Club by giving 7 days notice to all members of the Club, for the purpose of considering the forensic audit report, dated 11.12.2017 in a manner as indicated by the Division Bench of this Court in its common orders, dated 15.9.2017 and 11.12.2017 passed in OSA.Nos.231-242 of 2017.

2. The second application has been filed, seeking to appoint an independent person (preferably a retired Judge of this court) to sit as the Chairman/Presiding Officer of the proposed EGM of the 1st Respondent Club to be conducted for the purpose of consideration of the forensic audit report dated 11.12.2017.

3. The third application has been filed, seeking interim direction, postponing AGM of the 1st Respondent Club for the year 2016-2017 scheduled to be held on 31.12.2017, to a convenient date after recasting/ reworking of the accounts for the Club for the period from 1.4.2016 to 31.3.2017, in consonance with the forensic audit report dated 11.12.2017.

4. The suit had been filed, seeking declaration that the notice dated 9.3.2017 issued by the 1st Defendant Club, suspending the Plaintiff from membership and debarring the Plaintiff from contesting the elections is ultravires the bye laws of the Club, void abinitio and not

binding on the Plaintiff and for other consequential relief of injunction and for damages.

5. As is seen from the reliefs sought in the plaint, it was an individual grievance of the Plaintiff. Consequently, at that particular point of time, the Plaintiff did not though it fit to resort to the provisions of Order 1 Rule 8 of CPC. The cause of action for institution of the suit was the notice dated 9.3.2017 issued to the Plaintiff in his personal capacity. This Court had an occasion to examine that notice and the surrounding circumstances and a detailed order had been passed after hearing both sides. The order passed by this Court had been taken up in appeal and a common judgement had been passed in OSA.Nos.231-242 of 2017, dated 15.9.2017

6. In the said common judgement, dated 15.9.2017, the Division Bench gave a direction in pursuance of a Joint Terms of Reference dated 1.9.2017 and an auditor was appointed to conduct a forensic audit and the Division Bench had held as follows:-

"3.7. That the findings reported by the Auditor will be placed before the General Body, upon a meeting being called in that behalf. In case any party is aggrieved by the outcome contained in the report, he/she shall be at liberty to file his/her objections to the same.

3.8. That the General Body will allow the objector(s) to present his/her case before them. After hearing objector(s), the General Body will pass a resolution, as deemed fit.

3.9. Notwithstanding the decision taken at the General Body Meeting, the aggrieved party will be at liberty to assail the findings on the

auditor's report and/or the decision of the General Body, in the manner known to law."

7. When these applications were argued, Mr.R.Parthasarathy, the learned counsel for the Applicant has stated that the AGM has been scheduled to be held on 31.12.2017 and pointed out the Agenda for the Annual General Body Meeting, which is as follows:-

"THE GANDHINAGAR Club
ANNUAL GENERAL BODY MEETING
NOTICE

The 27th Annual General Body Meeting of the Club will be held on Sunday the 31st December 2017 at 10.00 a.m. at the Club premises to transact the following business:

- 01.To pass the minutes of the Adjourned Extra Ordinary General Body Meeting held on 25th June 2017 (Attached).
- 02.To present the Annual Report of the Club for the year 01/04/2016 to 31/3/2017 (attached) as per the statutory requirement of the Society Act.
- 03.To adopt the Annual Accounts for the year ended 31st March 2017.
- 04.To appoint Statutory Auditors/Auditor for the year 2017-2018 and fix his/their remuneration.
- 05.To consider any other business if the same is brought forward by a notice which has been received in writing not less than 7 (seven) days before the meeting (Rule 10.1(1)(iii)).
- 06.Presentation, discussion and appropriate decision of the General Body based on the Forensic audit report of M/s.N.C.Rajagopal and Company, appointed by the Hon'ble High Court, by order dated 15.9.2017.
- 07.any other matter subject with the permission of the Chair.

