



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.04.2018

Pronounced on : 24.07.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.888 of 2018

and

CMP (MD) No.3939 of 2018

1. The Chairman,
The Pastorate Committee,
St.George's Church,
Main Guard Square,
YMCA, Madurai.

2.Surendran Jayakumar

3.Selwyn Jeyakumar

4.T.A.Ebenezer

5.Devairakkam

.. Petitioners

vs.

1.C.John Victor

2. C.D.Rathna Kumar

(for themselves and on behalf
of the member of the St.George's
Church, Madurai)

3. The Bishop,
Church of South India,
Madurai Ramnad Diocese,
Madurai.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, challenging the order passed in I.A.No.293 of 2018 in O.S.No.213 of 2018, dated 12.04.2018 on the file of the Principal District Munsif, Madurai Town.

For Petitioners : Mr.R.Manimaran

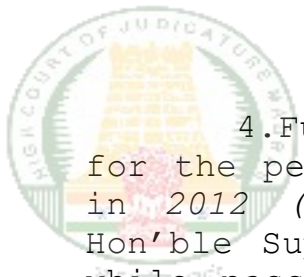
For Respondents : Mr.F.X.Eugene (for R1 and R2)
Mr.M.Rajaraman (for R3)

**O R D E R**

The Petitioners herein are respondents 1 to 5 in the interim application in I.A.No.293 of 2018 and defendants No.1 to 5 in the original suit in O.S.No.213 of 2018 pending on the file of the Principal District Munsif, Madurai Town. The instant Civil Revision Petition is preferred under Article 227 of the Constitution of India as against the interim order of Ad-interim Injunction passed in I.A.No.293 of 2018 in O.S.No.213 of 2018 dated 12.04.2018. The said order dated 12.04.2018 is under challenge in the Civil Revision Petition.

2.However, when the Civil Revision Petition came up for hearing, this Court by an order dated 19.04.2018 granted an order of Interim stay of all further proceedings of the order passed in the aforesaid I.A.No.293 of 2018 dated 12.04.2018 till 26.04.2018. In the meanwhile, the learned Principal District Munsif, Madurai extended the earlier interim order granted by him on 12.04.2018 till 18.06.2018. However, on 08.06.2018 it was brought to the notice of this Court that the learned Principal District Munsif, Madurai Town extended the Interim order passed by him in I.A.No.293 of 2018 in spite of the fact that on 19.04.2018 itself this Court had passed an order of interim stay of all further proceedings in I.A.No.293 of 2018 in O.S.No.213 of 2018 till 26.04.2018. Therefore, this Court directed the Registry to call for explanation from the concerned learned District Munsif and he has also filed his explanation stating that he did not receive the copy of the interim order passed by this Court on 19.04.2018, when he extended the earlier order of Ad-interim Injunction.

3.Now the Civil Revision is filed as against the Interim order of Ad-interim Injunction contending that the learned Trial Judge has passed the interim order without deciding the dispute and without considering that the entire Church administration has been paralyzed because of the interim order. It is the contention of the learned counsel for the revision petitioner that the interim order is passed in a hurried manner without even considering the prayers sought for in the original suit and in the interim application. He also brought to the notice of this Court that even according to the affidavit filed along with the interim application that the Revision Petitioners/Respondents No.2 to 5 have already been appointed as ad-hoc committee and they started their function. So, the prayer sought for in the interim application for grant of temporary injunction restraining the Revision Petitioners No. 2 to 5 became infructuous and without considering the same the interim order passed is ex-facie illegal. So, this Court in the interest of justice may be interfered with the interim order passed by the learned Principal District Munsif by invoking the supervisory jurisdiction.



4. Further in support of his contention the learned counsel for the petitioner has relied on the following judgments reported in 2012 (6) *Supreme Court Cases*, wherein, it is held by the Hon'ble Supreme Court that what are the factors to be considered while passing order of interim injunction without notice to the other side. "The Court concerned ought to have recorded reasons that the petitioner would suffer with irreparable injuries on refusal of the relief of temporary injunction".

