

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 15.10.2020]

[ORDERS PRONOUNCED ON : 03.12.2020]

CORAM:

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

C.R.P. [NPD] No.1291 of 2020

and

C.M.P.No.7090 of 2020

V.Dasarathy

... Petitioner/Plaintiff

.. Vs ..

1. South Indian Cine, Television Artistes and
Dubbing Artistes Union,
Rep. by T.N.B.Kathiravan,
General Secretary,
No.10, 4th Street, Vijayaraghavapuram,
Saligramam, Chennai - 600 093.

2. Mr.Radha Ravi,
President,
South Indian Cine, Television Artistes and
Dubbing Artistes Union,
No.10, 4th Street, Vijayaraghavapuram,
Saligramam, Chennai - 600 093.

... Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the
Constitution of India, against the Judgment and Decree dated 18.10.2019

passed in C.M.A.No.90 of 2016 on the file of the V Additional City Civil Court, Chennai, reversing the fair and decreetal order dated 22.08.2016 passed in I.A.No.7696 of 2016 in O.S.No.3169 of 2016 on the file of the XVII Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.Veeraraghavan

For Respondents : Mr.Colonel Dr.Edwin Jesudoss

ORDER

Plaintiff is the revision petitioner herein. He has filed a suit in O.S.No.3169 of 2016 to declare that the order passed by the first defendant, whereby he was removed from primary membership of the Trade Union, as null and void. Pending the suit, he has filed I.A.No.7696 of 2016 for interim injunction restraining the respondents/defendants in giving enforcement to the said order. The trial Court has granted ad-interim injunction. Subsequently, interim injunction was granted and the interim injunction granted by the trial Court was vacated by the Lower Appellate Court in C.M.A.No.90 of 2016.

2. Learned counsel for the revision petitioner/plaintiff submitted that the second respondent is the registered Trade Union and the illegal act committed by the interim committee in removing the revision petitioner/plaintiff from the primary membership of the union is illegal and hence, he filed the above said suit for declaration and consequently, sought for injunction restraining the respondents from interfering with his right in continuing to be a member of the Trade Union.

3. The learned XVII Assistant Judge, City Civil Court, Chennai, in I.A.No.7696 of 2016, has granted ad-interim injunction and the same was vacated in C.M.A.No.90 of 2016. According to the revision petitioner, the appeal proviso in 9 days is applicable to the facts of the case. The other citation relied on by the Lower Appellate Court viz., *AIR 1969 Mad 42 [S.Krishnaswamy and Ors. Vs. South India Film Chamber of Commerce]* is not applicable.

4. Learned counsel for the respondents/defendants would contend that as per Rule 9(H) of the bye-law, there is an appeal remedy and hence, without exhausting appeal remedy as provided in the bye-law,

the revision petitioner/plaintiff has straightaway approached the civil Court and hence, the suit is not maintainable. The second contention is that as per Section 18 of the Trade Union Act, civil suit is barred.

5. Before the trial Court, no oral evidence has been adduced on behalf of both the plaintiff and the defendants. On behalf of the revision petitioner/plaintiff, documents Exs.P.1 to P.14 were marked. On behalf of the respondents/defendants, documents Exs.R.1 to R.8 were marked.

6. By an order dated 22.08.2016, the learned XVII Assistant Judge, City Civil Court, Chennai, has allowed the I.A.No.7696 of 2016. The said order was set aside by the learned V Additional District Judge, City Civil Court, Chennai, in C.M.A.No.90 of 2016, dated 18.10.2019 and hence, the present Civil Revision Petition.

7. After hearing the rival contentions and also perusing the pleadings, it is seen that the revision petitioner/plaintiff is a member of the first defendant Trade Union. The second defendant is the President of the first defendant union. Originally, the salary of the cinema,

television artistes and the dubbing artistes were paid directly by the producers. In the case dispute regarding non-payment of lesser-payment, the first defendant Union intervened on behalf of the members and sorted out the dispute. But, a new practice of depositing the salary of the artistes to the first defendant Union account who will pay the same to the artistes after deduction of 10% of the salary payable to the artistes. Apart from the above deduction, the first defendant Union also appointed "In-charge" persons for collecting the money from the producer council and allocation of works to the artistes.

8. The revision petitioner is one among the persons extending moral support to his colleagues who raised voice against the illegal deduction in the wages. The petitioner sent a mail on 06.02.2016 in good faith to the first defendant to stop the illegal appointment of "In-charge/representatives" as there is no provision for such appointment in the bye-laws. Further, the term of office bearers had expired on 23.03.2016. The first defendant Union directed the petitioner to appear for an enquiry and appear before the Executive Committee on 25.02.2016 for offering his explanation. However, the said enquiry was dropped on

25.02.2016. Again on 27.02.2016, he was asked to appear for enquiry on 29.02.2016. He sent a detailed reply informing that he is entitled for 15 days time to attend enquiry as per the bye-laws. Meanwhile, elections were declared for the first defendant union on 21.03.2016. Against the election notification, a civil suit was filed before this Court for appointment of Election Officer for fair conduct of the election.

