

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
09.12.2020	18.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Application Nos.453 of 2019
in C.S.No.242 of 2019

Table Tennis Federation of India (TTFI)
Rep.by its Secretary General
Mr.M.P.Singh
No.18, Janpath,
New Delhi 110001

... Applicant / Defendant No.3

versus

1. Tamil Nadu Table Tennis Association (TNTTA)
CIN U92413TN2003NPL052120
Rep.by its Hon. Secretary
Mr.A.V.Vidyasagar
Room No.82, Jawaharlal Nehru Stadium,
Periamet, Chennai 600003. Respondent No.1/Plaintiff

2. Tamil Nadu Table Tennis Association
Registration No.194/2018
Rep.by Secretary Mr.J.Selvakumar
Flat No.5, 3rd Floor,
Indus Jubilee Manor,
No.38, Tank Bunk Road,
Nungambakkam,
Chennai 600034.

3. Mr.J. Selvakumar

Flat No.5, 3rd Floor,
Indus Jubilee Manor,
No.38, Tank Bunk Road,
Nungambakkam,
Chennai 600034.

... Respondents 2 and 3 / Defendants 1 and 2

4. The Inspector General of Registration,
Santhome,
Chennai 600028.

... Respondent No.4 / Defendant No.4

5. The District Registrar,
Saidapet,
Chennai 600015.

... Respondent No.5 / Defendant No.6

Prayer in A.No.453 of 2019: Application filed under Order XIV Rule 8 of Original Side Rules read with Order VII Rules 11 and Section 151 of CPC to reject the plaint in C.S.No.242 of 2019 as it is not maintainable in the eye of law, non-est and malice, with exemplary costs.

For Applicant : Mr. T. Mohan for
Mr.Cibi Vishnu

For Respondents : Mr. P.V. Balasubramanian for
Mr. S. Ranjith Kumar

ORDER

This application has been filed to reject the plaint in C.S.No.242 of 2019 as it is not maintainable in the eye of law, non-est and malice.

2.(a) It is stated in the application that the plaintiff has no cause of

action to file the Civil Suit and they have not approached the Court with clean hands and they suppressed the vital material facts. It is further stated that the Plaintiff Association was a State Association and was previously an affiliated member of the third Defendant. The members and other affiliated Associations are governed by the Bye-laws or Constitution/Memorandum of Association of TTFI. Plaintiff Association was disaffiliated by the Applicant for flagrant violation of bye-laws of the Federation in spite of several reminders and notices.

2.(b) It is the contention that with regard to the prayer sought in the plaint to declare the disaffiliation, an award has already been passed by the Arbitrator which also attained finality as no appeal against the said award has been preferred till date. Thus, there is no cause of action exists in the plaint. It is also stated that suit is not maintainable within the territorial jurisdiction of this Court and in the pleadings the exclusive legal jurisdiction clause is suppressed. The plaint ought to be rejected as the plaintiffs have sought the same relief already sought in another suit. It is further contention that the question of validity of the amendment of Arbitration clause ought to be adjudicated before the Arbitrator. While the existence and validity of an

arbitration clause cannot be determined in a civil suit, the said suit filed by the Plaintiffs challenging the arbitration clause is barred under law. Hence the suit is liable to be dismissed.

2.(c) Similarly, W.P.No.30022 of 2018 has already decided by this Court. This Court has held that the arbitration clause is binding on both parties, they are directed to act in accordance with the arbitration clause. Above writ was disposed. No appeal was filed. Hence, the suit is barred. Clause 47 of the Memorandum of Association has clearly shows that this Court has no jurisdiction. Similarly the bye-laws also provides for arbitration. Hence, suit filed before this Court is not maintainable. Therefore, prayed for rejection of the suit.

3. The Plaintiff filed objection stating that the application filed by the 3rd Defendant is clear case of abuse of process of law. The present suit has been filed seeking comprehensive reliefs. The above suit in C.S.No.242 of 2014, Original Application No.355 of 2019 and Application Nos.2618 and 2619 of 2019 were filed seeking to grant an order of interim stay of the disaffiliation dated 12.11.2018. The above applications came for hearing before this Court

on 02.04.2019, this Court has passed an order ex parte order injunction and ordered the stay of operation of amended arbitration clause and order of stay for disaffiliation order of 3rd Defendant dated 12.11.2018. The 3rd Defendant and other defendants had entered appearance in the suit and they sought time for filing counter in the above said interim application on 22.4.2019 and the matter was adjourned to 10.6.2019 for filing counter. Thereafter, 3rd Defendant filed an appeal in the vacation Bench of the Supreme Court and made several allegations against the Election Officer Retired Judge with regard to the elections held on 27.05.2018 and obtained ex parte stay. After obtaining the ex parte stay from the vacation Bench of the Honourable Supreme Court, 3rd Defendant has granted affiliation to the 2nd Defendant despite the pendency of the suit and SLP before the Honourable Supreme Court. The 3rd Defendant granting affiliation to the 2nd Defendant establishes the illegal nexus between the Applicant and the 2nd Defendant. Hence, submitted that the application has to be dismissed.

