

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	DELIVERED ON
03-09-2018	17-09-2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Contempt Appeal(MD)Nos.2 to 4 of 2018 and

Letters Patent Appeal (MD)No.1 of 2018

and

C.M.P.(MD)Nos.6064, 6065, 6541 and

8742 of 2018

Contempt Appeal(MD)No.2 of 2018:

Rt.Rev.S.E.C.Devasahayam,

The Bishop of CSI Tuticorin-Nazareth Diocese,

Having Office at Caldwell Higher Secondary School,

Tuticorin-628 001.

: Appellant

Vs.

1.R.Stanley Vedamanickam

2.Duraiaraj

3.M.Aroan

4.J.D.Anandaraj

5.CSI Tuticorin Nazareth Diocese,

Represented through its Bishop,

Rt.Rev.S.E.C.Devasahayam,

Caldwell High Secondary School,

Tuticorin-628 001.

6.Mr.D.Mohan Arumainayagam,

Treasurer,

CSI Tuticorin-Nazareth Diocese,

Having Office at

Caldwell Higher Secondary School,

Tuticorin-628 001.

: Respondents

PRAYER: Contempt Appeal is filed under Section 19 of the Contempt of Courts Act, 1971 read with Clause 15 of the Amended Letters Patent, 1865, against the order of a learned Single Judge this Court dated 04.07.2018, made in C.M.P.(MD)No.4773 of 2018 in C.R.P.(PD) (MD) No.820 of 2015.

For Appellant

: Mr.V.Lakshmi Narayanan,

For Mr.J.Kingsly Solomon

For Respondent No.1 : Mr.T.R.Rajaraman,

Senior Counsel,

For Mr.V.Rajiv Rufus

For Respondent No.2 : Mr.R.Asokan

For Respondent No.3 : Mr.C.Dhanaseelan

For Respondents No.4 : No Appearance

For Respondent No.5 : Mr.Pethu Rajesh

For Respondent No.6 : Mr.G.Prabhu Rajadurai

Contempt Appeal (MD) No.3 of 2018:

Rt.Rev.S.E.C.Devasahayam,
The Bishop of CSI Tuticorin-Nazareth Diocese,
Having Office at Caldwell Higher Secondary School,
Tuticorin-628 001. : Appellant
Vs.

- 1.R.Stanley Vedamanickam
- 2.Duraiaraj
- 3.M.Aroan
- 4.J.D.Anandaraj
- 5.CSI Tuticorin Nazareth Diocese,
Represented through its Bishop,
Rt.Rev.S.E.C.Devasahayam,
Caldwell High Secondary School,
Tuticorin-628 001.
- 6.Mr.D.Mohan Arumainayagam,
Treasurer,
CSI Tuticorin-Nazareth Diocese,
Having Office at
Caldwell Higher Secondary School,
Tuticorin-628 001.

: Respondents

PRAYER: Contempt Appeal is filed under Section 19 of the Contempt of Courts Act, 1971 read with Clause 15 of the Amended Letters Patent, 1865, against the order of a learned Single Judge this Court dated 04.07.2018, made in C.M.P.(MD) No.4775 of 2018 in C.R.P.(PD) (MD) No.820 of 2015.

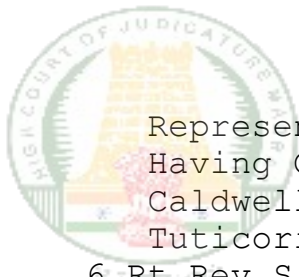
For Appellant : Mr.V.Lakshmi Narayanan,
For Mr.J.Kingsly Solomon
For Respondent No.1 : Mr.T.R.Rajaraman,
Senior Counsel,
For Mr.V.Rajiv Rufus
For Respondent No.2 : Mr.R.Asokan
For Respondent No.3 : Mr.C.Dhanaseelan
For Respondents 4 & 6 : No Appearance
For Respondent No.5 : Mr.Pethu Rajesh

Contempt Appeal (MD) No.4 of 2018:

Mr.D.Mohan Arumainayagam,
Treasurer,
CSI Tuticorin-Nazareth Diocese,
Having Office at
Caldwell Higher Secondary School,
Tuticorin-628 001. : Appellant

Vs.

- 1.R.Stanley Vedamanickam
- 2.Duraiaraj
- 3.M.Aroan
- 4.J.D.Anandaraj
- 5.CSI Tuticorin Nazareth Diocese,



Represented through its Bishop,
Having Office at
Caldwell High Secondary School,
Tuticorin-628 001.

6.Rt.Rev.S.E.C.Devasahayam,
The Bishop, CSI Tuticorin-Nazareth Diocese,
Having Office at Caldwell Higher Secondary School,
Tuticorin-628 001. : Respondents

PRAYER: Contempt Appeal is filed under Section 19(1) of the Contempt of Courts Act, 1971 against the order of a learned Single Judge this Court dated 04.07.2018, made in C.M.P.(MD)No.4773 of 2018 in C.R.P.(PD) (MD)No.820 of 2015.

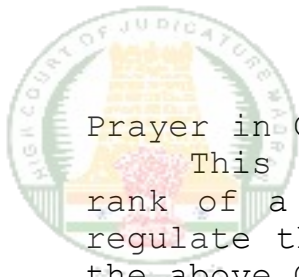
For Appellant : Mr.G.Prabhu Rajadurai
For Respondent No.1 : Mr.T.R.Rajaraman,
Senior Counsel,
For Mr.V.Rajiv Rufus
For Respondent No.2 : Mr.R.Asokan
For Respondent No.3 : Mr.C.Dhanaseelan
For Respondent No.4 : No Appearance
For Respondent No.5 : Mr.Pethu Rajesh
(*) For Respondent No.6 : Mr.J.Kingsly Solomon

L.P.A.(MD)No.1 of 2018:

CSI Tuticorin - Nazareth Diocese,
Represented through its Diocesan Secretaries,
Rev. S.Devaraj Gnanasingh and Mr.S.D.K.Rajan,
Caldwell High Secondary School,
Tuticorin - 628 001. : Appellant
Vs.

