

In the High Court of Judicature at Madras

Reserved on : 02.12.2020

Dated : 14.12.2020

Coram:

The Hon'ble Mr.Justice DR. VINEET KOTHARI
and
The Hon'ble Mr.Justice M.S.RAMESH

O.S.A.No.238 of 2019
and
CMP.Nos.20735 & 20737 of 2019

Cherian Abraham ... Appellant /1st Defendant

Vs.

1.Babu Daniel ... 1st Respondent/ Plaintiff

2.The Madras Medical Mission,
No.4-A, Dr.J.Jayalalitha Nagar,
Mogappair East, Chennai-600 037.

3.The Hon'ble Secretary (Interim),
The Madras Medical Mission,
No.4-A, Dr.J.Jayalalitha Nagar,
Mogappair East, Chennai-600 037.

... 2 & 3 Respondents/1 & 2 Defendant

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules r/w. Clause 15 of the Letters Patent, praying to set aside the order dated 06.09.2019 in O.A.No.816 of 2019 in C.S.No.523 of 2019 and allow the appeal.

Prayer in O.A.No. 816 of 2019: Original Application praying to grant interim injunction restraining the 3rd Respondent/Defendant 3 from conducting the EGM on 08/09/2019 at 7.00 P.M. at Hotel Radisson Blue, Chennai pending disposal of the suit.

Prayer in CS.No. 523 of 2019: Civil Suit has been filed praying for a declaration to declare the notice dated 17/08/19 issued by the 3rd defendant calling for an EGM to be held on 08/09/2019 at 7.00 PM at Hotel Radisson Blue, Chennai as illegal Null and void (b) Awarding costs of the suit.

For Appellant : Mr.P.S.Raman, Sr. Counsel for
Mr.Hari Radhakrishnan,

For Respondent : Mr.Thomas Jacob
No.1 for Ms.Stella Manoharan

For Respondent : Mr.Silambanan, Sr. Counsel
No.2 for Mr.V.Hallel Ben

J U D G M E N T
[Judgment of the Court was made by
M.S.RAMESH, J.]

Dr.Chерian Abraham, the third defendant/respondent in the suit and application for interim injunction, is the appellant in this appeal. The Madras Medical Mission/second respondent is a society registered under the Societies Registration Act, 1860. Mr.Babu Daniel, who is the plaintiff/applicant had filed the Civil Suit in C.S.No.523 of 2019, praying for a declaration to declare the notice dated 17.08.2019 issued by Dr.Chерian Abraham, calling for an Extra-ordinary General Body Meeting (EGM) to be held on 08.09.2019 at 7.00 p.m., at Hotel Radisson Blue, Chennai, as illegal, null and void. Pending the suit, his application seeking for an interim injunction restraining Dr.Chерian Abraham from conducting the EGM on 08.09.2019, came to be ordered as prayed for on 06.09.2019 by a learned Single Judge of this Court. The order of interim injunction is assailed in the present appeal.

2.1. As per the averments in the plaint, the Money Committee appointed in the EGM held on 17.09.2017, had pointed out financial irregularities amounting to Rs.186.63 Crores, during the tenure of Dr.Chерian Abraham as a treasurer of the society. By a resolution dated 22.06.2019, it was resolved that the alleged financial irregularities of the society should be forensically investigated by a professional agency. By further resolution, Dr.Chерian Abraham and another were suspended from all positions held by them with the society. Pursuant to this, a private financial investigator was appointed to investigate the financial improprieties and the investigation is pending.

2.2. Subsequently, by a notice dated 17.08.2019, Dr.Chерian Abraham had called for an EGM to be held on 08.09.2019 for recalling the resolutions passed at the earlier EGM held on 22.06.2019. In the said notice, proxy votes were also permitted. The said notice dated 17.08.2019 is under challenge in the Original Suit. In this appeal, Dr.Chерian Abraham is

aggrieved against the order of the learned Single Judge, granting interim injunction, restraining the conduct of the EGM proposed on 08.09.2019.

3. Two among the main issues raised in the plaint is that since the forensic audit had already commenced, Dr.Cherian Abraham is attempting to stall the same for his own vested interest, by calling for an EGM and that the notice dated 17.08.2019, permitting voting through proxy is contrary to the Bye-laws of the society and therefore illegal.

4. Mr.P.S.Raman, learned Senior counsel appearing for Dr.Cherian Abraham contended that the notice calling for voting through proxies is in conformity with the Bye-laws governing the Madras Medical Mission Society and that there is no violation of the procedure in calling for an EGM under the Bye-laws. It is his further contention that merely because the term "Proxy" is absent under Clause 89 of the Bye-laws, it cannot be said that the voting by proxies are prohibited, for which contention, he placed reliance on a decision of a Co-ordinate Bench of this Court, in the case of Sundar V. Srinivasan Vs. Ramasathyanarayana [2018 (1) CTC 35].

5. Per contra, Mr.Thomas Jacob, the learned counsel appearing for Mr.Babu Daniel contended that Dr.Cherian Abraham is attempting to curtail the forensic audit through the present appeal and that, calling for an EGM by permitting proxy votes is not permissible under the Bye-laws. He further submitted that the Proxy Form enclosed along with the impugned notice has been altered and is not in conformity with the Form prescribed under the Bye-laws.

