

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

RESERVED ON : 30.10.2019
DELIVERED ON: 04.11.2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A.NO.6809 OF 2019
IN
C.S.NO.242 OF 2019

Tamil Nadu Table Tennis Association (TNTTA)
Rep.by its Hon.Secretary
Mr.A.Vidyasagar,
Room No.82, Jawaharalal Nehru Stadium,
1.Periampet, Chennai 600 003Plaintiff

-vs-

1.Table Tennis Federation of India (TTFI),
Rep.by its Secretary General,
Mr.M.P.Singh,
18, Janpath,
New Delhi 110001

2.Mr.J.Selvakumar,
Flat No.5, 3rd Floor,
Indus Jubilee Manor,
No.38, Tank Baunk Road,
Nungambakkam, Chennai 34

3.Tamil Nadu Table Tennis
Association
Registration No.194/2018
Rep.by its Secretary Mr.J.Selvakumar,
Flat NO.5, 3rd Floor,
Indus Jubilee Manor,
No.38, Tank Bunk Road,
Nungambakkam, Chennai 34

4.The Inspector General of Registration
Santhome, Chennai 28

5.The District Registrar,
Saidapet, Chennai 600 005.

..Defendants

A.NO.6809 OF 2019:

Table Tennis Federation of India (TTFI),
Rep.by its Secretary General,
Mr.M.P.Singh,
18, Janpath,
New Delhi 110001

..Applicant/Defendant No.3

-vs-

1.Tamil Nadu Table Tennis Association (TNTTA)
CIN U92413TN2003NPL052120
Rep.by its Hon.Secretary
Mr.A.Vidyasagar,
Room No.82, Jawaharlal Nehru Stadium,
Periampet, Chennai 600 003

..Respondent No.1/Plaintiff

2.Tamil Nadu Table Tennis
Association
Registration No.194/2018
Rep.by its Secretary Mr.J.Selvakumar,
Flat NO.5, 3rd Floor,
Indus Jubilee Manor,
No.38, Tank Bunk Road,
Nungambakkam, Chennai 34

3.Mr.J.Selvakumar,
Flat No.5, 3rd Floor,
Indus Jubilee Manor,
No.38, Tank Baunk Road,
Nungambakkam, Chennai 34

..Respondent 2 & 3/Defendant No.1 & 2

4.The Inspector General of Registration
Santhome, Chennai 28

..Respondent No.4/Defendant No.4

5.The District Registrar,
Saidapet, Chennai 600 005.

..Respondent No.5/Defendant No.5

This Application praying that this Honble Court be pleased to reject the plaint in C.S.No.242/2019 as it is not maintainable with exemplary costs.

This Application coming on this day before this

<https://hcservices.ecourts.gov.in/hcservices/> hearing the court made the following order:

The third defendant in C.S.No.242 of 2019 has come

up with this application to reject the plaint.

2. The plaintiff is the State Association and it was affiliated to the Table Tennis Federation of India, the applicant herein and it was disaffiliated by an order dated 12.11.2018. The order of disaffiliation was challenged in W.P.No.30022 of 2018 and this Court, disposed of the Writ Petition on 19.03.2019 by observing that the Arbitration Agreement is binding on both the parties and they were directed to work out their remedy in accordance with the Arbitration Clause.

3. The prayers in the present Suit are to declare the amended Arbitration Clause 48 made in the Special General Meeting, dated 29.09.2018 as null and void and the disaffiliation order dated 12.11.2018 passed by the third defendant against the plaintiff as null and void. Along with the suit, the plaintiff filed three applications, viz., i) O.A.No.355 of 2019 seeking ad-interim injunction restraining the defendants 1 and 2 from using the name of the plaintiff until further orders, ii) A.Nos.2618 & 2619 of 2019, for stay of operation of the Arbitration Clause 48 and iii) the proceedings of disaffiliation dated 12.11.2018. This Court, by a common order dated 02.04.2019 granted interim orders. The matter was taken up on appeal by the applicant / third defendant and the same is pending before the Apex Court in S.L.P. Nos.10543 to 10545 of 2019 and an order of stay was granted on 27.05.2019.

4. Mr.T.Mohan, learned counsel for the applicant would urge that for non-compliance of the Bye-law of the applicant herein, the plaintiff Association was disaffiliated on 12.11.2018. The Writ Court in W.P.No.30022 of 2018 has held that in view of the Arbitration Clause, the Writ Petition is not maintainable and the plaintiff was directed to pursue the Arbitration Clause. The order of the Writ Court has become final, but the plaintiff instead of approaching the Arbitrator has filed the present suit. Further in view of non appearance of the plaintiff, the arbitration proceedings were also terminated.

5. It is the contention of the learned counsel for the applicant that unless the order passed in the Writ Petition and the order of termination are set aside, the present suit is not maintainable. It is also contended that the Arbitration Clause was already existing in the Bye-laws of the applicant, even before amendment in the year 2018 and it was further clarified only in a Special General Body Meeting, which has also been categorically observed by the Writ Court. Further, as per the Bye-laws, Court in New Delhi has jurisdiction and this Court has no territorial jurisdiction to entertain this Writ Petition. It is next contended that the prayers in the previous suit in C.S.No.479 of 2018 and the prayers (a) and (b) in the present suit are same and hence, the suit is an abuse of process of law and there is no cause of

action for filing the suit.

6. The learned counsel for the applicant has cited the following decisions in support of his contentions:-

(i) **T.Arivandandam v. T.V.Satypal** [(1977) 4SCC 467]

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful -- not formal -- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost

realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi

"It is dangerous to be too good."

7. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending Judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candor and correct advocacy."