1.R.Stanley Vedamanickam
2.Durairaj
3.M.Aroan
4.J.D.Anandaraj
5.Rt.Rev.S.E.C.Devasahayam,
The Bishop, CSI Tuticorin-Nazareth Diocese,
Having Office at Caldwell Higher Secondary School,
Tuticorin-628 001.
6.Mr.D.Mohan Arumainayagam,
Treasurer,
CSI Tuticorin-Nazareth Diocese,
Having Office at
Caldwell Higher Secondary School,
Tuticorin-628 001. : Respondents

PRAYER: Appeal is filed under Clause 15 of the Amended Letters Patent, 1865 against the order of a learned Single Judge this Court dated 04.07.2018, made in C.M.P.(MD)No.5095 of 2018 in C.M.P.(MD) No.4775 of 2018 in C.R.P.(PD) (MD)No.820 of 2015.



Prayer in CMP(MD). 4773/ 2018 :

This Petition filed to appoint a Commissioner, not below the rank of a retired District Judge or an advocate to supervise and regulate the proposed rescheduled election 2018 pending disposal of the above CRP and thus render justice.

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Prayer in CMP(MD). 4775/ 2018 :

This Petition filed to proceed against the 2nd and 3rd respondents for Contempt of Court for wilful disobedience of order dated 28.4.2018 passed in CMP No.4411/2018 in CRP(MD) No.820/2015 by ordering their arrest and detaining them in Civil Prison till they reschedule the Diocese election 2018 by restoring Status quo ante to the date 2.5.2018 i.e date of Publication of corrected voter list by the Pastorate Chairman and publish the corrected voter list by implementing the High Courts order and to pass such further or other orders as this Honourable Court may deem fit and proper in this case and render justice.

Prayer in CMP(MD). 5095/ 2018 :

This Petition filed to proceed against the respondents 1 to 3 for Contempt of Court for wilful disobedience of order dated 14.6.2018 passed in C.M.P.No.4775 of 2018 in CRP(MD) No.820 of 2015 by ordering their arrest and detaining them in Civil Prison till they cancel the election dated 17.6.2018 held in the Pastorates and in their failure to do so the same be set aside by this Honourable Court and thus render justice.

Prayer in CRP(MD). 820/ 2015 :

This Civil Revision Petition filed to call for the records in CMA NO. 18/2013 on the file of the 1st Additional District Court Tuticorin and set aside the order dated 17.11.2014 and thereby dismiss the said CMA NO.18/2013 with cost and thus render justice.

For Appellant : Mr.V.Lakshmi Narayanan,
For Mr.K.Subbu Ranga Bharathi
For Respondent No.1 : Mr.T.R.Rajaraman,
Senior Counsel,
For Mr.V.Rajiv Rufus
For Respondent No.2 : R.Ashokan
For Respondent No.3 : Mr.C.Dhanaseelan
For Respondent No.4 : No Appearance
(*) For Respondent No.5 : Mr.J.Kingsly Solomon

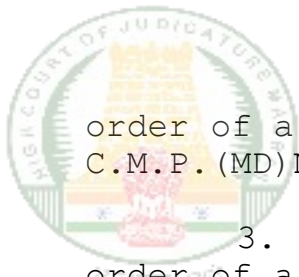
C O M M O N J U D G M E N T

N.SATHISH KUMAR, J.

Contempt Appeal (MD)No.2 of 2018 is directed against the order of a learned Single Judge this Court dated 04.07.2018, made in C.M.P. (MD)No.4773 of 2018 in C.R.P. (PD) (MD)No.820 of 2015.

<https://hcservices.ecourts.gov.in/hcservices/>

2. Contempt Appeal (MD)No.3 of 2018 is directed against the



order of a learned Single Judge this Court dated 04.07.2018, made in C.M.P.(MD)No.4775 of 2018 in C.R.P.(PD)(MD)No.820 of 2015.

3. Contempt Appeal (MD)No.4 of 2018 is directed against the order of a learned Single Judge this Court dated 04.07.2018, made in C.M.P.(MD)No.4773 of 2018 in C.R.P.(PD)(MD)No.820 of 2015.

4. Letters Patent Appeal (MD)No.1 of 2018 is directed against the order of a learned Single Judge this Court dated 04.07.2018, made in C.M.P.(MD)No.5095 of 2018 in C.M.P.(MD)No.4775 of 2018 in C.R.P.(PD)(MD)No.820 of 2015.

5. Before going into the merits of the appeals, the facts, which lead to the filing of these appeals, are relevant and extracted below:

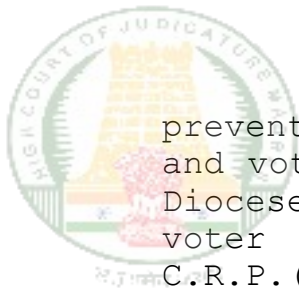
The respondents 1 to 4 herein filed a Suit in O.S.No.120 of 2013 on the file of Sub Court, Tuticorin, seeking declaratory relief that they are the members of Tuticorin Nazareth Diocese and are entitled to contest the election and for a permanent injunction restraining the defendants therein, their men and agents from preventing the plaintiffs from contesting the 2013 elections and for a mandatory injunction to include the name of the plaintiffs in the voter list of the respective churches. The above suit was initiated, since their voting rights were removed by the decision of the Executive Committee of the Diocese on 30.03.2009.

6. In pending suit, an application in I.A.No.359 of 2013 was filed for restraining the respondents therein, their men and agents from removing the names of the petitioners therein from the voter list and also preventing the petitioners therein from contesting the forthcoming Diocese elections till the disposal of the suit.

7. The above application was allowed by the learned Subordinate Judge on 28.05.2013, as against which, the appellant and the respondents 5 and 6 in Cont.A.(MD)No.2 of 2018, filed **(*) C.M.A.No.18 of 2013** on the file of the learned First Additional District Judge, Thoothukudi. Pending appeal, the respondents 1 to 4 herein were permitted to vote and also they participated in the election conducted for the period 2013-2017. Subsequently, the appeal was allowed on 17.11.2014, as against which, the respondents 1 to 4 filed C.R.P.(PD)(MD)No.820 of 2015. Pending revision, some Miscellaneous Petitions have been filed. The orders passed in the Miscellaneous Petitions are under challenge in these proceedings.

