

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

**CRP(NPD) No.1734 of 2019 &
CMP.No.11095 of 2019**

M.S.K. Memorial Cricket Club,
represented by its Secretary Anoop.S
Office at No.11, 6th Cross, Brindavan,
Puducherry-13

.. Petitioner

-VS-

1. G. Velmurugan
2. The Pondicherry Cricket Association,
represented by its Honorary Secretary,
G.Kalaimani, S/o.Gopalakrishnan,
No.37, 1st Floor, 2nd Cross,
Kurinji Nagar, Pondicherry.
3. G. Kalaimani

.. Respondents

Prayer: Civil Revision Petition under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 01.03.2019 made in I.A.No.189 of 2019 in I.A.No.606 of 2018 in O.S.No.43 of 2013 on the file of learned Principal Sub Judge Puducherry.

For petitioner : Mr. R. Thiagarajan

ORDER

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The petitioner/plaintiff is a sports club in the field of cricket and is a member of the 2nd respondent/1st defendant Association from 2001 and has been associated with the 2nd respondent/1st defendant Association. The 3rd respondent/ 2nd defendant is the secretary of the 2nd respondent /1st defendant Association and he is the person

responsible for the activities of the Association who will have to act as per the rules and regulations of the 1st defendant Association.

2. The petitioner herein as plaintiff filed a suit O.S.No.43 of 2013 seeking following reliefs;

a. to grant permanent injunction restraining the defendants from giving membership to the expelled members and non members or involving such members in any activities of the 1st defendant Association against the Rules and Regulations of the Association.

b. for a permanent injunction restraining the defendants from conducting any General body meeting or Extra Ordinary General Body Meeting with the involvement of the expelled members and non member against the Rules and Regulations of the Association.

3. The 1st respondent herein was impleaded as the third defendant in the suit, subsequent to its institution.

4. The suit was decreed exparte on 23.12.2016. Thereafter, on information, the 1st respondent / 3rd defendant filed a petition to set aside the exparte decree in I.A.No.606 of 2018 along with condonation of delay petition. The condone delay petition was ordered. Pending I.A.No.606 of 2019, the petitioner/plaintiff filed an interim application in I.A.No.189 of 2019 therein, raising very many allegations against the 1st respondent/3rd defendant and in order to prove his case, he want to examine

the witnesses since their evidence are vital to prove his case and thus seek to permit the him to take out summons to the list of witnesses mentioned in the application. One of such witnesses is 2nd defendant to the suit, i.e., the 3rd respondent herein.

5. The trial Court, after considering the arguments of both sides, dismissed the petition filed by the plaintiff to summon the witnesses holding that the plaintiff has to prove his case by himself and that he has to stand on his own legs and he cannot compel the defendant to stand as witness to prove the plaintiff's case and moreover, the present petition is only a set aside petition and the court has to see whether the reason put forth by the petitioner for setting aside the decree is acceptable or not and hence the petition has no merits at this stage. Aggrieved over the same, the petitioner/plaintiff preferred the above Civil Revision Petition.

6. Admittedly, the issue pending before the trial court in the order impugned is as to whether the petition to set aside the exparte decree can be allowed or not?

7. In that process, as rightly found by the trial Court, the issue to be analysed is that whether the reason put forth by the petitioner to set aside the exparte decree is acceptable or not. On the other hand, the petitioner is attempting to prove his locus standi to maintain the suit by examining the witnesses.

M.GOVINDARAJ, J.

msr

8. Curiously, out of the witnesses sought to be examined by the petitioner, two are Advocates and the third one is the 2nd defendant in the suit. If at all the petitioner wants to take summons to the witnesses, he can file a supporting affidavit to prove his case. The petition in I.A.No.189 of 2019 is filed under Order XVI, Rule 1 of CPC. Invocation of that provision will come into play only after settling the issue and not before that. The defendants were set exparte in the suit and exparte decree has been passed and it ought to be set aside. Therefore the invocation of Order XVI Rule 1 CPC will come into play only after the exparte decree is set aside and the suit is taken up for trial.

9. In such circumstances, the finding given by the trial court in dismissing the above application is correct and does not warrant interference. Therefore the Civil Revision Petition deserves to be dismissed and accordingly it is dismissed. No costs. Consequently, connected CMP.No.11095 of 2019 is closed.

06.06.2019

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Index:Yes/No

Internet:Yes/No

speaking order/non speaking order

To

Principal Sub Judge, Puducherry.

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