



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.R.P. (MD) No.563 of 2015 (PD)
& C.M.P. (MD) No.8335 of 2016 & M.P. (MD) No.3 of 2015

Dr.R.Arun
Honorary Secretary,
Indian Dental Association,
Tamil Nadu State Branch,
Jai Dent Hub.
No.712/134, C-2 Kothai Plaza,
Oppo. To Murugan Kovil,
Salem Road,
Namakkal - 637 001.

.. Petitioner/1st Defendant

Vs.

1.Dr.D.Manivannan
2.Dr.T.Gokulraj

..Respondent/Plaintiff
.. Respondents/2nd Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to strike off the plaint filed by the first respondent/plaintiff in O.S.No.133 of 2015, on the file of the Principal District Munsif Court, Madurai Town.

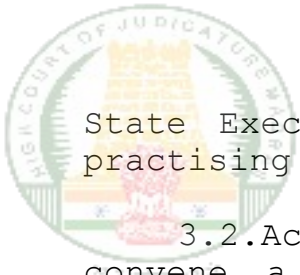
For Petitioner	: Mr.Veerakathiravan Senior Counsel
For R1	: Mr.N.Sankaran
For R2	: Mr.V.Raghavachari

ORDER

This Civil Revision Petition is filed to strike off the plaint filed by the first respondent/plaintiff in O.S.No.133 of 2015, on the file of the Principal District Munsif Court, Madurai Town.

2.The petitioner is the first defendant and the first respondent is the plaintiff and the second respondent is the second defendant in the suit in O.S.No.133 of 2015 on the file of the Principal District Munsif Court, Madurai Town. The first respondent filed the suit for declaration to declare that the impugned notice, dated 27.02.2015, sent by the Petitioner/Secretary convening the Executive Committee Meeting on 15.03.2015 at Hotel Raj, Tuticorin, is void and illegal and ultra vires and also for consequential injunction. The first respondent filed I.A.No.156 of 2015 along with plaint for temporary injunction against the petitioner.

3.1.According to the first respondent, he is a Member of Indian Dental Association, Tamil Nadu Branch and was elected as a Member of



State Executive Committee for Tamil Nadu State Branch and he is practising as a Dentist at Madurai.

3.2. According to the first respondent, the petitioner has to convene a Executive Committee Meeting in consultation with the second respondent. The first respondent received notice dated 27.02.2015 from the petitioner about the Executive Committee Meeting to be held on 15.03.2015 at Hotel Raj, Jeyaraj Road, Tuticorin. The second respondent sent a E-mail notice dated 10.03.2015 to the first respondent and other Executive Committee Members stating that the said Meeting was convened by the petitioner without his consent and approval and fresh meeting date will be informed later. The petitioner sent messages that the Executive Committee Meeting will be held as proposed.

3.3. According to the first respondent, the notice dated 27.02.2015 sent by the petitioner is illegal and the petitioner has sent the notice with an ulterior motive and is acting against the interest of Association. The first respondent filed the suit and also filed I.A.No.156 of 2015 for temporary injunction. The learned District Munsif considering the averments in the plaint as well as the affidavit filed in support of I.A.No.156 of 2015, by order dated 12.03.2015, granted an ex-parte injunction and posted I.A.No.156 of 2015 to 18.02.2015 for further proceedings.

4. The petitioner has filed the Civil Revision Petition to strike off the plaint in O.S.No.133 of 2015.

5. The learned Senior Counsel appearing for the petitioner contended that;

(i) the suit filed by the first respondent is barred as per Rule 6 of the Amended Bye-laws, which provides Arbitration Proceedings to resolve the dispute among the members on the administration of the Society. The suit filed by the first respondent is not maintainable in view of alternate effective remedy of arbitration;

(ii) no cause of action for the suit has arisen, as the first respondent has not suffered any legal injury to maintain the suit. The learned District Munsif has erroneously entertained the suit, as there is no cause of action to file the suit;