8. Pending revision, the period of Office Bearers elected in 2013 came to an end. Accordingly, the Diocese Committee called for a fresh election and the schedule was released on 14.04.2018. As per Schedule, **(*)106** Pastorates, which constitute the CSI at Tuticorin-Nazareth, commenced the preparation of voter list on 16.04.2018. Fortnight after the release of the Schedule, the respondents 1 to 4 filed an application for injunction in a pending Civil Revision Petition on 27.04.2018 seeking the following reliefs:

"Interim injunction restraining the respondents from



preventing the petitioners from participating, contesting and voting in the Diocese Election 2018 of the CSI Nazareth Diocese either by not including the petitioners name in the voter list or otherwise, pending disposal of the above C.R.P. (PD) (MD) No.820 of 2015."

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9. The learned Single Judge on 28.04.2018 in C.M.P. (MD) No.4411 of 2018, passed the following order:

"6. The present C.M.P. (MD) No.4411 of 2018 has been filed by the petitioners is only sought for participating, contesting and voting the diocese election 2018 which was proposed to be held on 17.06.2018.

7. The learned counsel for the respondents has made a strong objections that, though, an election only to be conducted on 17.06.2018, there is no urgency in the matter. This court is of the view that, entire process of inclusion of members is from 29.04.2018 to 29.05.2018. Therefore, in this application a strong objections made by the learned counsel for the respondents, this court is including to pass the following order:-

There shall be an order of interim injunction restraining the respondents from preventing the petitioners, from participating, contesting and voting the diocese election 2018 of the CSI Tuticorin Nazareth Diocese, either by not including the petitioners name in the voter list or otherwise, pending disposal of C.R.P. (MD) 820 of 2015.

8. Subject to the result, Post the CRP (MD) 820 of 2015 for final hearing on 05.06.2018."

10. Thereafter, the respondents 1 to 4 herein filed C.M.P. (MD) Nos.4773 to 4775 of 2018, C.M.P. (MD) No.4773 of 2018 to proceed against the second and third respondents therein for contempt of Court for wilful disobedience of the order dated 28.04.2018 passed in C.M.P. (MD) No.4411 of 2018 and in C.M.P. No.4774 of 2018, they have sought for temporary injunction against the respondents 1 to 3 therein restraining them from allowing the nominated members of the Diocesan Council to vote at the election to lay Secretary and other Office Bearers of the Diocese at the Diocesan Election, 2018. In C.M.P. (MD) No.4775 of 2018, they sought for the relief of appointment of Commissioner, not below the rank of a retired District Judge or an Advocate, to supervise and regulate the proposed re-scheduled election, 2018.

11. On 14.06.2018, the learned Single Judge passed the following order in C.M.P. (MD) No.4775 of 2018:

"5. When the matter was posted for pronouncing orders today, the 2nd respondent has filed a petition in C.M.P. (MD) No.5037 of 2018 in C.R.P. (MD) No.820 of 2018 for reopening the case so as to permit him to produce the voters' list of four pastorates.



5. It is the case of the petitioner that since the petition for contempt is pending for disobeying the order passed by this court dated 28.04.2018, the original status as on 28.04.2018 has to be restored.

6. It is an admitted fact that the application C.M.P.(MD)No.4775 of 2018 in C.R.P.(MD)No.820 of 2015 is pending for initiation of contempt proceedings against the second and third respondents. It is seen that the second respondent has neither filed any counter affidavit in the contempt application either accepting the contempt or denying the same nor filed any apology affidavit. However, the learned counsel for the second respondent has simply adopted the counter filed by the third respondent, which act is not acceptable.

7. Under such circumstances, there shall be an order of interim injunction, restraining the second and third respondents not to proceed with the election process till 19.06.2018 and in other words, the respondents 2 and 3 shall not conduct the election, which was specifically scheduled to be held on 17.06.2018 by the 1st respondent, till 19.06.2018."

12. Again, on 18.06.2018, two applications came to be filed by the respondents 1 to 4 herein. C.M.P.(MD)No.5094 of 2018 was filed to stay all further election proceedings and elections of the first respondent Diocese and C.M.P.(MD)No.5095 of 2018 to proceed against the respondents 1 to 3 therein for contempt of Court for wilful disobedience of order dated 14.06.2018 passed in C.M.P.(MD) No.4775 of 2018 in C.R.P.(MD)No.820 of 2015, by ordering their arrest and detaining them in civil prison till they cancel the election dated 17.06.2018 and in their failure to do so, the same be set aside by this Court.

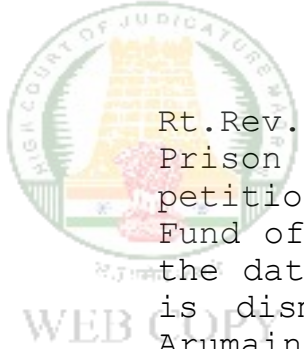
13. The learned Single Judge allowed the Civil Revision Petition and connected petitions by way of common order dated 04.07.2018 and passed the following order:

"56. In the result,

(a) this Civil Revision Petition is allowed by setting aside the order passed in CMA.No.18 of 2013 dated 17.11.2014, on the file of the learned 1st Additional District Court, Tuticorin and the order passed in I.A.No.359 of 2013 in O.S.No.120 of 2013 dated 28.05.2013 on the file of the learned Sub Court, Thoothukudi is restored.;

(b) CMP.No.4773 of 2018 filed under Order 39 Rule 2A of CPC is allowed by sentencing the respondents 2 and 3 viz., Rt.Rev.S.E.C.Devasahayam and D.Mohan Arumainayagam for a term of two weeks in the Civil Prison and the cost of Rs.5,000/- each to be paid to the Hon'ble Chief Justice Relief Fund of this Hon'ble Court within a period of two weeks from the date of receipt of a copy of this order;

(c) CMP.No.5095 of 2018 filed under Order 39 Rule 2A of CPC is allowed by sentencing the 2nd respondent viz.,



Rt.Rev.S.E.C.Devasahayam for a term of two weeks in the Civil Prison and a cost of Rs.5,000/- directed by the 2nd petitioner to be paid to the Hon'ble Chief Justice Relief Fund of this Hon'ble Court within a period of two weeks from the date of receipt of a copy of this order and the petition is dismissed in respect of 3rd respondent viz., D.Mohan Arumainayagam;

(d) both the sentences imposed in CMP.No.4773 of 2018 and CMP.No.5095 of 2018 against the 2nd respondent shall be run concurrently;

(e) the election conducted for the 1st respondent on 17.06.2018 and subsequent dates by the respondents 1 and 2 are set aside and the parties are restored to the earlier status to election;

(f) the trial Court viz., Sub Court, Thoothukudi, is hereby directed to issue suitable warrant through the local Police Station to secure the respondents 2 and 3 and send them to the Civil Prison as per the above order of punishment;

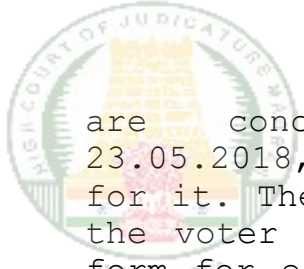
(g) CMP.No.5093 of 2018 filed to implead the petitioner as a party to the above Civil Revision Petition is unnecessary and accordingly, the same is dismissed;

(h) CMP.No.5094 of 2018 is dismissed as infructuous."

