

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Monday, the Twenty Fifth day of November Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE R. PONGIAPPAN

CMP No.15972 of 2019

AND CMP.NO.1814 OF 2017

IN CRP.NPD.NO.1296 OF 2012

1 THE TAMILNADU DEPOSIT HOLDERS [PETITIONER IN CMP No.15972/2019]
ASSOCIATION REP BY ITS PRESIDENT
MR.S.K.G.SAMBANDAM (DIED) NOW REP BY M.VIJAYKUMAR,
S/O MARAPPA GOUNDER, 117 MAMARATHOTTAM,
THIRUMALAYAM PALAYAM POST, MADUKKARAI, COIMBATORE.

2 M.VIJAYKUMAR

3 N.NAVANEETHA KRISHNAN

4 P.NANJUKUTTY

5 M.SUBATHAL

1 THE TAMILNADU DEPOSIT HOLDERS [PETITIONER IN CMP.NO.1814/2017]
ASSOCIATION REP.BY ITS PRESEIDENT
MR.S.K.G.SAMBANDAM, POLLACHI, 602 001.

Vs

1 V.MAYLSAMY [RESPONDENTS IN BOTH THE PETITIONS]
ADVOCATE, COIMBATORE

2 P.RAMASWAMI
ADVOCATE, COIMBATORE

3 S.RAJAGOPAL
ADVOCATE, COIMBATORE

4 M/S EVEREST ENGINEERING WORKS
REP BY S.MNOHARAN, S/O A.SOMASUNDARAM, RES
AT ALAGAR NIWAS, NSR AYYANGAR ROAD, SAIBABA
COLONY, COIMBATORE

5 BHARAT BLACKSMITH LTD
A.SOMASUNDARAM, RES AT ALAGAR NIWAS, NSR
AYYANGAR ROAD, SAIBABA COLONY, COIMBATORE

6 S.MANOCHARAN
S/O A.SOMASUNDARAM, RES AT ALAGAR NIWAS, NSR
AYYANGAR ROAD, SAIBABA COLONY, COIMBATORE

7 S.RAVINDRAN
S/O A.SOMASUNDARAM, RES AT ALAGAR NIWAS, NSR
AYYANGAR ROAD, SAIBABA COLONY, COIMBATORE

8 S.SUNDARAKUMAR
S/O A.SOMASUNDARAM, RES AT ALAGAR NIWAS, NSR
AYYANGAR ROAD, SAIBABA COLONY, COIMBATORE

9 S.SEETHALAKSHMI
W/O G.SINGARAVELU, NO.19/1 SUBA ILLAM,
EDAYARPALAYAM, SARAVANA NAGAR,
VELANDIPALAYAM POST, COIMBATORE

10 S.SAKUNDALA
W/O LATE P.SATHIYANARAYANACHAR, NO.103, 1ST
STATE, HOUSE NAME GAYATHRI, ANAND NAGAR,
MANIPAL, UDUPI DIST, KARNATAKA

11 V.CHANDRA
W/O DR.R.VISWANATHA ACHAR, NO.233, 4TH PHASE,
S.F.S.407, KHV MAIN ROAD, YALAHANKA NEW TOWN,
BANGALORE

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to To implead the petitioners herein as the Revision petitioners in the above CRP in the interest of justice IN CMP.NO.15972 OF 2019 AND;

(II) to amend the cause title in the above Civil Revision petition by showing the name of Mr. M. Vijayakumar instead of Mr. Sambandam, and thus render justice IN CMP.NO.1814 OF 2017 Respectively.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.T.R.RAJAGOPALAN, SENIOR COUNSEL FOR MRS.P.VEENA SURESH, Advocate for the petitioner and of MR.S.PARTHASARATHY, SENIOR COUNSEL FOR MR. ARUN KARTHIK MOHAN FOR 4,5, 6,8 Respondents and of MR.A.THIYAGARAJAN, ADVOCATE FOR 7TH Respondent and 1 to 3, and 9 to 11 Respondent not appearing either in person or by an advocate the court made the following order:-

The petitioners in the Civil Miscellaneous Petitions are the proposed petitioners in CRP (NPD) No.1296 of 2012. They have filed this application under Order I Rule 10 read with Section 151 of Code of Civil Procedure and prayed to implead the petitioners as the Civil Revision Petitioners.

2. The averments made in the affidavit filed in the support of the petition filed by the petitioners, are as follows:

(i) The first petitioner is the President of the petitioner Association, who has already filed the Civil Revision petition. Pending the above Civil Revision Petition, the then President of the Tamil Nadu Depositor Holders Association Mr.S.K.G.Sambandam, expired on 17.06.2015 and Mr.M.Vijayakumar, has been elected as the President by the members of Association. In the suit in OS No.210 of 1986, pending on the file of the Sub Court, Coimbatore, the petitioner association was the 8th defendant. The Association consists of 5043 members/ Fixed Deposit holders in the 2nd defendant Company, which was under the management of one Mr.A.Somasundaram and his family members. The said Suit was filed in the representative capacity, on behalf of the creditors viz., the defendants 1 to 7 in the suit. The suit was filed by 98 creditors who had advanced financial help to the 2nd defendant Company. The cause of the fixed deposit holders was pleaded by the 8th Defendant association.