(iii) the first respondent has not impleaded the Society or State Branch and as such the suit is not maintainable;

(iv) the Court at Madurai has no territorial jurisdiction to entertain the suit;

(v) the second respondent ceased to be a Member as well as the President of State Branch, as he failed to pay the subscription before 31.12.2015;

(vi) the intention of the respondent is only to stall the Executive committee Meeting;

(vii) the second respondent on his failure to pay the subscription before 31.12.2015 cannot continue as Office Bearer and there is no necessity to consult him. Therefore, consultation was taken from the next Office Bearer, namely, Vice President of the



Society;

(viii) the first respondent is seeking relief to all the Members of the Society in a representative capacity. The suit is not maintainable, as he did not obtain leave to file suit in a representative capacity; and

(ix) the suit is abuse of process of law, illegal and irregular and is liable to be struck off.

6. In support of his submissions, the learned Senior Counsel for the petitioner relied on the following judgments:

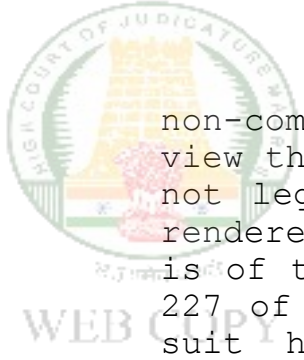
(i) 1998 (3) SCC 573 [K.K.Modi Vs. K.N.Modi and others], wherein at paragraph 44, it has been held as follows:-

"44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

(ii) 2013 (5) LW 810 [S.R.Nanda Kishore Vs. The Body of Villagers of No.29, Mambakkam Village and others], wherein at paragraphs 30 and 36, it has been held as follows:-

"30. When the suit was filed against the elected village panchayat of Mambakkam village, three individuals of the said village cannot represent the entire village people and further, it is mandatory on the part of the plaintiff to follow the mandatory procedure, as contemplated under Order 1 Rule 8 of the Code of Civil Procedure. However, without obtaining leave from the Court below, the suit was filed by three individuals of the village, as if they represent the people of the village against the village panchayat, represented by its elected President.

36. In the light of the submissions made by the learned Advocate General of Tamil Nadu and also the fact that the first respondent/plaintiff has no locus standi and also the



non-compliance of Order 1 Rule 8 CPC, this Court is of the view that the suit filed by the first respondent/plaintiff is not legally sustainable. In the light of various decisions rendered by the Hon'ble Apex Court and this Court, this Court is of the view that the revision preferred, invoking Article 227 of the Constitution of India has to be allowed, as the suit has been filed by the first respondent/plaintiff, without any locus standi and without following the mandatory procedure, known to law and accordingly, the same is liable to be struck off. In the result, this Civil Revision Petition is allowed and the suit filed by the first respondent/plaintiff is ordered to be struck off."

(iii) 2013 (6) CTC 809 [N.A.Chinnasamy and another Vs. S.Vellingirinathan], wherein at paragraphs 38, 50 and 52, it has been held as follows:-

"38. As the revision petition has been filed under Article 227 of the Constitution of India, it being the superintending power of the High Court over all subordinate Courts, including Tribunals, this Court can interfere, only if there is clear abuse of process of Court, based on the averments or pleadings of the plaint. If it is established that the suit has been filed as an abuse of process of Court, in order to prevent the abuse of process of court and to avoid miscarriage of justice, this Court has to order strike off the plaint. The Hon'ble Supreme Court in the decisions referred to above has categorically ruled that where there is abuse of process of Court or filing the suit itself is contrary to justice and against public policy, this Court has to exercise its power under Article 227 of the Constitution. If it is a frivolous or vexatious suit, as per the pleadings of the plaint and the Court process is being wasted, this Court has to exercise its power under Article 227 of the Constitution of India to strike off the plaint. However, such jurisdiction should be exercised sparingly. When the Court is satisfied that there is no chance of the suit succeeding, as held by the Hon'ble Apex Court in K.K. Modi v. K.N. Modi (cited supra), petition filed under Article 227 of the Constitution of India, has to be allowed by this Court, to prevent abuse of process of law and to meet the ends of justice.