4. Mr.T. Mohan, learned counsel appearing for the Applicant submitted that the suit has been filed to declare that the amended Arbitration Clause 48 of the 3rd Defendant's Memorandum of Association in the Special General

Meeting dated 29.09.2018 as null and void and to declare that the disaffiliation order dated 12.11.2018 passed by the 3rd Defendant against the Plaintiff Association as null and void. It is his contention that the Writ Petition already filed and disposed of. While challenging the disaffiliation, the Writ Court has clearly held that since there is an Arbitration Clause in the bye-law, the parties are governed by the Arbitration Clause. Accordingly, the Writ Petition was disposed of. When the very challenge made to the disaffiliation has already reached finality and no appeal is filed against the order passed by the learned Single Judge in W.P.No.30022 of 2018 dated 19.3.2019, the suit for declaring the disaffiliation as null and void is not maintainable and it just amounts to relitigation. It is also submitted that any dispute between the Associations, its members constitutes, suit will lie within the jurisdiction of Delhi Courts and not in this Court. On that ground alone the suit is not maintainable before this Court. It is his further contention that the Arbitration clause is already existing in the bye-laws of the applicant. Even before the amendment in the year 2018, there was an arbitration clause. Hence, it is submitted that the prayers in the (a) and (b) in the present suit are the same in the previous suit viz., C.S.No.479 of 2019. Hence, the suit is nothing but re-litigation, abuse of process of law and barred by the principal of re-litigation. Hence, it is his contention that the suit

has to be rejected. In support of his contention he cited the following judgments:

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

(ii) *Kaverner Cementation India Ltd. v. Bajranglal Agarwal [(2012) 5 SCC 214]*

(iii) *Sundaram Finance Limited and another Vs. T.Thankam [(2015) 14 SCC 444]*

(iv) *National Aluminium Company Limited vs. Subhash Infra Engineers Pvt. Ltd., [2019 SCC OnLine SC 1091]*

5. Learned counsel Mr.P.V. Balasubramanian appearing for the Respondents submitted that this application is nothing but abuse of process of law. The suit cannot be rejected merely on the ground that the Writ Petition was disposed of. Even after the Writ Petition was disposed of, this Court has passed an order on 2.4.2019 in the interim application and the above order still continuing. The Honourable Apex court while disposing the SLP has also held that the above order shall continue and directed this Court to dispose of the

suit within a period of 12 months from the date of order. The order of Apex Court was passed on 11.12.2019. However, instead of cooperating for trial, this Application has filed only to delay the suit. It is his further submission that the suit is filed for comprehensive relief to set aside the disaffiliation of the plaintiff/respondents who was elected in democratic manner and the election conducted by the Retired Judge of this Honourable Court appointed by this court and observers also sent by the applicant in the election. After the plaintiff was elected, the present applicant/3rd Defendant recognised the 2nd Defendant malafidely and the amendment was also brought in the so called special resolution which was challenged in the suit. That apart disaffiliation also challenged when Mr.A.V. Vidyasagar was elected in the elections. Hence, it is his contention that this application is nothing but abuse of process of law. Further objection as to territorial jurisdiction also cannot be raised at this stage. It is his further contention that the suit cannot be split and disputes could be referred to arbitration. Hence, his contention that the suit cannot be rejected and prayed for dismissal of the application.