14. The Letters Patent Appeal is filed challenging the order of the learned Single Judge in setting aside the entire election proceedings. Similarly, the appellants in Contempt Appeal (MD)Nos.2 to 4 of 2018 preferred appeals challenging the punishment imposed by the learned Single Judge.

15. The learned counsel appearing for the appellants in Cont.A.(MD)Nos.2 to 4 of 2018 and the learned counsel for the appellant in L.P.A.(MD)No.1 of 2018 would submit that the Bishop and the Treasurer were no way responsible for the conduct of elections. In fact, the constitution of the CSI Diocese gives a specific power to the **(*)Pastorate Chairman** to conduct elections. The Bishop is only the Chairman of the Election Commission. He was no way responsible for conducting the elections. It is only the **(*)Pastorate Chairman** which conducted the elections. Admittedly, there was no interim order passed against the **(*)Pastorate Chairman**. Even the **(*)Pastorate Chairman** was not made as a party in any of the proceedings.

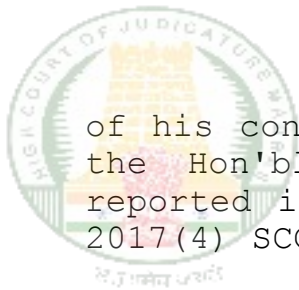
16. It is the further contention of the learned counsel that even before the order of the learned Single Judge on 28.04.2018 in C.M.P.(MD)No.4411 of 2018, the third respondent gave a letter on 27.04.2018, to include his name in the list of voter, pursuant to which, his name was included on 23.05.2018 on the directions of the Election Tribunal. This fact has not been considered by the learned Single Judge. Knowing very well that the last date of filing nominations was on 24.05.2018, the first and fourth respondents did not file any nomination. Insofar as the second and third respondents



are concerned, even after obtaining the nomination forms on 23.05.2018, they have not filed the nominations on the date reserved for it. The second respondent, though sought to include his name in the voter list for Krishnarajapuram Pastorate, he filed nomination form for election from Vembar Pastorate, wherein he is not a voter at all. Similarly, the third respondent had sent nomination belatedly. Therefore, he did not contest the election. The Bishop is not responsible for receiving or scrutinizing the nomination forms. Admittedly, the Bishop is out of country. Only on his return from 14.06.2018, when the order was reserved, he filed an application to re-open the case to produce the voter list of all the four pastorates. On production of the voter list, the learned Single Judge in C.M.P.(MD)No.4775 of 2018 passed an order to the effect that the respondents 2 and 3 therein shall not conduct election, which was specifically scheduled to be held on 17.06.2018 by the first respondent, till 19.06.2018.

17. Adding further, the learned counsel would submit that the elections were conducted by the Pastorate Committee as per the constitution of the Diocese. The Bishop and the Treasurer were no way responsible for conduct of elections. Hence, the order of the learned Single Judge finding guilty of the appellants in Contempt Appeal (MD)Nos.2 to 4 of 2018 for conducting elections, is not according to law. It is the further contention of the learned counsel that by clubbing all the applications and Civil Revision Petition, the learned Single Judge has also set aside the elections in its entirety for more than (*)106 Pastorates, which is impermissible in law, that too, without hearing the elected candidates. Since the learned Single Judge decided the issue entirely on the new cause of action and has gone into the merits of the dispute, the aggrieved persons have got a right to file an appeal and to challenge such decision in an intra-Court appeal. Hence, it is the contention of the learned counsel that these appeals are very well maintainable, since the decision taken by the learned Single Judge itself is beyond the scope of the suit, as the suit relief relates to the 2013 election.

18. The learned Senior Counsel appearing for the first respondent would submit that as against the order passed in the revision, no Letters Patent Appeal would lie and Contempt Appeals also are not maintainable, as they are clearly barred under Section 100-A of the Civil Procedure Code, 1908. It is his further contention that any appeal from an original or appellate decree or order is heard and decided by a learned Single Judge of a High Court, no further appeal would lie from the judgment and decree of the learned Single Judge. Therefore, it is submitted that all the appeals are not maintainable. It is the further contention of the learned Senior Counsel that despite the order of injunction, there was an election, which, the learned Single Judge has rightly set aside. Hence, he prayed for dismissal of all the appeals. In support



of his contention, he has also placed reliance on the judgments of the Hon'ble Apex Court in P.S.Sathappan v. Andhra Bank Ltd., reported in 2004(11) SCC 672 and Vasanthi v. Venugopal reported in 2017(4) SCC 723].

19. We have also heard the learned counsel for the second respondent and the learned counsel appearing for the third respondent in the appeals.

20. We have considered the submissions made on either side and also perused the entire materials available on record before this Court.

21. It is well settled that after amendment of Civil Procedure Code by Act 22 of 2002, LPA against judgment and decree of Single Judge of High Court after enforcement of Amendment Act 22 of 2002 with effect from 01.07.2002 is not maintainable. Similarly, the Constitution Bench of the Supreme Court has also held the same view.

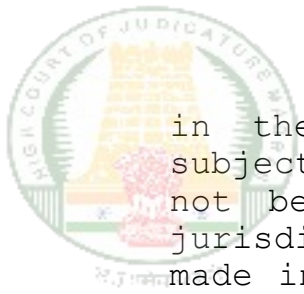
22. Applying the above settled position of law to the case on hand, when we look into the order of the learned Single Judge, it shows that the learned Single Judge has not only decided C.R.P.(PD) (MD)No.820 of 2015, which was filed as against the interlocutory order in respect of a relief sought for the year 2013 election, but also considered C.M.P.(MD)Nos.4411, 4773, 4775, 5037, 5093, 5094 and 5095 of 2018, which came to be filed only in the year 2018, on fresh cause of action in respect of the election for the year 2018. The learned Single Judge, while allowing the revision, set aside the election conducted in the year 2018, which was not the subject matter of the suit in O.S.No.120 of 2013. The relief granted by the learned Single Judge with regard to the election is beyond the scope of the suit itself. Such orders passed are based on the new cause of action alleged by the respondents 1 to 4 herein by way of C.M.Ps., in the year 2018.