50. The other two points under Order VII Rule 1 CPC are relating to no cause of action for filing the suit and the statutory bar under the Limitation Act. Apart from the said grounds, if it is also established that the filing of the suit itself is an abuse of process of law and the Court, hence, invoking Article 227 of the Constitution of India, the plaint could be to struck off, to meet the ends of justice.

52. It cannot be disputed that plaint could be struck off only in the rarest of cases, when there is clear abuse of process of law and Court, however, the same has to be decided



only based on the pleadings and the admission made by the plaintiff and not based on the written statement and when the court comes to a conclusion that there is no possibility for the plaintiff to succeed and filing such a suit is also an abuse of process of law and the Court. In this Revision, all these aspects are available against the respondent/plaintiff, hence, this Court has no hesitation to invoke Article 227 of the Constitution and struck off the plaint, to meet the ends of justice."

(iv) 2013 (1) LW 491 [N.Babu Vs. S.Shanmugam and others], wherein at paragraphs 23 and 25, it has been held as follows:-

"23. In the judgment in Southern and Rajamani Transport Private Limited v. R. Srinivasan (2010 (4) CTC 690), it has been held as follows:

"29. From the cumulative reading of the decisions referred to supra, it is easily discernible that Article 227 of the Constitution of India can be invoked by every High Court under the guise of superintendence, on the following grounds:

(a) to prevent abuse of process of law

(b) to prevent miscarriage of justice

(c) to prevent grave injustice

(d) to establish both administrative as well as judicial power of High Court."

25. Further, though an alternative remedy is available to the revision petitioner, for striking off the suit under Order 21 Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of Court and when the facts are not controverted and admitted by the plaintiff/first respondent, the Court can exercise the extra ordinary jurisdiction of the Court under Article 227 of the Constitution of India and strike off the plaint and as a matter of fact, this Court and Honourable Supreme Court held that the right conferred under Article 227 must be exercised very sparingly and it is also settled law that when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of Article 227 of the Constitution of India."

(v) 2009 (2) CTC 57 [Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai and another Vs. Selvaraj and another], wherein at paragraphs 11, 20, 21 and 23, it has been held as follows:-

"11. As per the above said dicta, if a party has initiated a vexatious or frivolous litigations in order to harass the other party, the Court can nip the attempt in the bud itself, irrespective of the stage of such proceedings.



20. In considered opinion of this Court, whenever this Court finds any abuse of process of Courts and if the proceedings initiated are possessing the elements of frivolousness and vexatiousness, this Court can very well pass appropriate orders, invoking Article 227 by exercising supervisory jurisdiction.

21. Following the dictum in Surya Dev Raj's case (supra) the interest of justice, it is also to be observed that in all the cases it need not be held that a particular party has to exhaust the alternative remedy and however every case depends upon its nature, facts and circumstances.

23. As far as the scope of exercising the supervisory jurisdiction under Article 227 is concerned, the duty of this Court is to infer or discern any vexatious or frivolousness in the proceedings initiated."

(vi) 1999 (3) LW 897 [T.Palanisamy Gounder Vs. Sankara Ramanathan and 4 others], wherein at paragraph 14, it has been held as follows:-

"14. In the decision reported in T.Arivanandam V.T.V.Satyapal (1997) (4) SCC 467), the Supreme Court has held that if on a mere reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a dear right to sue, it should exercise its power under Order VII Rule 11 of Code of Civil Procedure taking care to see that the grounds mentioned therein are fulfilled. The Trial court will remind itself of Section 35A of the Code of Civil Procedure and take deterrent action, if it is satisfied that the litigation was inspired by vexatious motives for an altogether groundless litigation. Applying the ratio laid down in the aforesaid decision, it is clear that the averments made in the plaint do not disclose the cause of action, besides the plea raised by them are not maintainable."