(ii) The Association was formed only for the sole purpose of representing the cause of the Fixed Deposit Holders. In the course of the proceedings, IA No.1035 of 2008 was filed on 04.09.2008, by the 8th defendant association and the application was disposed of on 12.09.2009. The objections now raised by the respondents in the present Civil Revision Petition, is that the 8th Defendant Society has become defunct, but the same was not raised before the trial Court. The present affidavit of the Respondent was filed on 08.07.2019 as an additional affidavit. It is only thereafter, the petitioner herein as the President of the Petitioner's Association came to know that there is an order under section 44(4) Tamil Nadu Societies Registration Act. The erstwhile President of the Association never brought to the notice of the General Body, about any notice being received from the District Registrar under the Act. To the knowledge of the petitioner there is no such notice for initiating any such actions against the 8th Defendant Association, which is active even now.

(iii) The sole purpose of the Association is only to recover the money due to its members from the 2nd Defendant company. As the proceedings are getting delayed, the members of the Association agreed to receive 50% of the amount with interest on the Fixed Deposit amount. Based upon that a preliminary decree was passed on 28.08.1989, only with the intention to benefit the fixed deposit holders and the trial Court cast the duty on the administrators to enforce the orders in accordance with the preliminary decree passed in the case.

(iv) The order dated 28.08.1989 in IA No.364 of 1989 in the suit, clearly spell out that the creditor should be paid 50% of their demand which includes the principle amount. The word "Koorikai" referred there, is what is prayed for, by the depositors. In spite of the specific direction in the decree, the

learned Sub Judge passed an order restricting the claim of the Fixed Deposit holder only to the Principle Amount. Hence the above Civil Revision Petition was filed by the Association.

(v) The Revision Petitioners are the Deposit Holders. Hence, if the Court takes the view that the Association cannot continue the above Civil Revision Petition, the proceedings being a representative actions, the members of the association should be brought on record. The 5043 members of the association are not aware of the present developments, till now. The petitioner undertakes to take appropriate steps to inform all the members of the Association about the present status of the association.

(vi) In the said circumstances, the present proceedings being a representative action, the proposed petitioners herein who are the fixed deposit holders should be permitted to be brought on record as Civil Revision Petitioners.

3. Refuting the claim made by the petitioners, respondent Nos.4,5, 6 to 8, have filed the counter affidavit, which states as follows:

(i) At the outset, the present Civil Miscellaneous Petition has been filed in the name of the Tamil Nadu Deposit Holders Association and 4 Others, seeking to implead 4 purported fixed deposit holders as Civil Revision Petitioners in the captioned Civil Revision Petition. The present petition, as also the main Civil Revision Petition, is not maintainable and ought to be dismissed in limine because the Petitioner Association, having been struck off from the Register of Societies as far back as on 18.12.2007 itself and thus, lacks the legal personality necessary to maintain any proceedings in the Court of law.

(ii) The captioned Civil Revision Petition was filed in the name of the Tamil Nadu Deposit Holders Association, which was a registered association bearing registration No.29 of 1986, against the order dated 12.09.2011 in I.A. No. 1035 of 2008 in O.S. No. 210 of 1986 on the file of the Sub Court, Coimbatore. The Petitioner Association filed a miscellaneous petition, bearing CMP No.1814 of 2017, seeking to amend the cause title of the captioned Civil Revision Petition by showing the name of one Mr.M.Vijayakumar instead of Mr.Sambandam, through whom the captioned Civil Revision Petition had originally been filed in the name of the Petitioner Association.

(iii) The affidavit in support of such miscellaneous petition contained inherently contradictory statements regarding the status of Mr.M.Vijayakumar, wherein at one paragraph he has stated to have been elected as President of the association whereas in another paragraph the election of the President was stated to be still pending. Further there is no no proof or details whatsoever to establish his authority to represent such purported association. The Respondents filed a detailed counter affidavit to the miscellaneous petition. Mr.M.Vijayakumar filed an additional affidavit claiming to have been appointed as the President of the

Petitioner Association at the General Body Meeting held on 03.01.2016 and it was at this stage that the copies of the purported resolution in this respect were filed. However, no explanation whatsoever was provided as to why despite the demise of Mr. Sambandam as far back as on 17.06.2015, and the purported resolution being passed on 03.01.2016, the application for amendment was filed nearly a year later without disclosing the details of such resolution in the application.

(iv) On verification it came as an absolute shock and surprise that the petitioner association has been struck off the record of the Registrar of Societies as far back as on 18.12.2007, being much prior to the date of filing of the captioned Civil Revision Petition, and in fact even prior to the filing of the I.A. No.1035 of 2018 before the trial court, the order in which has given rise to the present Civil Revision Petition.

(v) Petitioner Association has filed the present petition seeking to implead fixed deposit holders as Civil Revision Petitioners in the captioned Civil Revision Petition, itself being an acknowledgment/admission of the fact that the captioned Civil Revision Petition in the name of the Petitioner Association is not maintainable. The Civil Revision Petition being not maintainable from its very inception, having been filed in the name of the association, having no existence in the eyes of law, the question of impleading 4 purported deposit holders as civil revision petitioners to pursue the action instituted in the name of the association does not arise in the Civil Revision Petition.

