



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2017

CORAM :

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Miscellaneous Appeal (MD)Nos.305 and 306 of 2017
and
C.M.P (MD)Nos.3600, 3601 and 3802 to 3804 of 2017

- 1.Kuldeep Sethia
- 2.C.Subramanian
- 3.B.Meenakshi Sundaram
- 4.N.Sreeram
- 5.E.Arunkumaran
- 6.R.Thamilmaran
- 7.A.Shalini
- 8.Elanchelian
- 9.S.Karunakaran

... Appellants/Respondents 1 to 9/
Defendants 1 to 9 in both C.M.As.

Vs.

- 1.R.Jeeva
- 2.R.Janani
- 3.R.Kiruthika
- 4.R.Sriram
- 5.R.Shanthi

...Respondents 1 &2/Petitioners/Plaintiffs

- 6.Sri Vinayaga Educational and Charitable Trust
a registered Public Trust represented by its
Managing Trustee, R.Shanthi,
C-4, Grand Avenue,
1st Cross, N.E.E.Thillainagar,
Trichy.

...Respondents 3 to 6/Respondents 10 to 13/
Defendants 10 to 13 in both C.M.As

Appeals filed under Order 43 Rule 1 C.P.C to set aside the docket order passed in I.A.Nos.178 and 179 of 2017 in O.S.No.37 of 2017 on the file of the III Additional District Court, Trichy, dated 27.03.2017 and allow the above Civil Miscellaneous Appeals.

For Appellants in : Mr.C.Vakeeswaran
both CMA's

For Respondents 5&6 : Mr.S.Ramesh
For 3rd Respondent : Mr.H.Lakshmi Shankar
For Respondents 1&2 : Mr.K.Prabhakar
For 4th Respondent : Mr.K.S.Vamsidhar
(In both C.M.As)

COMMON JUDGMENT

These appeals have been filed by the respondents 1 to 9 in I.A.Nos.178 and 179 of 2017 in O.S.No.37 of 2017 on the file of the III Additional District Court, Trichy.

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2.The dispute relates to the management of a trust, namely, Sri Vinayaga Educational and Charitable Trust. The prayer, in the suit, in O.S.No.37 of 2017 reads as follows:-

"(a)to declare that the notice dated 09.03.2017 calling for a meeting of board of trustees on 17.03.2017 is illegal, ultravires, capricious, unenforceable, non-est, null and void;

(b)for a declaration that the resolutions passed on 17.03.2017 are illegal, ultravires violative of the trust deed, non-est, illegal, capricious, unenforceable, null and void and for consequential relief of permanent injunction restraining the defendants from enforcing or implementing the resolutions alleged to have been passed on 17.03.2017;

(c)for a declaration that the defendants are not entitled to appoint any additional trustees without the collective consent of all trustees of the Sri Vinayaga Educational and Charitable Trust;

(d)for declaration that the notice undated calling for the meeting of the board of trustees on 03.04.2017 is illegal, unlawful, capricious, null and void;

(e)grant costs of the suit;

(f)and such other relief that this Hon'ble Court deem fit and proper in the circumstances of the case and thus render justice."

3.Pending the said suit, the applicants who claimed to be the trustees sought for temporary interim injunction restraining the respondents from enforcing or implementing the resolutions alleged to have been passed on 17.03.2017 in I.A.No.178 of 2017 and for a temporary interim injunction restraining the respondents 1 to 9 from conducting meeting of the Board on 03.04.2017 in I.A.No.179 of 2017.

4.The learned Additional District Judge, Trichirappalli passed the following order in both the interlocutory applications on 27.03.2017:-

"Heard. Documents perused. Prima facie case is made out. Ad-interim injunction is granted against the respondent till 01.04.2017. Notice to the respondent by the Order 39 Rule 3 to be complied with."



5. It is, this order which is challenged by the appellants who are the defendants 1-9 in the suit by way of these Civil Miscellaneous Appeals.

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6. By consent of all the parties, both the Civil Miscellaneous Appeals have been taken up together for final hearing and disposed of by this common judgment.

7. A perusal of the order impugned in these Civil Miscellaneous Appeals shows that the requirements of Order 39 Rules 1 and 2 for grant of temporary injunction have not been complied with by the learned Additional District Judge.

8. The plaintiffs who are the respondents 1 and 2 in these appeals have sought for vacation of the interim order passed by this Court on 12.04.2017.

9. As already stated, the orders impugned in these Civil Miscellaneous Appeals will have to be set aside solely on the ground that they do not comply with the requirements of Order 39 Rules 1 and 2 of Code of Civil Procedure. Accordingly, the interim orders passed by the learned Additional District Judge on 27.03.2017, in I.A.Nos.178 and 179 of 2017 are set aside.

10. At this juncture, learned counsel for the respondents would submit that the salaries payable to the teachers have not been paid for the month of April.

11. It is made clear that the fifth defendant and the twelfth defendant who are Managing Trustee and Joint Managing Trustee respectively, will be at liberty to disburse salaries of the teachers for the month of March which is due and payable now.

12. It is represented by the learned counsel for the parties that counter affidavits have been filed in the applications and the petitioners before the trial Court had in fact completed their arguments and the matter has been posted for respondents' arguments.

13. In such view of the matter, there will be a direction to the trial Court to dispose of the applications, namely, I.A.Nos.178 and 179 of 2017, on or before 28.04.2017. It is made clear that the temporary arrangement made for payment of salaries for the month of March will be in operation till the disposal of the above said interlocutory applications by the trial Court. The parties shall co-operate, for the disposal of the above said applications as per the aforesaid direction.



14. In fine, the Civil Miscellaneous Appeals are allowed. No costs. Consequently, C.M.P(MD)Nos.3600, 3601 and 3802 to 3804 of 2017 are closed.

Sd/-

Assistant Registrar(Crl.Side)

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Sub Assistant Registrar

To
The III Additional District Judge,
Trichy

+2CC to M/S.C.Vakeeswaran, Advocate, SR.No. 52545, 52546

+2CC to M/S.K.Prabhakar, Advocate, SR.No. 52460

+1CC to M/S.V.Raghavachari, Advocate, SR.No. 52703

Civil Miscellaneous Appeal (MD)Nos.305

and 306 of 2017

and

C.M.P(MD)Nos.3600, 3601 and 3802 to 3804 of 2017

sms

AM/SKN RSK/SAR 4/19.04.2017/4P/7C