23. It is pertinent to note that the suit filed in the year 2013 remained unamended. Whereas, all the applications filed before the learned Single Judge during the pendency of the revision pertaining to the 2018 election are based on the alleged new cause of action not from the original cause of action alleged in the suit. The learned Single Judge has passed an order assuming original jurisdiction with regard to the new cause of action alleged by the parties in the year 2018.

24. In the above background, we look at Clause 15 of the Letters Patent, which reads as follows:

"15. Appeal from the Courts of Original Jurisdiction to the High Court in its appellate jurisdiction-

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made



in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Sec.107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Sec.108 of the Government of India Act, and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Sec.108 of the Government of India Act made (on or after the 1st day of February, 1929), in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal, but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council as hereinafter provided."

25. The order of the learned Single Judge, though appears to be interlocutory order, it continues to determine the rights of the parties and affected the valuable right of the parties. It is also to be noted that the election conducted for more than **(*)106** Pastorates is also set aside without their presence. Even assuming that the respondents 1 to 4 herein are entitled to contest the election, the election, at the most, can be set aside only in respect of their constituencies and not in its entirety. The order passed by the learned Single Judge is based on the new cause of action. When such order certainly affects the rights of the parties, we are of the view that there is no difficulty in holding that the affected parties have got a right of appeal under Clause 15 of the Letters Patent.

26. At this juncture, it is worthwhile to refer to the judgment reported in Midnapore Peoples' Coop.Bank Ltd., v. Chunilal Nanda [2006(5) SCC 399], wherein the Hon'ble Supreme Court considered the specific questions, viz.,

(i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether the same is appealable under Section 19 of the Contempt of Courts Act, 1971?, if not, what is the remedy of the person aggrieved?

(ii) Whether such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under Clause 15 of the Letters Patent?



27. By framing such specific questions, the Hon'ble Supreme Court in Paragraph No.11, has held as follows:

".11. I.....

II.....

III.....

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases)."

28. The above dictum laid down by the Hon'ble Supreme Court makes it clear that when a learned Single Judge decides an issue or makes any direction relating to the merits of the dispute between the parties in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal.

29. In this case also, the entire order is based on the new cause of action and not related to the suit relief and, therefore, we are of the view that the contention of the learned Senior Counsel appearing for the first respondent that no appeal would be maintainable cannot be countenanced.

30. It is also relevant to note that the decision allowing the revision has not been challenged in these appeals and the challenge is only to the directions which goes to the merits of the case. The relief granted by this Court is beyond the scope of the very suit itself. Hence, we are of the view that the affected parties certainly have a right of appeal. If the contention of the learned Senior Counsel that no Letters Patent Appeal would be maintainable is accepted, it will lead to a situation, where one can obtain orders based on the new cause of action, which is totally unconnected with the suit relief, by filing an application and deprive the aggrieved party a right of statutory appeal. Furthermore, any order, which finally decided the collateral issue or question, which is not the subject matter of the main suit, certainly, is appealable under Clause 15 of the Letters Patent.



Hence, we hold that the appeals are maintainable.

31. Now, coming to the facts, when analysing the materials, originally, the suit was instituted by the respondents 1 to 4 herein in the year 2013 for declaration that they are the members of Tuticorin - Nazareth Diocese and are entitled to contest the election and for permanent injunction restraining the defendants, their men and agents from preventing the plaintiffs from contesting the 2013 elections and for a mandatory injunction to include the name of the plaintiffs in the voter list of the respective Churches. The interim order passed in that regard was set aside in the appeal by the District Court, Tuticorin, which is not in dispute, as against which, C.R.P. (PD) (MD) No. 820 of 2015 was filed.

32. The materials, particularly, constitution of the Tuticorin-Nazareth Diocese, when carefully seen, we are of the view that the following provisions are necessary to be extracted hereunder:

"Preamble:

The affairs of the Diocese shall be administered by a system of Councils, Committees and Boards as follows:-

Pastorate Committee for groups of Congregations, Church Councils for groups of Pastorates and a Diocesan Council, and a Diocesan Synod for the whole Diocese. The Diocesan Council has an Executive and other Committees and Boards. The Constitution and functions of the Councils and Committees and Boards shall be as set forth below.

Bye-laws are indicated by an asterisk.

No provision of this constitution shall be of force if the Synod shall rule that such provision is at variance with anything contained in the Constitution of C.S.I."

33. Chapter - I-B relates to General Rules. Rule 4(a) reads as follows:

"At each ordinary session of the Diocesan Council, a Commission shall be appointed to enquire into and to settle all election disputes in the Diocese. The Bishop will be the Chairman and the Diocesan Treasurer will be the convener of the commission."

34. The above rule makes it clear that the Bishop will be the Chairman of the Election Commission and the Diocesan Treasurer will be the Convener of the Commission.

35. Rule 4(c) relates to any dispute or complaint regarding election should be referred to the Convener, Election Commission in writing within first four working days of the Diocesan Office from the date of the particular election.

36. Chapter II deals with the Sphere of a Pastorate Committee. Chapter II - Rule 10 (e) reads as follows:

"To prepare a list of voters and put it up in a



conspicuous place in the church on a day to be fixed by the Diocesan Executive Committee according to Election Rule No.3."

37. Rule 11 reads as follows:

"The Pastorate Committee at its first meeting after each election, and after nomination if any, shall elect one of its members to be its Secretary who shall ordinarily continue in office until a new election for the secretaryship has been made at the first meeting of a new committee.

Note: If a vacancy arises in the post of newly elected Secretary at the time of election, it shall be filled up only after the first meeting of the Diocesan Council."

