

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

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THE HONOURABLE MR.JUSTICE DR.JUSTICE G.JAYACHANDRAN

C.S.No.764 of 2017
and A.Nos.966/2017, 2626/2018 & 2627/2018

Christopher Gnanasekara Baburao ... Plaintiff

..Vs..

Madras Christian College Association,
Rep.by its Secretary,
having its Reg.Office at:
The Madras Christian College Higher Secondary School,
No.78, Harrington Road,
Chetpet, Chennai-600 ... Defendant

Plaint filed under Order IV Rule 1 of O.S. Rules read with Order VII
Rule 1 of C.P.C praying to pass a judgment and decree:-

a) to declare that the Annual General Meeting of the Madras Christian College Association to be held in the registered office at Madras Christian College Association, No.78, Harrington Road, Chetpet, Chennai-600 031 on Thursday, 28th September, 2017 at 12.00 noon or on any other subsequent dates, without issuing statutory notice to all the members of the Defendant Association as null and void and not binding on the plaintiff;

b) Permanent injunction restraining the Defendant Association from conducting the Annual General Meeting of the Madras Christian College

Association to be held in the registered office at Madras Christian College Association, No.78, Harrington Road, Chetpet, Chennai-600 031 on Thursday, 28th September, 2017 at 12.00 noon or on any other subsequent dates, without issuing statutory notice to all the members of the Defendant Association as same is illegal and unlawful;

c) For a mandatory injunction directing the Secretary of the Defendant Association to update the website of the college and other institutions of the association by including the names of the six nominees in the list of the members of the association;

d) To pay the cost of the suit.

For Plaintiff : Mr.P.Raja

For Defendant : Mr.R.Thiyagarajan, Senior counsel
for Mr.Godson Swaminathan

J U D G M E N T

The suit has been filed by one Christopher Gnanasekara Baburao for the following reliefs:

a) to declare that the Annual General Meeting of the Madras Christian College Association to be held in the registered office at Madras Christian College Association, No.78, Harrington Road, Chetpet, Chennai-600 031 on Thursday, 28th September, 2017 at 12.00 noon or on any other subsequent dates, without issuing statutory notice to all the members of the Defendant Association as null and void and not binding on the plaintiff;

b) Permanent injunction restraining the Defendant Association from conducting the Annual General Meeting of the Madras Christian College Association to be held in the registered office at Madras Christian College Association, No.78, Harrington Road, Chetpet, Chennai-600 031 on Thursday, 28th September, 2017 at 12.00 noon or on any other subsequent dates, without issuing statutory notice to all the members of the Defendant Association as same is illegal and unlawful;

c) For a mandatory injunction directing the Secretary of the Defendant Association to update the website of the college and other institutions of the association by including the names of the six nominees in the list of the members of the association;

2 The contention raised by the plaintiff is that the defendant namely Madras Christian College is a private company incorporated under the provision of the Companies Act, and the plaintiff is one of the nominee members of the Association.

3 The plaintiff's grievance is that for the Annual General Meeting, dated 28.09.2017, he was not served 21 days prior notice as per the statute and the intention of the majority members is to oppress the Minorities more particularly the nominees of the church. This Court while taking the plaint on file, has passed ad interim order in the Interlocutory

Application. After service of suit summon, the defendant has filed Application in A.2626 of 2018 to reject the plaint on the ground that the defendant being a company registered under the Companies Act, there is a statutory bar under Section 430 of the Companies Act, 2013, to entertain Civil Suit. The averments made in the plaint squarely falls under Section 241 of the Companies Act, wherein it is stated that any alleged act of oppression or act of prejudice shall be redressed through Tribunal.

4 The learned Senior Counsel appearing for the defendant/applicant would draw the attention of this Court to Sections 241, 244 and 430 of the Companies Act to buttress his submission to reject the plaint.

5 The learned counsel for the plaintiff would submit that his relief falls under common law remedy since, he as a member of the Association is entitled for a notice as prescribed under Section 101 of the Companies Act. The only exception stated in the Act is accidental omission to give notice to, or the non receipt of such notice by, any member or other person who is entitled for such notice for any meeting. Here, for a long time the nominees of the church are agitating for their lawful representation by

filing suits and application before the Company Law Board and therefore, the non issuance of notice is a deliberate act and not an accidental omission by the defendant.

6 After considering the submissions made by the learned counsel for the petitioner/defendant and learned counsel for the respondent/plaintiff. On perusing the averments made in the plaint, and the law governing the factual matrix of the case, this Court is of the opinion that the plaintiff has approached the forum which does not have jurisdiction over the subject matter in dispute, in view of Section 241 and 430 of the Companies Act, 2013. Hence, the plaint is rejected. Application in A.2626 of 2018 is allowed. This order shall no way prohibit the plaintiff to approach the Tribunal under the Companies Act. Consequently, connected applications stand closed.

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Index : Yes/ No

Internet : Yes/ No

Speaking Order/ Non-speaking Order

Dr.G.JAYACHANDRAN,J.

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