6. Mr.Silambanan, learned Standing counsel for the Madras Medical Mission would submit that the society is not in favour, or against, either of the contesting parties and that their interest is only to safeguard the society.

7. Heard and perused the available records.

8. At the outset, it would be pertinent to point out that the suspended member Dr.Cherian Abraham, on behalf of himself and 59 other members, had called for an EGM to be held on 08.09.2019 at 7 pm., at Hotel Radisson Blue, Chennai. The Civil Suit in C.S.No.523 of 2019 was filed on 29.08.2019 along with Original Application No.816 of 2019, seeking for an interim injunction. The learned Single Judge had ordered the original application on 06.09.2019, thereby restraining Dr.Cherian Abraham and others from conducting the EGM on 08.09.2019. After 08.09.2019, the notice dated 17.08.2019 calling for the EGM to be held on 08.09.2019, had become infructuous and it would be

desirable that the trial Court may come to a logical conclusion on this aspect.

9. The appellants herein have proceeded to contest the present appeal on the strength of an interim order granted by a Co-ordinate Bench of this Court on 03.10.2019, whereby the impugned order of the learned Single Judge dated 06.09.2019 came to be stayed and further, permitted the appellant to conduct the EGM by holding that the decision to be taken in the EGM, shall not be implemented, until further orders in this appeal. By a subsequent order dated 21.11.2019, the Co-ordinate Bench had appointed a Judge-Commissioner for convening the EGM and directed the proxy votes to be kept separately. It was further ordered therein that, the decision taken in the EGM to be conducted by the learned Judge-Commissioner, shall not be implemented until the disposal of this appeal.

10. After the Co-ordinate Bench had passed interim orders on 03.10.2019, staying the operation of the order dated 06.09.2019 granting interim injunction, an EGM was held on 03.11.2019, but no decision could be taken, in view of the commotion and chaos created therein. In these circumstances, the Co-ordinate Bench of this Court had passed further interim orders on 21.11.2019 in a petition filed in CMP.24393 of 2019 in OSA.No.238 of 2019, by appointing a learned Judge-Commissioner to chair and conduct the EGM of the society. The circumstances under which the learned Judge-Commissioner was appointed for conducting the meeting was that, the Co-ordinate Bench was made to believe that the learned Single Judge had granted the interim injunction, subject to the condition that the EGM can be conducted, but the decision taken thereon need not be implemented or given effect to.

11. The relevant portions of the order dated 21.11.2019 passed in CMP.No.24393 of 2019 by the Co-ordinate Bench are extracted hereunder for reference:-

"4. The learned Single Judge, taking note of the fact that Forensic Audit is not yet completed and in the meanwhile the petitioner herein issued the notice dated 17.08.2019 to convene a meeting on 08.09.2019, granted an interim injunction restraining the petitioner herein/appellant from conducting the Extra Ordinary General Meeting on 08.09.2019 on condition that the decision that may be taken in the meeting need not be implemented until further orders. Assailing the order of the learned Single Judge, the present appeal is filed.

....

8. On appreciation of the facts, which has

given rise for the present litigation, we could infer that earlier, an Extra Ordinary General Meeting was convened on 22.06.2019 in which certain decisions were taken. In order to recall or rescind the decisions taken in the meeting held on 22.06.2019, the petitioner herein/third defendant has attempted to convene an Extra Ordinary General Meeting on 08.09.2019. Questioning the authority of the petitioner/third defendant to conduct such meeting, the first respondent/plaintiff has filed the suit. The learned Single Judge granted an interim injunction subject to the condition that the Extra Ordinary General Meeting shall be conducted, but the decision taken thereof need not be implemented or given effect to until further orders. The order passed by the learned Single Judge is assailed in this appeal at the instance of the appellant, who is the third defendant in the suit."

[Emphasis supplied]

12. A perusal of the order of the learned Single Judge dated 06.09.2019 does not hold, express or imply that the grant of interim injunction would be subject to such a condition, whereby the EGM could be proceeded with and the decision should be withheld. The learned Senior counsel appearing for the appellant had also fairly admitted that there is no such finding in the order of the learned Single Judge. When the interim order dated 21.11.2019 passed in this appeal is read in its toto, it is clearly seen that the one and only ground in which the Co-ordinate Bench of this Court had considered to appoint the learned Judge Commissioner to conduct the EGM was because of its understanding that the learned Single Judge was also of the view that the EGM can be conducted and the decision therein could be withheld. On the contrary, the learned Single Judge had specifically held in para 19 of the impugned order dated 06.09.2019, that it would not be appropriate to permit the parties to hold the EGM as per the impugned notice, which portion, reads as follows:

"19. Clause 89 of the Bye-law of the first respondent-Society says that all decision at the General Body or the Governing Board shall be taken by a majority of members present and voting and only in a Special Resolution, proxy is permitted after the amendment to the bye-law in the year 2003. Impugned notice says voting through proxy is permitted. In respect of the first respondent-Society, the Co-ordinate Bench of this Court in CDJ 2003 MHC 1638 has observed

in paragraph 30 of the judgment, the proxies are permitted only for the purpose of passing Special Resolutions. In pursuance of the judgment, the first respondent has amended the bye-laws incorporating Clause 90 of the Bye-law. Since the notice is issued against the bye law and the decision of the Co-ordinate Bench referred supra, it would not be appropriate to permit the parties to hold EGM as per the impugned notice."