38. Rule 13 reads as follows:

"The Pastorate Committee at its first meeting after each election, and after nominations, if any have been made, may decide by resolution to have a lay man as its Treasurer and shall then elect a layman to that office. In the absence of such resolution the Pastorate Chairman shall be the Treasurer. A vacancy in the lay Treasurership shall be filled up as soon as possible by a special meeting of the Pastorate Committee called for the purpose.

Note: If a vacancy arises in the post of newly elected Treasurer at the time of election, it shall be filled up only after the first meeting of the Diocesan Council. During the interim period the Chairman shall act as Treasurer.

In the interim period, if necessity arises, the Pastorate Committee may elect a lay Treasurer, if so directed by the Diocesan Finance Sub-Committee."

39. Chapter IV deals with the Diocesan Council. Rule 6 states that Bishop shall be ex-officio Chairman of the Diocesan Council. The Diocesan Council shall, at its first meeting after each election elect a Vice-Chairman who shall be a Clergyman and shall ordinarily continue in office until a new Vice-Chairman is elected at the first meeting after the next election.

40. Chapter X deals with Rules for elections. Rule 2 reads as follows:

"The scale of representation to a congregation worshiping in a church or worshiping Center dedicated by the Bishop or by his nominee shall be as follows:

For a congregation containing				
10 -	50	Communicants	1	member
51 -	100	"	2	members
101 -	150	"	3	"
151 -	200	"	4	"



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201 - 250	"	5	"
251 - 350	"	6	"
351 - 450	"	7	"
451 - 550	"	8	"
551 - 650	"	9	"
651 - 750	"	10	"
751 - 1000	"	11	"
1001 - 1250	"	12	"
1251 - 1500	"	13	"
1501 - 2000	"	14	"
2001 - and above	"	15	"

41. Rule 3 reads as follows:

The Pastorate Chairman shall prepare a list of voters qualified under General Rules B, Rule 1 of this chapter, Category wise and displayed in a conspicuous place in the church on a day to be fixed by the Diocesan Executive Committee. Objection if any should be made to the Pastorate Chairman within 7 days after the publication of the voters list. The revised list if any should be published by the Pastorate Chairman within three days there after. Appeal can be made about the inclusion or non-inclusion in the revised voters list within 7 days after the publication of the list to the Council Chairman and where the Council Chairman is also the Pastorate Chairman to the Election Commission. The revised list if any should be published by the Council Chairman within 3 days hereafter. An appeal can be made with the Election Commission within 7 days after the publication of the revised voters list if any by the Council Chairman. There is no appeal on the matter after the election is over. The voter's list prepared for a general election under this chapter for all the categories of voters is valid till the next general election unless any voter in the list is disqualified for the following reasons.

Any appeal made to the Council Chairman shall not be entertained if it was not already made to the Pastorate Chairman. Any appeal made to the Election Commission shall not be entertained if it was not already made to the Council Chairman.

(i) Ex-communication.

(ii) Failure to pay his / her sangam or church dues, lease dues or dues of rent of Mission properties or dues to the Diocesan Institution before 31st March of every year.

(iii) Failure to pay the contribution for any development scheme fixed by the Diocesan Executive Committee before 31st March of every year.

(iv) If he fails to reside in the pastorate area for atleast 120 days in a year.

(v) If there is a change of category of the voter.

42. Rule 4 reads as follows:



"The election of Congregation Representatives shall be conducted as follows;

(a) Notice shall be given publicly in each Church or other places of worship of each congregation on the two Sundays previous to the election during Divine services at the proper time for giving notices that there will be a meeting of voters to elect members according to chapter X Rule B 2 of the Pastorate Committees at specified time and place.

(b) Fifteen days (Two Sundays) prior to the date of election, a notice shall be read in each congregation inviting nominations of congregation representatives for the number of seats allotted in the scales of representation shown in Rule B of Chapter X Rule 2 for election to the Pastorate Committee. The nominations should be sent to the Pastorate Chairman within 7 (seven) days from the publication of the notice. The nominations shall be made in the prescribed forms available in the Pastorate Office or in the Diocesan Office. Withdrawal if any should be made to the Pastorate Chairman within two days hereafter.

The final list of candidates shall be displayed on the third day in the Pastorate Office notice board in the English alphabetical order with serial numbers.

(c) At the meeting when the election takes place the Clergyman in charge of the Pastorate, or in his absence the local Pastorate worker shall preside and begin the meeting with prayer.

At the meeting, when the election takes place the Clergyman in charge of the Pastorate or in his absence the local Pastorate Worker shall preside and begin the meeting with prayer. Two witnesses shall be appointed by the voters from among the voters present.

(d) If the number of voters is equal to or less than the number of persons required to be elected, in such cases no election is necessary. All the voters become ipso facto members of the respective committee or councils.

(e) If the number of candidates is equal to or less than the number required to be elected, the Chairman will say "These are elected". If there are two voters only of whom one is to be elected, if there is a election the choice shall be made by casting lots. If there are three voters of whom one is to be elected they shall be asked to exercise their votes. If there is a tie, the choice shall be made by casting lots.

Election shall be conducted on the day of the election, at the same time according to the election schedule in all the Congregations of the Diocese prescribed by a special service.

(f) The election of representatives shall be by



ballot where the number of nominations is greater than the number of persons to be elected.

(i) Each person will be given a ballot paper numbered, ini-

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and shuffled by the Chairman and the voter will make (x) on it to names of those for whom he wishes to vote. He must not vote more than the number to be elected and should not write anything on the ballot paper.

(ii) A ballot paper is invalid

1) If the voter has signed the Ballot Paper, or made any other special marks by which the counters could know who had marked it;

2) If more names of persons proposed are marked on it than can be elected.

Note: A ballot paper is valid even if the required number of names is not marked on it.

(iii) If there are voters present who cannot mark, the voters present shall appoint two witnesses. Each voter who cannot mark shall then tell the chairman the names of those for whom he wishes to vote and the chairman will mark them for him in the presence of the witnesses on his numbered and initialled ballot.

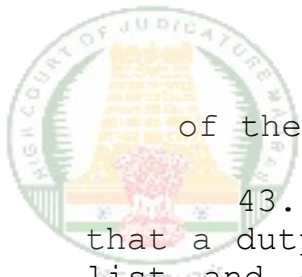
(iv) All voters must be present in person and no ballot will be handed out for any voter not present. Voting by proxy is not allowed. The candidate for election need not be present.