6. Perused the materials.

7. The plaint clearly indicate that in the election of the office bearers there was dispute arose between the Associations which resulted in filing of

W.P.No.12968 of 2018 and this Court by order dated 24.05.2018 has appointed Honourable Mr.Justice S.Rajeswaran (Retd.) as an observer to conduct the elections. Challenging the above election, the 2nd Defendant's wife one Tmt. Arulselvi filed C.S.No.359 of 2018 challenging the rejection of the nomination and for declaration that the election held on 27.5.2018 as null and void and also sought for an injunction in O.A.No.533 of 2018 seeking for an order restraining the newly elected body from carrying out their functions. However, no interim order was granted by this Court. It is the allegation of the plaintiff that the 3rd Defendant who is national body instead of playing the fair role has openly started supporting the Ex-Trasurer viz., 2nd Defendant and his wife. Despite the fact that the newly elected office bearers took charge of the Association 3rd Defendant called for the Special General Body Meeting to be held at Gauhati. The 3rd Defendant directed the Plaintiff to conduct fresh election discarding the election conducted by this Court and further allegation also made that the amendment was made contrary to the provisions, ignoring elected office bearers only in order to support the Second Defendant, who was not elected in the election. Therefore, injunction has been sought against using the name "Tamil Nadu Tennis Association", similar or identical to the Tamil Nadu Table Tennis Association and to declare the amended Arbitration Clause

48 of the 3rd Defendant's Memorandum of Association and to declare that the disaffiliation order dated 12.11.2018.

8. The main contention of the learned counsel Mr.T. Mohan appearing for the applicant is that the first prayer of the suit has become infructuous since the name has been changed as "Tamil Nadu Table Tennis Association." Further the disaffiliation issue also decided in the writ petition and there cannot be further re-litigation. Further this Court has no jurisdiction. The learned counsel also relied the following judgments:

(v) *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."

9. On perusal of the above judgements absolutely there is no dispute or quarrel over the settled principles. When the issue has been finally settled, decided and reached finality, the same cannot be re-litigated by any other form by camouflaging or by clever drafting. Now, the entire pleadings in the plaint read in entirety, the very relief is sought mainly on the ground of malafide action on the part of the 3rd Defendant in supporting the 2nd Defendant who lost the election conducted by the Election Officer appointed by this Court and the very allegation itself clearly show that the elected officer bearers sought to be thrown out, and the 3rd Defendant has given recognition after obtaining stay order pending proceedings. When the very relief seeks the action of the 3rd Defendant is to be annulled on the ground of malafideness and bias, all those issues can be gone in the trial only. Merely because the name of the Tamil Nadu Table Tennis Association changed as Thamizhaga Table Tennis

Association, it cannot be said that the 1st prayer has become automatically infructuous. Such contention cannot be accepted at this stage when "Tamil Nadu" and "Thamizhagam" appear to be similar, one cannot contend that mere change of name "Tamil Nadu" as "Thamizhagam" the prayer itself has become infructuous.

10. It is to be noted that the Writ Petition No.30022 of 2018 disposed of taking note of the Arbitration Clause and Bye-laws, even after the writ court passed such order. This court while disposing the applications in the suit considered the entire documents and in paragraph 6 it is categorically held as follows:

“The original Arbitration Clause as it stood governed only disputes between the Federation and its Constituents and among the Constituents. The Constituents of the Federation are the State Associations. The said Arbitration Clause was amended after the report of the Observer appointed by this Court was accepted by this Court in W.P.No.12968 of 2018 and after this Court has refused to grant interim injunction in the suit filed by Mrs.Arulselvi challenging the report of the Observer appointed by this Court. The amended Clause expanded the scope of the Arbitration between the Members and Office

Bearers or amongst the Members of Affiliated Unit.”

11. From the above order it can be seen that the prior to the amended clause what was referable is only disputes between the Federation and among the constituents and not the dispute among the members. When the amendment expanded the scope of arbitration between the members and office bearers which was challenged in the suit. The court also in the above orders categorically recorded that the Bye-laws are only subordinate legislation and a cannot be allowed to amend the bye-laws with a view to nullify or impede the proceedings pending before the court of law. It is also observed that the disaffiliation is not correct. When the above orders were challenged before the Apex Court in Civil Appeal No.9418-9420 of 2019 (arising out of SLP No.10543-10545 of 2019) the Apex Court while entertaining the appeal granted stay. It appears that after obtaining stay, 3rd Defendant granted recognition to the 2nd Defendant, who in fact lost the election conducted by this Court. While disposing the SLP the Honourable Apex Court has held that interim order not to be disturbed at this stage and in fact requested this court to dispose the suit within 12 months from the date the order is produced before the Court and also categorically held that the interim order passed by this court

shall continue. All points are left open for determination of the High Court.

12. When the Apex Court itself held that the interim order shall continue and parties should go for a trial, now it cannot be said that suit has to be rejected at this stage. The conduct of the 3rd Defendant taking a short cut method instead of facing the trial cannot be appreciated. Whether their action is without any bias or any malafide has to be tested in the trial and it is the matter of evidence. At this stage this Court is of the view that the suit cannot be rejected.