(vii) 1998 (1) LW 255 [Madhya Pradesh Electricity Board Vs. M/s.Klen & Marshalls, Manufactures & Exports Ltd. and another], wherein at paragraph 15, it has been held as follows:-

"15. There cannot be a cause of action against the Bank in this case. Unless there is a wrongful act on the part of the Bank, first respondent cannot have a cause of action against it. A 'cause of action' is defined thus':

"By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit."

If the Bank has not interfered with the right of the plaintiff, there cannot be any question of cause of action against the Bank and that too a particular branch. Taking



into consideration these facts, it is clear that the first respondent herein has really indulged itself in judicial adventurism fully knowing that the court has no jurisdiction and that too by suppressing a material document (contract between the plaintiff and first defendant), and also not disclosing the lack of jurisdiction as per the contract before court. Under these circumstances, I feel that this is a fit case where this Court has to invoke the jurisdiction under Article 227 of the Constitution of India."

(viii) 1997 (2) LW 761 [Ranipet Municipality Commissioner etc. Vs. M.Shamsheerkhan], wherein at paragraphs 11 and 20, it has been held as follows:-

"11. "Abuse of process is the malicious and improper use of some regular legal proceeding to obtain some advantage over an opponent." This is a term generally used to proceeding which is wanting in bona fide and is frivolous, vexatious or oppressive. An abuse of the process of court can be committed by the court or by a party. It is therefore clear that where a court employed a procedure in doing something which it never intended to do, but resulted in miscarriage of justice, there is what is called an abuse of the process of the court. If a subordinate court commits an abuse of the process of the Court, a superior court has the power, nay the duty to prevent the said abuse becoming perpetual by interfering with the proceeding. What then is an abuse of the process of the court committed by a party to the proceedings? Instituting vexatious, obstructive or dilatory action in court of law is one instance; where a party should be held to be guilty of an abuse of the multiplicity of proceedings for one's own aggrandisement is yet another instance where a party could be said to have committed an abuse of the process of the court."

20. The appellate Court will not be competent to grant an injunction in favour of petitioner herein, even if it succeeds in the appeal. By invoking the inherent powers and taking note of the abuse of the process of Court, even if there is an alternative remedy, this Court is entitled to invoke the power under Section 151 of the Code of Civil Procedure, taken along with Art.227 of the Constitution of India."

(ix) 2004 (3) CTC 241 [The General Manager, Telecommunications, Trichy and others Vs. K.Natrayan and others], wherein at paragraph 12, it has been held as follows:-

"12. In such a circumstance, though the plaintiff withdrew the suit subsequent to filing of the revisions, I hold that in the light of specific bar under Section 7-B and in view of Section 9 of CPC as well as as explained by catena of decisions that in respect of any dispute relating to the matter specifically provided in sub-section (1), the only remedy for the affected person to resolve the same is by way



of arbitration proceedings and the civil Court has no jurisdiction to entertain the suit of this nature."

(x) 2001 (1) LW 202 [Senni @ Sundarammal Vs. Ramasamy and others], wherein at paragraph 9, it has been held as follows:-

"9. Here in this case on hand, there was already a litigation with reference to which the matter has reached the High Court by way of Second Appeal, wherein interim order has been passed, vacating the injunction. Subsequently, another suit has been filed and the first respondent could not get any interim order. Thereafter, he thinks of the idea of filing of suit in a court which has nothing to do at all with the matter and without impleading the party really affected, files a suit and obtains an order of injunction. It clearly amounts to abuse of process of court. Such tendency on the part of the litigant should be put down with strong hands. Hence, I am of the view that as there is a blatant abuse of process of court resulting in miscarriage of justice, it eminently satisfies the parameters for stepping in under Article 227 of the Constitution."