9. The respondents have issued a show cause notice to the revision petitioner/plaintiff to appear and give explanation before the Executing Committee on 17.05.2016. Instead of appearing for the enquiry, the revision petitioner and one Booma have started to raise slogans against the respondent union in front of the union office.

10. The revision petitioner neither gave any reply to the show cause notice nor appeared before the Executing Committee for enquiry. The petitioner was removed from the primary membership of the first defendant union on 30.05.2016.

11. The objection of the respondents is, as stated supra, there is an appeal remedy under the bye-law before the Executing Committee and the suit is barred under the Trade Union Act.

12. It is seen from the records that there was a dispute between the first defendant Union and some of the members of the Union regarding deduction of 10% of the salary of the artistes by the Union. There is also dispute regarding appointment of in-charge representative, who allegedly acted whimsically in allocating works to the artistes. The revision petitioner is a person, who supports those who objected the deduction of the salary and appointment of in-charges.

13. The revision petitioner and others engaged in anti-union activities, are trying to mis-interpret the scheme as if the in-charges/representatives are illegally deducting the 10% of the salary paid to the artistes.

14. There is an appeal provision in the bye-laws of the first defendant Trade Union. As per Rule 9(H) of the bye-laws, a member,

who was removed from the union, can appeal to the General Body for reinstatement. The removed member is not expected to approach the civil Court without exhausting the appeal remedy. In this case, the revision petitioner has approached the civil Court without exhausting the appeal remedy which is against the terms of bye-laws.

15. It remains to be stated that when the first show cause notice was given, the revision petitioner, without giving reply to the same, has asked for 15 days time for giving his explanation. Again, the second show cause notice was issued on 02.05.2016 with clear 15 days time for submitting a reply or explanation and for appearing before the Executive Committee for enquiry.

16. My attention was drawn to Exs.R.6, R.7 and R.8. The e-mail letters, which are marked as Exs.R.6, R.7 and R.8, would go to show that the revision petitioner has described the former office bearers of the union in a derogatory manner, which was brought to the knowledge of the respondents. On reading of the e-mail marked as Exs.R.6, R.7 and R.8, it is clear that the revision petitioner has a personal grudge against

the office bearers. Nowhere in the e-mails or in his representation, he has spoken about the deduction of 10% of salary or appointment of in-charges.

17. In the instant case, the first respondent herein/first defendant, after following the appropriate procedure under the bye-laws, has removed the revision petitioner/plaintiff from the primary membership of the trade union and that he was put to challenge in the above suit on two grounds namely, *mala fide* intention on the part of the present office bearers of the union. Secondly, on the ground that since the team with which the revision petitioner had affiliation was defeated in the election and they are indulging in revenge. In this regard, it is useful to refer the conduct of election as contented by the learned counsel for the revision petitioner herein.

18. The respondents have filed counter affidavit, wherein, it is stated that this Court, in C.S.No.210 of 2016, by an order dated 13.10.2017, had appointed Ms.Justice K.B.K.Vasuki, former Judge of this Court, as election officer for conducting the elections for the first

respondent union during 2018. A detailed exercise had been done in respect of preparation of eligible voters list. Thereafter, a final list was prepared and published by the Judge Commissioner. Elections were conducted during March 2018 and the officer bearers had been appointed and the period of the committee had been till March 2020 (i.e.) for a period of two years.

19. Elections have to be conducted every two years, as per the bye-laws of the Union. The elections were scheduled for the month of March 2020 and the Union, though they had a right to conduct the election by themselves, the Union thought it proper to have the elections conducted under aegis of independent persons and hence, the Union had appointed three member committee consisting of one Retired Judge of this Court Mr.Justice V.S.Ravi, and two Advocates of the Madras High Court viz., Mr.M.Rajasekaran and Mr.K.Chandrasekar as Election Officers. This exercise had been done in order to have a free and fair elections.

20. After following the schedule, the election process for the year 2018 was conducted and concluded. Thereafter, election was scheduled for the month of March 2020 that is also conducted and concluded, results have been declared and successful candidates are also assumed office. Therefore, the contention of the learned counsel for the revision petitioner that the previous committee did not have any locus standi to issue the show cause notice is factually in correct.