(ii) **Kaverner Cementation India Ltd. v. Bajranglal**

Agarwal [(2012) 5 SCC 214]

"3. There cannot be any dispute that in the absence of any arbitration clause in the agreement, no dispute could be referred for arbitration to an Arbitral Tribunal. But, bearing in mind the very object with which the Arbitration and Conciliation Act, 1996 has been enacted and the provisions thereof contained in Section 16 conferring the power on the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement, we have no doubt in our mind that the Civil Court cannot have jurisdiction to go

into that question."

(iii) **Sundaram Finance Limited and another Vs.**

T.Thankam [(2015) 14 SCC 444]

"13. Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law-generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the Court."

(iv) **National Aluminium Company Limited vs. Subhash**

Infra Engineers Pvt. Ltd., [2019 SCC OnLine SC 1091]

"14. Having regard to aforesaid judgment of this Court and various communications between the parties, we are in agreement with the submission made by the learned senior

counsel for the appellant that, if the first respondent wants to raise an objection with regard to existence or validity of the arbitration agreement, it is open for the first respondent to move an application before the arbitrator, but with such plea, he cannot maintain a suit for declaration and injunction. Though the Trial Court rightly rejected the interim injunction sought for by the first respondent, the same is erroneously reversed by the learned Additional District Judge and such order is confirmed by the High Court, by the impugned order. "

7. Per contra Mr.S.Ranjith Kumar, learned counsel for the first respondent / plaintiff submitted that raising identical grounds, the applicant has filed the Special Leave Petitions and the matter is seized of before the Hon'ble Apex Court. The plaintiff has moved an application to vacate the interim order granted by the Hon'ble Apex Court, contending that the suit is maintainable and unless, the maintainability issue is decided in the pending S.L.P, this application cannot be taken up for consideration.

8. It is further contended by the learned counsel for the first respondent / plaintiff that W.P.No.30022 of 2018 was dismissed mainly on the ground that the plaintiff has not challenged the Bye-laws of the Association and hence, the present suit has been filed.

Though in the election held in 2018, a new office bearers have been elected for the plaintiff, in view of the total non co-operation of the applicant herein / National Body, they are not able to function in a democratic manner and the applicant is supporting the second defendant, who has defeated in the last election.

9. Heard the rival submissions and perused the materials placed on record.

10. There is no quarrel over the proposition laid down in the above decisions. It is the contention of the learned counsel for the applicant that the suit is not maintainable in view of the Arbitration Clause, which is binding on both the parties. On the other hand, the plaintiff would contend that the suit is very well maintainable, since the second defendant was not a party in the Arbitration Agreement and the contentious issues could be decided only in the suit and not before the Arbitrator.

11. In the instant case, it is not disputed that on the very same issue of maintainability of the suit, the Hon'ble Apex Court entertained the Special Leave Petitions and granted interim stay in the suit and the order dated 27.05.2019 is still in force.

12. Keeping in view of the above factual position, in my considered opinion, it would not be proper and appropriate to decide the maintainability issue at this juncture. Hence, the application is dismissed, granting

liberty to the applicant to move an application after disposal of pending Special Leave Petitions, if so advised.

Sd/.M.K.K.S.J.

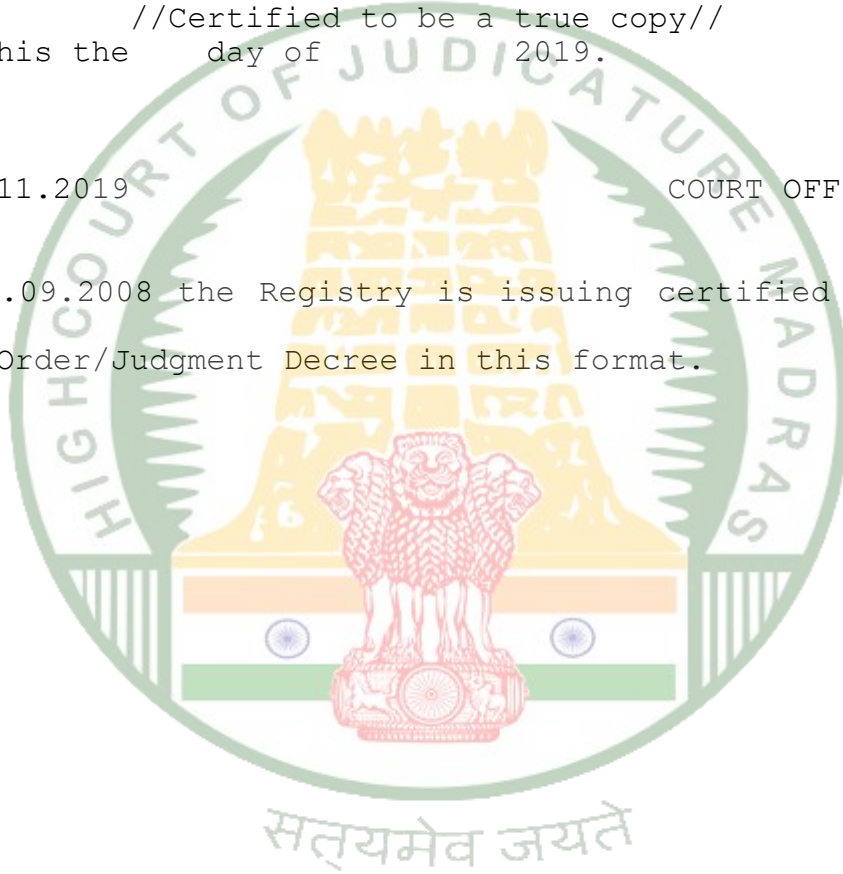
04.11.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/18.11.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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