7. Per contra, the learned counsel for the respondents independently contended that the Civil Revision Petition is not maintainable and they further contended that;

(i) the first respondent is a practising Dentist in Madurai, Member of Indian Dental Association and elected Executive Committee Member of Tamil Nadu State Branch. He received notices with regard to the Executive Committee Meetings from both the petitioner and the second respondent at Madurai. He is affected and prejudiced by the notices sent by the petitioner received by him at Madurai. Hence, cause of action has arisen at Madurai and the suit is filed at Madurai, is maintainable;

(ii) the petitioner participated in the suit initiated by the first respondent by filing counter affidavit in I.A.No.156 of 2015 for temporary injunction. The petitioner has not raised the plea that the suit is barred in view of Arbitration Clause contained in the Bye-laws and has not taken any steps for referring the issue to arbitration;

(iii) the petitioner has waived his right to arbitration and cannot raise the plea in the Civil Revision Petition that the suit is barred and not maintainable in view of alternative remedy of arbitration;

(iv) as per Bye-laws of the Association, the petitioner can convene the Executive Committee Meeting only in consultation with the second respondent, who is the President of Tamil Nadu State Branch of the Association. The petitioner contended that he consulted the second respondent, which is denied by the second respondent. In view of denial of the second respondent about consultation by the petitioner, the notice issued by the petitioner is illegal and void. Hence, the suit filed by the first respondent is maintainable and it is not illegal or abuse of process of law;



(v) the petitioner claims that the second respondent ceased to be a Member of the Association and President of Tamil Nadu State Branch of Association, as he failed to pay the subscription within the stipulated time. The amount alleged to have been paid by the second respondent, is not members subscription and it relates to some other transaction. On the other hand, the second respondent claimed that he has paid the subscription within the time as contemplated by Bye-laws and he continues to hold the post of President. The petitioner has to prove his claim that the second respondent ceased to be the President and he need not consult the second respondent for convening the Executive Committee Meeting by acceptable evidence and plaint cannot be struck off summarily;

(vi) the petitioner claims in the correspondence that he consulted the second respondent to convene the Executive Committee Meeting and except the Venue, the second respondent agreed for convening the Executive Committee Meeting on the date and time mentioned by the petitioner. At the same time, the petitioner states that the second respondent ceased to be President and he consulted the Office President and convened the Executive Committee Meeting. The contradictory stand clearly shows, on the face of it, the notice issued by the petitioner convening the Executive Committee Meeting, is contrary to the Bye-laws, illegal and void ab initio; and

(vii) the first respondent has filed the suit in his individual capacity and there is no need to obtain leave to file suit under Order 1 Rule 10 C.P.C.

8. The learned counsel for the first respondent relied on the following judgments:

(i) 2003 (4) CTC 176 [Surya Dev Rai Vs. Ram Chander Rai and others], wherein at paragraph 37, it has been held as follows:-

"37. (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-



drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

(ii) 2010 (1) CTC 199 [Madras Gymkhana Club and others Vs. K.C.Sukumar], wherein at paragraphs 5 and 16, it has been held as follows:-

"5. The petition has been filed under Article 227 of the Constitution and the powers of this Court under Article 227 have to be exercised sparingly when any gross injustice and patent violations of elementary principles of law are discernible from the orders or the attitude of the subordinate Courts. This Court has got supervisory power over the affairs of the subordinate Courts.

16. When the dicta laid down by the Honourable Supreme Court are followed, it has to be held that the power of the High Court under Article 227 have to be exercised sparingly, that the provision cannot be invoked to correct an error which is the duty of appellate Court and that when the avenue of appeal is open to the party aggrieved, invoking Article 227 has to be discouraged. At the cost of repetition, it is stated that the factual findings recorded by the Court below need not be interfered with by this Court exercising jurisdiction under Article 227, since error allegedly available in the order challenged has to be interfered and corrected by the Court of appeal on the questions of fact. It



is settled by the Supreme Court that disputed and contentious facts could not be settled by invoking jurisdiction of High Court under Article 227 of Constitution."