5. Further he also relied on the judgment reported in 1995 (2) *CTC 323*, wherein, it is held that "the Court before granting ex parte order of injunction has to record reasons that issue of notice to opposite party would defeat the object of granting injunction". As such the judgment reported in 2002 (1) *MLJ 501* is also relied on to the effect that "the Court while granting injunction without giving notice of the application to the opposite party must be on sound reasons". However, it is the contention of the learned counsel for the Revision Petitioners that though St. George's Church and its branch churches are Anglican traditional Churches which are no way related to C.S.I. and its members, but this factor was not considered while passing the interim order of Ad-Interim Injunction. So, according to the learned counsel interim order is liable to be set-aside.

6. Per contra, the learned Counsel for the 1st and 2nd respondents would submit that the interim order of injunction granted by the learned Trial Court is perfectly correct and no interference of this Hon'ble Court by using the supervisory jurisdiction is required. Moreover, the learned Trial Judge has considered the totality of the case and in the interest of justice he has passed the reasoned order, therefore he prays for the dismissal of the Civil Revision Petition.

7. The learned counsel for the 3rd respondent by relying on the judgment of this Court passed in C.R.P.(PD)Nos.4399 and 4580 of 2012 in the case of "Most Rev.G.Devakadasham Moderator and ors. Vs. Mr.Daniel Diwakar and Rev.Sathish Timothy Paul and the Karnataka Central Diocese and Rev.Prasanna Kumar Samuvel Vs. Mr.Daniel Diwakar and Ors.," has submitted that the Court below has gone through the serious allegations and documents in respect of the maladministration of the church. So, the grant of interim injunction shall not prejudice the case of the revision petitioners before the learned Trial Court in any manner. Hence, the order of the learned Trial Court is very well sustainable and needs no interference.

8. I heard Mr.R.Manimaran, learned counsel for the petitioners, Mr.F.X.Eugene, learned counsel for the respondents 1 and 2 and Mr.M.Rajaraman, learned counsel for the 3rd respondent and all the materials available on record are perused.



9. The short question has arisen before this Court in appreciating the grounds raised in the Civil Revision Petition is that what are the parameters to be applied by the Court below while granting the extraordinary discretionary relief of Ad-Interim Injunction without notice to the counter part of the lis.

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10. In the case on hand, the grievance of the Respondents 1 and 2/Plaintiffs is that the Petitioners/Respondents 1 to 5/Defendants 1 to 5 except the 1st petitioner herein namely the Chairman, Pastorate Committee of St. George's Church of Madurai were appointed as ad-hoc committee members by the 1st petitioner herein is against the bye-laws of the Church. Therefore, the administration of the Church by the ad-hoc-committee is ex-facie illegal, hence Respondents 1 and 2/ Plaintiffs filed an Original Suit for declaration that the appointment of ad-hoc-committee is illegal. In the said suit, an interim application is also filed to restrain the ad-hoc-committee members from in any way interfering with the administration, management and regular services of the St George's Church and its branch Churches.

11. While hearing the interim application on 12.04.2018, the learned trial Court has passed the following order that "the documents No.5 shows that this Court ordered for appointment of Advocate Commissioner on 22.12.2017. Document No.7 Publication of Respondent Church shows that the Respondents 2 to 5 appointed as Ad-hoc Committee to look after the administration of Church. Document 1, Bye-laws of Church admittedly not contained any provision for appointment of Ad-hoc committee. It clearly appears that the Ad-hoc Committee was appointed prima facie without Authority. The petitioners/plaintiffs challenged the appointment of Ad-hoc Committee if Ad-hoc Committee is allowed to function it will cause irreparable loss to the welfare of the Church. Balance of convenience favouring the case of petitioners/plaintiffs. Ad-Interim Injunction is granted till 26.04.2018. Order 39 Rule 3 of C.P.C., is to be complied with".