8. According to the learned counsel for the

Applicant, the Agenda in S.Nos.2 and 3 , which relate to the annual report and the annual accounts, should not be discussed and the AGM should be called only to discuss the Agenda at S.No.6, because, according to him, the Division Bench had stipulated that the General Body must be convened for the purpose of discussing the forensic audit report. According to the learned counsel, without deciding on the forensic audit report, the annual accounts should not be passed. This was because if the forensic audit report is taken into consideration, then the annual accounts will have to be reworked. It was under these circumstances, these applications came to be filed.

9. I am deliberately not going into the background facts of the case, since on an earlier occasion, this Court had dealt with the issues in detail.

10. The grievance of the Plaintiff on the earlier occasion, as stated above, was with respect to the notice issued to him in his individual name. Once again, it was pointed out that the provisions of Order 1 Rule 8 of CPC were not invoked since it did not involve the interest of all members of the Club. Thereafter, the the Division Bench had thought it fit to appoint an forensic auditor to examine into the allegations as against the Plaintiff and the auditor and to submit a report and the Division Bench had stated that as and when the auditor submits his report, the General Body must be convened to examine the report.

11. However, in the present applications, the

Plaintiff has shifted the cause of action from the cause of action on which he had instituted the suit and had widened the scope of the suit from being one to readdress a personal grievance to one that involves all the members of the Club. Any attempt to postpone the General Body Meeting directly affects each and every member of the Club. This has a new cause of action and Order 1 Rule 8 of CPC is necessary so that each and every member, who are affected or who are interested in participating in the General Body Meeting, should necessarily be afforded an opportunity or at least given an invitation to participate in these proceedings.

12. These applications are prima facie, therefore, misconceived. Even though this may be on a narrow technical ground, it is actually a very strong ground, because the Plaintiff, who is seeking to address a personal cause, is now attempting to widen the entire scope of the suit beyond the relief which had sought in the suit. I am not convinced that the present applications are the proper method to ventilate the grievance of the Plaintiff.

13. There is yet another disturbing factor. The Agenda was dated 4.12.2017. The forensic audit report was actually submitted on 11.12.2017 and came up before the Division Bench for consideration on 11.12.2017.

14. Mr.M.Krishna Srinivasan, the learned counsel, who had entered appearance for the 1st Defendant Association, has also filed a counter and in the counter,

it was specifically stated as follows:-

"4. .. In fact when the appeals, OSA.Nos.231 to 241 of 2017 were listed under the caption "For Reporting Compliance" on 4.12.2017, the Counsel for the Respondent Club specifically drew the attention of this Hon'ble Division Bench to the fact the first Respondent Club had to convene the Annual General Meeting as per Section 26 of the Tamil Nadu Societies Registration Act, on or before 31.12.2017 and since 21 days advance notice of the same had to be given, the Respondent Club may be permitted to issue the notice of the Annual General Meeting. This oral submission by the Club's counsel was accepted by the Hon'ble Division Bench and accordingly, the 1st Respondent Club proceeded to issue the notice for the Annual General Meeting on very same day itself, on 4.12.2017.

15. Though a copy of this counter had been served on the learned counsel for the Applicant herein on 20.12.2017, as is seen from the endorsement when matters were heard on 21.12.2017, there was no reply to this specific averment. The above averment is again repeated in specific paragraphs in the counter.

16. After conclusion of arguments, by way of reply Mr.R.Parthasarathy, the learned senior counsel for the Applicant hurriedly got an affidavit prepared from the Plaintiff in CS.Nos.203 and 205 of 2017, stating that the Division Bench had felt that since OSAs were already disposed of, it would not be possible to pass any orders in the appeals. However, that issue is beyond the point. The fact is that the present applications have widened the scope of the suit and no order can be passed, restraining the conducting of the General Body Meeting in the present suit. The Plaintiff in these applications cannot seek

relief in his personal name as against the General Body of the 1st Defendant Association.

17. Even otherwise, it is for the General Body to decide about the accounts and the forensic audit report and this court cannot substitute itself for the General Body or impose any views over the General Body. This court cannot also presume the decisions that the General Body would take. The present applications are totally misconceived and accordingly, the Applicant cannot be granted the relief that he seeks in all the applications.

18. In the result, all the three applications are dismissed.

Sd/- C.V.K.J

22.12.2017

//Certified to be a true copy//
Dated this the day of 2017

jj 26/12/2017 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.