21. Since the show cause notice was issued on 09.02.2016, date of enquiry was fixed on 25.02.2016 and subsequently, deferred to 29.02.2016. It appears that since the enquiry did not took place, it was deferred to 29.02.2016. The revision petitioner did not attend the enquiry and he was deferred. Again, the revision petitioner had made several allegations in facebook and sent whatsapp messages making unlawful statements only with an intention to tarnish the reputation of the Union and the elected representatives. Aggrieved by the actions of the revision petitioner, the first respondent had issued another notice on 02.05.2016 stating that the revision petitioner is making allegations against the Union and its members on a social platform without any basis

or any documentary proof. The enquiry was stated to be on 17.05.2016. The revision petitioner had submitted a reply questioning the authority of the Union and further made various unfounded allegations and did not participate in the enquiry.

22. It remains to be stated that any person, who is aggrieved by the decision of the Executive Committee, can approach the General Body to re-instate his membership as per Rule 9.8 of the bye-laws and hence, unless the revision petitioner demonstrates by way of additional documents and oral evidence before the trial Court challenging his removal from the primary membership of the respondents/defendants, there cannot be any interim injunction on mere oral submissions. After perusing the e-mail marked as Exs.R.6, R.7 and R.8, the lower Appellate Court has rightly come to conclusion that the act of the revision petitioner is not a grievous as he has projected but it is found to be in a derogatory manner and it is a reflection of personal grudge against the elected office bearers. Nowhere in the e-mail or in his representation, the revision petitioner has spoken about the deduction of 10% of salary or appointment of in-charges for collection of the amount as projected by

the revision petitioner also assumes significance and hence, I find that the revision petitioner has not made out any prima facie case for the relief of injunction restraining the respondents/defendants from enforcing the order of removal of the revision petitioner from the primary membership of the union and hence, this civil revision petition is devoid of merits and the same is liable to be dismissed.

23. In the result,

[i] the Civil Revision Petition is dismissed and the order dated 18.10.2019 passed in C.M.A.No.90 of 2016 by the learned V Additional District Judge, City Civil Court, Chennai, is confirmed.

[ii] It is hereby made clear that the findings rendered in the preceding paragraphs are only for the disposal of this civil revision petition and the trial Court is directed not to get influenced by the findings and observations made in the preceding paragraphs.

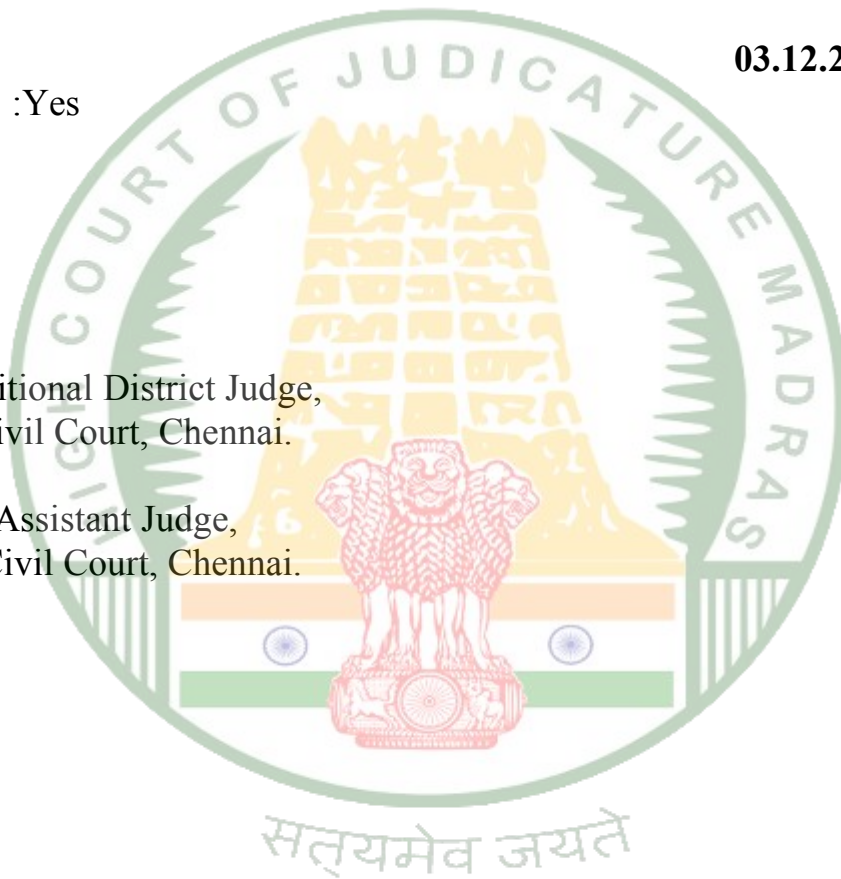
[iii] No costs. Consequently, the connected
miscellaneous petition is also dismissed.

03.12.2020

Internet :Yes
Jrl

To

1. V Additional District Judge,
City Civil Court, Chennai.
2. XVII Assistant Judge,
City Civil Court, Chennai.



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RMT.TEEKAA RAMAN, J.

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**Order made in
C.R.P.[NPD] No.1291 of 2020**

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