(vi) In otherwise, the contents of the affidavit filed by the petitioners are all denied. In any event the persons sought to be impleaded admittedly not being a party to the suit proceedings cannot be impleaded in the present Civil Revision Petition. The 4 purported deposit holders have no authority to represent the entire body of depositors. It is pertinent to note that the purported resolution dated 03.01.2016 allegedly electing Mr.M.Vijayakumar as President of the association itself has only 21 signatories. In fact, the averment to the effect that the members of the purported association are not aware of the present developments till now, only strengthens the apprehension of the respondents that the present proceedings are nothing but an attempt of a small group of people, driven by a personal agenda, to frustrate the interests of the larger body of creditors to benefit from the preliminary decree. It is purely the action of such persons that has delayed the benefits of the preliminary decree being transferred to the creditors, in light of which itself any claim for interest is rendered wholly untenable. Accordingly, the petition filed under Order I Rule 10 of CPC, is not maintainable.

4. Today, when the impeading petition came up for hearing, learned counsel for the proposed petitioners and the contesting respondents, were present and made their respective submissions.

5. Learned counsel appearing for the proposed petitioners submitted that the first petitioner association herein is the 8th defendant in OS No.210 of 1986. At the time of filing of the suit, the said association was represented by its president Mr.SKG.Sambandam. Further, the said association consists of 5043 members / fixed deposit holders in the 2nd defendant company. Moreover, the said association was registered under the Societies Registration Act and during the pendency of the suit the President of the Association, Mr.SKG.Sambandam died. So, the present President M.Vijayakumar was elected as the President of the said Association and thereby, they are necessary party to proceed CRP No. 1296 of 2012, which was filed by the Association by its erstwhile President Mr.SKG.Sambandam.

6. On the other hand, the learned counsel appearing for the respondents 4, 5, 6 and 8 would contend that as of now, no association is in existence in the eye of law. Further without impleading the proposed petitioners in the proceedings pending before the trial Court, impleading them as a party to the proceedings in the Civil Revision Petition can create multiplicity of proceedings and the petitioners have to work out their remedy only before the trial Court and not before this Court. Ultimately, he prayed to dismiss the impleading petition filed by the petitioners.

7. Upon considering the arguments made by either side, it is not in dispute that the 1st petitioner association was registered under the Societies Registration Act and the same has been struck off from the record of the Registrar of Societies as far back as on 18.12.2007, being much prior to the date of filing the captioned Civil Revision Petition and infact even prior to the filing of the interlocutory application No.1035 of 2008 before the trial Court, the order in which has given rise to the present Civil Revision Petition.

8. In this regard, now, on going through the affidavit filed in support of the petition, filed in IA No.1035 of 2008, the same was sworn by Mr.SKG.Sambandan, on behalf of the 1st petitioner association. In fact the said affidavit was sworn on 09.06.2008, i.e., after the date of 18.12.2007, the date on which the association was struck off. So filing the Civil Revision Petition itself creates a doubt whether the same has been filed in accordance with law or not. However, till the name of the registered society is restored to the record of the Registrar of Societies, no association is found in the eye of law. Though already election was held for electing the new President, immediately after electing the new President, it is the duty of the Association, for making an application before the authority concerned for restoring the Society. Further, it is necessary for them to file an application before the Court below for amending the plaint.

9. In this case, on the side of the petitioners, nothing was averred in the affidavit filed in support of this petition, as to

the whether the defunct Society was restored to the record of the Registrar of Societies. Further, the petitioners 2 to 5, are not a party to the proceedings, pending before the trial Court. Therefore, they are not entitled to file this application directly before this Court for impleading them as party to the proceedings. Order 1 Rule 10 of Code of Civil Procedure.

10. In general a party seeking to be impleaded as a party to a suit must demonstrate that he has a direct and substantial interest in the subject matter of the suit and that such interest would be affected directly by the decree that may be passed in the suit or that his presence as a party to the suit must be necessary for answering the issues arising in the suit.

11. But in this case in the affidavit filed by the petitioners, the petitioner nos.2 to 5 have not said anything about the substantial interest in the subject matter of the suit. Moreover without filing an application before the Court below for impleading them as a party to the proceedings in the trial proceedings, filing an application to implead them before this Court, directly, is not proper. So, the application filed by the petitioners, both factually and logically, is not maintainable.

12. In the light of the above, the Civil Miscellaneous Petition is dismissed. Post the Civil Revision Petition for hearing on 13.12.2019.

-sd/-

25/11/2019

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SUBORDINATE
JUDGE COIMBATORE.

C.C. to M/S.P.VEENA SURESH Advocate on payment of necessary charges

C.C. TO M/S.ARUN KARTHIK MOHAN ADVOCATE SR.NO.14045

Order

in

CMP No.15972 of 2019

AND CMP.NO.1814 OF 2017

IN CRP.NPD.NO.1296 OF 2012

Date :25/11/2019

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