(iii) 2013 (2) TNCJ 592 (MAD) (MB) [Naachiarammal and others Vs. Jainulbhurhaniya Banu and others], wherein at paragraph 15, it has been held as follows:-

"15. The oft-quoted judgment of the Hon'ble Supreme Court of India is reported in 2000 (IV) CTC 358 Venkatasubbiah Naidu.A Vs. S.Chellappan, wherein, a Division Bench has held that when an effective alternative remedy is available to the party, he has to exhaust the said remedy, instead of the revision before the High Court under Article 227 of the Constitution of India. It is useful to extract the following portion of the said judgment, which is as follows:

"18. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the Constitutional powers of the High Court it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition."

9.The learned counsel for the second respondent relied on the following judgments:

(i) M/s.Ishwarya Health Care, Partnership Firm, Rep. by its Partner Dr.K.Veluchamy and another Vs. T.P.M.Nagar Resident's Welfare Association, Rep. by its Secretary and others [C.R.P.(MD) (PD)No.1346 of 2016, dated 24.11.2016], wherein at paragraph 9, it has been held as follows:

"9. The grounds raised in the civil revision petition are all disputed facts and the said facts cannot be decided by this Court under Article 227 of the Constitution of India. The power under Art.227 of the constitution is to be exercised by the Court in its discretion and cannot be claimed as of right by any party. Under Art.227 of the Constitution of India, the well settled position is:-

(1)The High Court's power of revision under Art.227 of the Constitution would be restricted to interference in cases of grave dereliction of duty or flagrant violation of law, and would be exercised most sparingly, in cases where grave injustice would be done



unless the High Court interferes. It cannot be used as appellate or revisional power.

(2) The Power would not be exercised to correct an error of fact or of law, not being an "error of law apparent on the face of the record", of an "irregularity or illegality of procedure" unless such error affects the jurisdiction, or involves a breach of the principles of natural justice; or to reappraise the evidence.

....."

(ii) S.Sivasami Vs. S.Balachandran and others [C.R.P.(PD) No.1040 of 2016, dated 01.04.2016], wherein at paragraph 9, it has been held as follows:

"9. The petitioner in the present revision, invoking the power of superintendence under Article 227 of the Constitution of India for striking off the plaint in this case has made such an attempt on a misconception and misinterpretation of law. Hence, the Civil Revision Petition does not deserve even admission and the same deserves to be dismissed at the threshold."

(iii) Mrs.Uma Ramanan Vs. M/s.Vignesh Weighers, Rep. by its Proprietor, Mr.K.Harikrishnan [C.R.P.(NPD) Nos.2593 and 2594 of 2007, dated 05.02.2008], wherein at paragraphs 13 and 17, it has been held as follows:

"13. The learned counsel appearing for the respondents has resisted the contentions of the learned counsel appearing for the revision petitioner on the ground that when an alternative remedy like order 7 Rule 11 CPC is available for the petitioner and having failed to avail the same cannot approach this Court under Article 227 of the Constitution of India. The learned counsel for the respondents would further contend that even without filing a written statement or counter in the interlocutory application, the defendant has straightaway come to this Court with these revision petitions which is not also permissible under law. In support of his contention, the learned counsel appearing for the respondents would rely on a decision reported in Enercon (India) Ltd., Mumbai-v-J.T.Micheal Anjalo (2005 (2) CTC 365). The facts in brief in the said case are as follows: The revision has been filed under Article 227 of the Constitution of India for striking off the suit in O.S.No.288 of 2004 from the file of the District Munsif, Valliyur on the ground that the suit is not maintainable. The respondents in the revision petition have filed a suit for an interim injunction, restraining the third respondent from alienating the suit property till the sale agreement is subsisting and restraining the petitioner from commissioning the wind energy electrical generator. Pending suit, respondents 1 and 2 prayed for an interim



injunction, restraining the petitioner from commissioning the wind Mill. The trial Court gave interim injunction only with regard to the operation of the wind mill generator. Against the said order, the petitioner in the revision petition has filed a revision without filing an appeal which is there remedy against an order passed in an application under Order 39 Rules 1 and 2 and 151 of the Civil Procedure Code. While disposing of the said CRP, this Court has observed as follows:

"If the petitioner is aggrieved by the order passed under Order 39, Rules 1 and 2, there is an appeal remedy and he can avail, of it. If the petitioner's case is that the plaint should be rejected, even then, he has his remedy. But unless, the circumstances, warrants and the abuse of process of law stares in the face, Article 227 cannot be invoked for striking of a case from the file. It is in these circumstances, the CRP is dismissed."

17. In *Sadhana Lodh-v-National Insurance Company Ltd.* (2003(2) CTC 122) was relied on by the learned counsel appearing for the respondents only for the guidance emanate in the Judgment regarding the supervisory jurisdiction of this Court under Article 227 of the Constitution of India . The relevant observation is that "supervisory jurisdiction of High Court under Article 227 is confined only to see whether inferior Court or Tribunal had acted within its parameters and not to correct error apparent on face of record much less error of law. In exercising supervisory power, High court does not act as appellate Court. It is not permissible for High Court to review or re-weigh evidence upon which inferior Courts or Tribunals passed the order or to correct errors of law while exercising jurisdiction under Article 227."

10.I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record and the judgments relied on by the learned counsel appearing for the parties.

11.The issue to be decided in the Civil Revision Petition is whether on the facts and circumstances of the case, the plaint in O.S.No.133 of 2015 is liable to be struck off by exercising the power under Article 227 of the Constitution of India.

12.The power conferred on the Courts under Article 227 of the Constitution of India is an extraordinary power. As per the said power, the Court has supervisory control over Subordinate Courts. The Court has power to stop the proceedings and strike out the plaint, if the said proceeding is abuse of process of Court; the plaint does not reveal cause of action; the Court has exceeded its jurisdiction or failed to exercise its jurisdiction or from the



averments in the plaint, it is seen that there is no possibility of plaintiff succeeding in the suit or the suit is abuse of process of Court. Article 227 of the Constitution of India can be invoked also to prevent miscarriage of justice and grave injustice and the relief sought for is contrary to justice and public policy. The Court can exercise this power even if the party has not exhausted the alternative remedy. The vexatious, obstructive or dilatory action can be struck off at the threshold itself.

13.It is pertinent to note that the Court must exercise this power sparingly and only in extraordinary cases. The plaint can be struck off only when the Court is satisfied that it is a fit case to exercise the power under Article 227 of the Constitution of India. This power is discretionary power and the Court must exercise the power judicially. The Court can consider only the averments in the plaint to decide whether the plaint is liable to be struck off or not. The written statement or any document relied on by the defendant cannot be considered.

14.The above principles are laid down in the judgments relied on by the learned Senior Counsel for the petitioner as well as in the judgments relied on by the learned counsel for the respondents. The contention of the learned Senior Counsel for the petitioner as well as the learned counsel for the respondents are considered taking into consideration the above principles laid down by the Hon'ble Apex Court as well as this Court. The first contention of the learned Senior Counsel for the petitioner is that no cause of action has arisen within the Court at Madurai. This contention is untenable. The first respondent is a practising Dentist at Madurai. He received the impugned notice issued by the petitioner at Madurai. The cause of action is bundle of facts and any one of the facts gives rise to cause of action. It is well settled that cause of action arises in the place where the plaintiff received notice or order which is challenged in the proceedings. It is not the case of the petitioner that the first respondent is not a practising Dentist at Madurai or did not receive the impugned notice at Madurai. Therefore, I hold that cause of action has arisen at Madurai, as claimed by the first respondent.