12. The case of the petitioners concerned before this Court is that the Church of South India Trust Association or its sub unit C.S.I. Madurai Ramnad Diocese has no power of administration over the St. George's Church and its 17 branch Churches.

13. So, that is why the Hon'ble Supreme Court and this Court have repeatedly time and again held that before granting the relief of extraordinary discretionary relief of exparte injunction, the Court must satisfy that the order of notice to the other side would defeat the object of granting the injunction. In the instant case, the learned judge who has passed the order of Ad-Interim Injunction not recorded any reason the object of granting the injunction would be defeated if notice is ordered to the counter part. At the same time, it is disputed by the petitioners before the trial Court that the appointment of ad-hoc committee is without any authority and supported by any bye-laws



of the Church. On the other hand, the petitioners before this Court have contended that the CSI Madurai Ramnad Diocese has no authority over the St.George's Church in any manner.

14.The Original Suit in O.S.No.213 of 2018 is filed by the plaintiffs for themselves and on behalf of the members of the St.George's Church, Madurai. However, no application is filed to comply with the procedure as contemplated under Order 1, Rule 8 of the Code of Civil Procedure as contended by the learned Counsel for the revision petitioners by placed his reliance of the judgment reported in the Madras Law Journal Reports 1999 page 392, in the case of Rev.Noble Gambeeran and others -Vs- Peter P.Ponnan for himself and as representative of members of C.S.I. Christian Community in C.R.P No.1879 of 1998. In this judgment it is held that "admittedly, second defendant is an un-incorporated body. A Church is also an un-incorporated body, and a suit against them is not maintainable without getting permission under Order 1 Rule 8 of Code of Civil Procedure. Further, it is also held that Injunctions in representative suits procedure under Order 1 Rule 8 of C.P.C. not complied with, therefore no injunction can be granted.

15.Further, in the instant case the learned trial Judge has not recorded any reason as to the notice to other side would defeat the object of order of Ad-Interim Injunction. Moreover, the learned judge has recorded the reason that the perusal of Document Nos.1, 5 and 7 would show that in connection with the affairs of the church the very same Court has already appointed Advocate Commissioner by the order dated 22.12.2017 and the bye-laws of the church has not contained any provision for the appointment of Ad-hoc Committee and in such circumstances the further function of the said Ad-hoc Committee will cause irreparable loss. In the considered opinion of this Court the reasons adduced by the learned Judge will not suffice to order exparte injunction in a matter like the administration or pastorate election of a church, on the other hand, it would be fair and proper to hear the other side before passing an order of Ad-interim Injunction.

16.Yet another circumstance is also brought to the notice of this Court by the learned counsel for the petitioners that the Respondents/Plaintiffs have not brought to the notice of the learned trial Court any mal practice of the Ad-hoc Committee in the affidavit filed therein. In such circumstances, it is to be ascertained that the appointment of the Ad-hoc Committee is valid or not by hearing the other side. Further, the reasons recorded by the learned trial judge is in the opinion of this Court is not sufficient in considering the settled legal position in this regard. Hence this Court finds that grounds raised in the civil revision petition are deserved for consideration.

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17.Therefore, for the foregoing discussion, this Court is of the view to allow the Civil Revision Petition by setting-aside



the interim order passed by the learned trial judge in I.A.No.293 of 2018 in O.S.No.213 of 2018 dated 12.04.2018, on the file of the learned Principal District Munsif, Madurai Town, accordingly the Civil Revision Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Principal District Munsif,
Madurai Town.

Copy to

The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Manimaran, Advocate Sr.No.74623
+1cc to Mr.F.X.Eugene, Advocate Sr.No.74732

VSV

VB/KAK/SAR3/23/08/2018/6P/6C

order made in
C.R.P. (MD) (PD) No.888 of 2018
and
CMP (MD) No.3939 of 2018
24.07.2018