(v) The Chairman shall collect the ballots, and see that the numbers and initials agree. He shall cancel any ballot that was not issued by himself. If a ballot is spoilt the chairman shall reject it, but, if he be not himself the Pastorate Chairman he must then send it to the Pastorate Chairman with the accepted ballots.

He shall then together with one or two persons appointed by the voters present, count the votes given to each candidates. If two or more candidates at the end of the list secure equal number of votes, the Chairman shall write the names in the presence of Candidates on folded papers and place the papers in a box. The papers shall be drawn by a person present and those shall be declared elected whose names are drawn first in order from the box.

(vi) The chairman shall then say, "The following are elected". And he shall read out the names in the order of the number of votes obtained by them, but if there were any spoilt papers and the votes on those papers if included would have altered the result, he shall say. "The following are elected subject to approval by the Pastorate Chairman" and the Pastorate Chairman shall, on consideration of the spoilt papers publish the result of the election to be announced in church on the following Sunday.

(vii) If a Pastorate Worker presides he shall report the result of the election without delay, to the Chairman



of the Pastorate Committee."

43. A combined reading of the above provisions makes it clear that a duty lies only on **(*) Pastorate Chairman** to prepare the voter list and conduct elections. The Bishop is only the Chairman of Election Commission. His role is to decide the dispute referred to him.

44. It is an admitted fact that after 2013 elections, period has come to an end. A Schedule was released by the **(*) Pastorate Chairman** on 14.04.2018. The election schedule produced before this Court shows that from various dates starting from 16.04.2018 till 22.08.2018, various schedules have been prepared by the **(*) Pastorate Chairman** with the Diocese as per the Constitution. After release of the Schedule and voter list on 16.04.2018, C.M.P. (MD) No. 4411 of 2018 has been filed by the respondents 1 to 4 herein seeking the relief of interim injunction restraining the respondents therein from preventing them from participating, contesting and voting in the Diocese Election 2018, which was proposed to be held on 17.06.2018. In the said application, the learned Single Judge has passed an order as follows:

"There shall be an order of interim injunction restraining the respondents from preventing the petitioners, from participating, contesting and voting the Diocese Election, 2018 of the C.S.I. Tuticorin - Nazareth Diocese, either by not including the petitioners name in the voter list or otherwise, pending disposal of C.R.P. (MD) No. 820 of 2015."

45. This order has been passed by the learned Single Judge on 28.04.2018 in C.M.P. (MD) No. 4411 of 2018. The typed-set filed before this Court, when carefully seen, the first respondent has addressed a letter to the **(*) Pastorate Chairman** on 27.04.2018 to include his name in the voter list. Similarly, he has also addressed a letter to the Most Rt. Rev. Moderator, CSI Synod, Chennai, to include his name in the voter list, pursuant to which, his name has been included in the voter list dated 16.05.2018. Similarly, the second respondent, by his undated letter, has sent a requisition to the **(*) Pastorate Chairman** to include his name. His name has also been included in the voter list on 23.05.2018. The third respondent's name has also been included in the voter list on 23.05.2018. Similarly, the fourth respondent's name has also been included in the voter list on 16.05.2018. This fact is not in dispute. Though, as per the election schedule, nominations have to be filed on 24.05.2018, before nomination, the names of respondents 1 to 4 were very well included in the voter list. The respondents 1 and 4 did not file any nomination though they obtained nomination on 16.05.2018. **"(*) Whereas the other respondent viz., Durai Raj's nomination dated 26.05.2018 by way of Registered Post was sent only on 29.05.2018."**

Though he claimed to include his name in the list for Krishnarajapuram Pastorate, he sought to file nomination for the election from Vembar Pastorate, wherein he is not a voter at all.



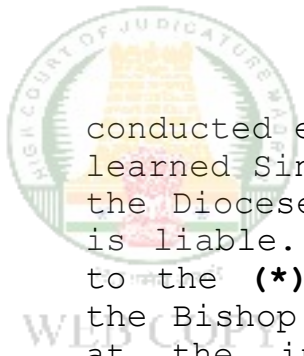
The nomination could not be accepted for two reasons. One for delay in sending nomination and another one, he wants to contest the election in some other area, where he is not a voter at all. Similarly, the third respondent-Aroan also belatedly sent nomination. It is not the case of the respondents 1 to 4 that the Bishop alone is responsible for receiving or scrutinizing the nomination form.

46. As discussed above, the responsibility of preparing list and conducting elections, as per the constitution, lies on the **(*) Pastorate Chairman**. The factual aspects, as discussed above, make it clear that even before nominations, the names of respondents 1 to 4 were included in the voter list. Two of the respondents did not file their nominations. Two of the respondents sent nominations belatedly, among them, one of the respondents wanted to contest in a different area, wherein he is not a voter at all.

47. When the matter stood thus, the respondents 1 to 4 filed other applications in C.M.P.(MD)No.4773 to 4775 of 2018, one for taking action against the respondents 2 and 3 therein for wilful disobedience of the order dated 28.04.2018 passed in C.M.P.(MD) No.4411 of 2018 and for restraining the respondents 1 to 3 therein from allowing the nominated members of the Diocesan Council to vote at the election to lay Secretary and other office bearers of the Diocese at the Diocesan election 2018 and one for appointment of Commissioner. In the above applications, the respondents 1 to 4 were pleaded that due to some unfortunate incident in Tuticorin and law and order problem, two of the nominations could not be sent in time. It is relevant to note that more than **(*)106** Pastorates have been elected on the basis of the nominations sent on the same day. Therefore, the contention of the respondents 1 to 4 has no legs to stand in that regard.

48. Thereafter, the learned Single Judge in C.M.P.(MD)No.4775 of 2018 passed an order restraining the respondents 2 and 3 therein not to conduct elections till 19.06.2018. It is curious to note that the Bishop-the second respondent in C.M.P.(MD)No.4775 of 2018 was away from the country. Only when the Civil Revision Petition was reserved for orders, he filed a re-open application to adopt the counter-affidavit filed by the third respondent therein. Thereafter, C.M.P.(MD)Nos.5094 and 5095 of 2018 came to be filed, one to stay all further proceedings and another to proceed against the respondents 1 to 3 therein for contempt of Court for wilful disobedience of the order dated 14.06.2018 in C.M.P.(MD)No.4775 of 2018. The learned Single Judge has punished the appellants on the ground that they violated the orders.