13. Before the amendment, as recorded by this Court in interim applications, the dispute between the members were absent. Amendment clause expanded its scope the Arbitration between the members. In such a view of the matter, it cannot be said that as per the amended bye-laws, the suit is barred by the Arbitration Clause, when the very amendment and Special Resolution are also challenged before this Court. Therefore the suit cannot be rejected.

14. With regard to the territorial jurisdiction, Bye-law 47 reads as

follows:

"47. Legal Jurisdiction:

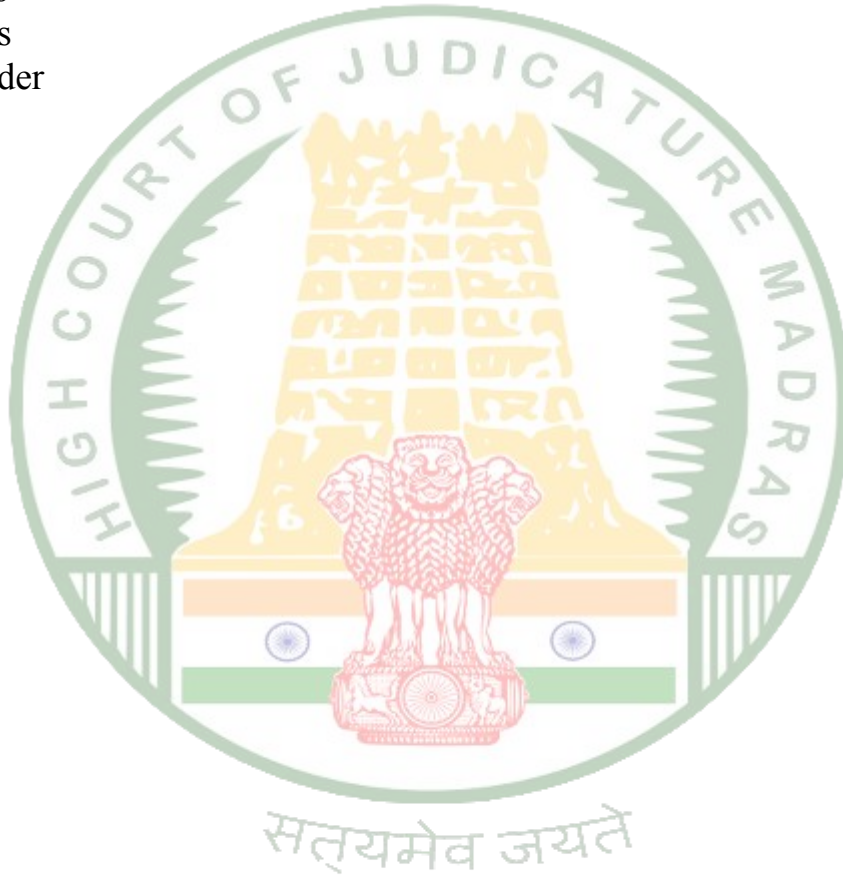
No suit in respect of any matter relating to the affairs of the Federation shall be instituted in any court save and except in court of competent jurisdiction of the place where the Federation's Registered office is situated."

15. In writ Petition filed by the Plaintiff Association, there is no whisper about the jurisdiction. Similarly, in the Civil Suit when the orders were passed in earlier occasion and challenged before the Apex Court, jurisdiction issue was never raised. Therefore, when the Apex Court has confirmed the interim orders passed by this Court and requested this Court to dispose the suit within a period of twelve months, this Court is of the view that objection as to jurisdictional issue cannot be raised at this stage when the jurisdiction to entertain the suit is approved by the Apex Court and time frame is also fixed to dispose the suit. It is also well settled that objection as to place of suing should have been raised at the earliest possible opportunity. Whereas in this case even when interim orders were challenged upto the Honourable Apex Court no objection as to place of suing ever raised. In such a view of the matter the contention of the applicant cannot be countenanced.

16. Accordingly, the Application is dismissed.

18.12.2020

Index : yes
Internet : yes
Speaking order
ggs



WEB COPY

Application No.453 of 2019 in C.S.No.242 of 2019

N.SATHISH KUMAR, J.

ggs



order in:

Application No.453 of 2019

in C.S.No.242 of 2019

WEB COPY

18.12.2020