15.The second contention of the learned Senior Counsel for the petitioner is that the suit is barred in view of availability of remedy in Arbitration as per Bye-law. The learned counsel for the first respondent contended that the petitioner cannot raise this plea in the Civil Revision Petition, as he failed to raise the same at the earliest and has actively participated in the proceedings by filing counter in I.A.No.156 of 2015, which is filed by the first respondent for temporary injunction, pending suit. This contention has considerable force. It is well settled that when a party initiates legal proceedings without availing the remedy of arbitration, the other party must invoke arbitration clause at the time of first hearing itself before participating in the suit proceedings. In the present case, the petitioner has filed counter



affidavit in I.A.No.156 of 2014 and did not take any steps to refer the issue for arbitration. In view of the same, the contention of the learned Senior Counsel for the petitioner, is devoid of merits.

16.The next contention of the learned Senior Counsel for the petitioner is that the first respondent is not personally prejudiced and has no locus standi to file suit in his personal capacity. The first respondent from the averments in the plaint is claiming relief for all the Members of the Association. The first respondent has not obtained leave of the Court under Order 1 Rule 10 C.P.C. to file the suit in a representative capacity. The first respondent has not impleaded the Association, which is a necessary party to decide the issue in the suit. In view of failure on the part of the first respondent to implead necessary and proper party to the suit, the plaint is liable to be struck off. These contentions are untenable and unsustainable. A reading of the plaint shows that the first respondent is claiming relief on the ground that he is personally prejudiced and has filed the suit in his individual capacity. Whether the suit is filed for the benefit of all the Members of the Association or Members of the Executive Committee or in the individual capacity of the first respondent can be decided by the Trial Court only based on the pleadings and evidence let in by the parties. Similarly, it is for the Trial Court to decide whether the suit is liable to be dismissed for not obtaining permission to file the suit in a representative capacity or whether the first respondent can seek permission under Order 1 Rule 10 C.P.C., pending suit.

17.The learned Senior Counsel for the petitioner next contended that the second respondent ceased to be a Member and President of Tamil Nadu State Branch and therefore, there is no necessity to consult him to convene the Executive Committee Meeting and the petitioner consulted the Vice President and convened the Executive Committee Meeting and therefore, the impugned notice is valid and legal. Per contra, the learned counsel for the second respondent contended that the second respondent had paid subscription within the time limit fixed in the Bye-laws of the Association and the second respondent continues to be member and president. Whether the second respondent ceased to be a Member and also the President of Tamil Nadu State Branch can be decided only based on evidence let in by both the parties.

18.The petitioner is seeking for striking off the plaint on the facts, which are disputed by the respondents. The disputed question of fact can be decided only based on evidence let in by the parties during trial. From the reading of the plaint, it cannot be said that there is no cause of action or the suit is abuse of process of Court. The various contentions made by the learned Senior Counsel for the petitioner can be decided only after trial and the plaint cannot be struck off at the threshold. Considering all the facts and circumstances of the case, I hold that the petitioner has not made out any case to strike off the plaint by exercising



extraordinary discretionary power under Article 227 of the Constitution of India.

19. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

The Principal District Munsif,
Madurai.

Copy To:

**The Record Keeper,
VR. Section,
Madurai Bench Of Madras High Court,
Madurai.**

+1cc to M/s.VEERA ASSOCIATES, Advocate, in SR No.8868
+1cc to M/s.V.RAGHAVACHARI, Advocate, in SR No.8777
+1cc to M/s.M.N.SANKARAN, Advocate, in SR No.8993
+1cc to M/s.K.M.SUBRAMANIAN, Advocate, in SR No.9004

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AAM PM SAR3 22.02.2017 16P 7C

C.R.P. (MD) No.563 of 2015 (PD)
& C.M.P. (MD) No.8335 of 2016 & M.P. (MD) No.3 of 2015
16.02.2017