49. The facts narrated and discussed above would clearly indicate that the affairs of the election, as per the constitution of the Diocese, are only with the **(*) Pastorate Chairman**. The **(*) Pastorate Chairman** was not made as a party to the proceedings. Admittedly, the **(*) Pastorate Chairman**, as per the notification, has



conducted election and more than **(*)106** Pastorates were elected. The learned Single Judge took the view, since the Bishop is in-charge of the Diocese, for the election conducted by subordinates, the Bishop is liable. When the constitution governing the Diocese gives power to the **(*)Pastorate Chairman** to conduct elections, merely because the Bishop is in-charge of the Diocese, we cannot assume that only at the instruction of the Bishop, the **(*)Pastorate Chairman** proceeded to conduct the elections. Merely because the respondents 1 to 4 could not submit nominations on or before the scheduled date and they lost the chance, it cannot be said that the entire election conducted by the **(*)Pastorate Chairman**, as per the constitution, is invalid. It is also curious to note that the elected members are not made as parties and the issue in the suit is not related to the elections of the year 2018. Therefore, in our view, the order of the learned Single Judge in setting aside the election in its entirety, without even the presence of the elected candidates, is not according to law.

50. Admittedly, the names of respondents 1 to 4 were already included in the voter list before 24.05.2018, i.e., the last date for filing of nominations and having obtained the nomination forms, two of the respondents sent it belatedly and filed applications in C.M.P.(MD)Nos.4773 to 4775 of 2018 alleging that their names were not included in the voter list and their nominations were not received when they filed it. The very factum of obtaining the nomination forms before 24.05.2018 and sent it belatedly clearly makes it clear that theirs names have already been included in the voter list. That being so, the respondents 1 to 4, narrating incidents taken place on 22nd, 23rd, 26th and 29th of May, 2018 in the affidavit dated 06.05.2018, is highly doubtful. The above conduct of the respondents 1 to 4 itself clearly shows that those applications have been filed later on the basis of false particulars and misrepresentation of facts.

51. It is curious to note that the respondents 1 to 4 filed the applications under Order 39 Rule 2-A CPC. Such applications cannot be decided on the basis of mere affidavits. In fact, the allegations and counter allegations are all matter of evidence. Strict proof is required before calling the person for contempt, which has not been done by the learned Single Judge. On the mere available materials, we could see that despite their names have been included in the voter list before 24.05.2018, having sent nominations belatedly, they included the facts relating to subsequent period in their affidavit dated 06.05.2018. Therefore, we are of the view, without going into the factual aspects and giving an opportunity to the parties to establish their stand to prove their respective contentions, the Court cannot normally be expected to presume the facts averred in the affidavit are true.

52. No doubt, there was injunction not to conduct further elections till 19.06.2018. It is to be noted that as per the constitution, the respondents 1 to 3 in C.M.P.(MD)Nos.4773 to 4775



of 2018 were no way connected with the conduct of elections. It is only the **(*)Pastorate Chairman** which is responsible for such affairs. The affidavit of the Bishop also shows that there was a legal opinion in this regard, as there was no injunction against the **(*)Pastorate Chairman**, which proceeded to contest the elections.

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53. It is to be noted that if the order of the Court is clear and unambiguous and not capable of more than one interpretation, then it can be said that the disobedience or breach would amount to contempt. It is also well settled that power to punish a person in contempt is no doubt a powerful weapon in the hands of the judiciary. The same cannot be used, unless the Court satisfies beyond doubt that the person has deliberately and intentionally violated the order of the Court. The power under the contempt of Court must be exercised with utmost care and caution and sparingly, in the larger interest of the Society and for proper administration of justice delivery system. When the order of the Court is capable of more interpretation or misunderstood in the wrong premise, such disobedience cannot be termed as wilful and deliberate one.

54. Admittedly, in this case, the **(*)Pastorate Chairman**, which conducted the election, is not a party to the suit. Hence, we are of the view that for the election conducted by the **(*)Pastorate Chairman**, the appellants in Contempt Appeal (MD) Nos. 2 to 4 of 2018 cannot be punished for contempt, merely because an interim order as against them was existing. As per the constitution of the Tuticorin-Nazareth Diocese, every Committee vested with certain powers. Therefore, merely because CSI Tuticorin-Nazareth Diocese was represented by the Bishop, we cannot assume or presume that he has violated the order of the learned Single Judge deliberately. Hence, on facts and law, we found that the order of the learned Single Judge convicting the appellants in Contempt Appeal (MD) Nos. 2 to 4 of 2018 for contempt is not correct and the same is liable to be interfered with.

55. Furthermore, the relief granted by the learned Single Judge in entirety even without any substantive relief being sought in the main suit cannot be valid in the eye of law. In such circumstances, we are of the view that every election dispute gives rise to a fresh cause of action. If anybody challenges such action relating to the fresh cause of action, there must be a fresh proceedings by initiating a suit. They cannot assail every election by taking advantage of the pendency of the revision, which relates to the election of the year 2013.

56. In the case on hand, election of more than **(*)106** Pastorates is also set aside, without hearing any of the elected candidates. The elections have been conducted as per the rules. The relief granted in the revision and other petitions is beyond the scope of the very suit itself. Hence, we are inclined to hold that the order of the learned Single Judge in setting aside the elections



of the Pastorate Committee in its entirety is liable to be interfered with.

57. In fine, Contempt Appeal (MD)Nos.2 to 4 of 2018 are allowed and the judgment of the learned Single Judge punishing the appellants are set aside. Likewise, L.P.A.(MD)No.1 of 2018 is also allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/

Assistant Registrar(CO)

**(*)AMENDED AS PER ORDER OF THIS COURT
DATED 19.09.2018**

/True copy/

Sub Assistant Registrar(CS-I)

TO

+3cc to Mr.K.SUBBU RANGA BHARATHI, Advocate, SR.No.84531
+6cc to Mr.J.KINGSLY SOLOMON, Advocate, SR.No. 84529,84530
+4cc to Mr.C.DHANASEELAN, Advocate, SR.No. 84499
+1cc to Mr.V.RAJIV RUFUS, Advocate, SR.No. 84579

Contempt Appeal(MD)Nos.2 to 4 of 2018 and
Letters Patent Appeal (MD)No.1 of 2018
17.09.2018

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