[Emphasis supplied]

13. Thus, with due respect to the Co-ordinate Bench, the entire exercise of conducting the EGM, which admittedly emanated from misconception of facts, becomes insignificant. Moreover, an interim arrangement of conducting an EGM itself may amount to moulding of the relief through a mandatory order, by enlarging the scope of the appeal against an interim order and permitting conduct of an EGM. The Hon'ble Apex Court in Samir Narain Bhojwani Vs. Aururo Properties & Investments reported in 2018 (17) SCC 203 had disapproved such moulding of relief in the following manner:

"24. That apart, the learned Single Judge as well as the Co-ordinate Bench have committed fundamental error in applying the principle of moulding of relief which could at best be resorted to at the time of consideration of final relief in the main suit and not at an interlocutory stage. The nature of order passed against the appellant is undeniably a mandatory order at an interlocutory stage. There is marked distinction between moulding of relief and granting mandatory relief at an interlocutory stage. As regards the latter, that can be granted only to restore the status quo and not to establish a new set of things differing from the state which existed at the date when the suit was instituted. This Court in DorabCawasji Warden v. Coomi Sorab Warden [DorabCawasji Warden v. Coomi Sorab Warden, (1990) 2 SCC 117] , has had occasion to consider the circumstances warranting grant of interlocutory mandatory injunction. In paras 16 & 17, after analysing the legal precedents on the point as noticed in paras 11-15, the Court went on to observe as follows: (SCC pp. 126-27)

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full

relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion." "

14. Nevertheless, while permitting the conduct of EGM through interim order dated 21.11.2019, declaration of the result of the EGM was left open for consideration, at the time of final disposal of this appeal. Thus in such consideration and by applying the principles laid down by the Hon'ble Supreme Court in Samir Narain Bojwani's case (supra), the outcome of the EGM conducted by the learned Judge-Commissioner, is deemed undesirable for further appraisal.

15. Insofar as the merits of the appeal are concerned, the learned Senior counsel for the applicant placed reliance on Clause 89 of the Bye-laws of the Association and contended that proxy voting is not excluded in the Bye-laws and therefore,

there is no infirmity in the impugned suit-notice providing for such proxies.

16.1. The validity or legality of the provision for proxy votes in the impugned suit-notice does not require consideration for two reasons. Firstly, the permissibility of proxy votes in the proposed EGM under the impugned suit-notice is one of the main issues in the suit. The plaint averments indicate allegations of undue influence exercised by Dr.Cherian Abraham, while obtaining signatures for conducting the EGM for the purpose of recalling the resolutions of conduct of a forensic audit by a professional agency and suspension of Dr.Cherian Abraham and another from the positions held by them in the society. Further, averments questioning the legality of inclusion of proxy votes in the proposed EGM and allegations of manipulations of the Proxy Form in the Bye-laws have been made. These averments could possibly be framed as issues, which requires to be established during the course of a trial, by letting in evidences. While that being so, it would be desirable that the issue of proxy votes in the proposed EGM, should be left open for adjudication in the suit, rather than rendering a finding by this Court.

16.2. In Mohd. Mehtab Khan Vs. Khushnuma Ibrahim Khan reported in 2013 (9) SCC 221, the Hon'ble Supreme Court had dealt on the aforesaid aspect in the following manner:

"17. Given the ground realities of the situation it is neither feasible nor practical to take the view that interim matters, even though they may be inextricably connected with the merits of the main suit, should always be answered by maintaining a strict neutrality, namely, by a refusal to adjudicate. Such a stance by the courts is neither feasible nor practicable. Courts, therefore, will have to venture to decide interim matters on consideration of issues that are best left for adjudication in the full trial of the suit. In view of the inherent risk in performing such an exercise which is bound to become delicate in most cases the principles that the courts must follow in this regard are required to be stated in some detail though it must be made clear that such principles cannot be entrapped within any straitjacket formula or any precise laid down norms. The courts must endeavour to find out if interim relief can be granted on consideration of issues other than those involved in the main suit and also whether partial interim relief would satisfy the ends of justice till final disposal

of the matter. The consequences of grant of injunction on the defendant if the plaintiff is to lose the suit along with the consequences on the plaintiff where injunction is refused but eventually the suit is decreed has to be carefully weighed and balanced by the court in every given case. Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. Though experience has shown that observations and clarifications to the effect that the findings recorded are prima facie and tentative, meant or intended only for deciding the interim entitlement of the parties have not worked well and interim findings on issues concerning the main suit has had a telling effect in the process of final adjudication it is here that strict exercise of judicial discipline will be of considerable help and assistance. The power of self-correction and comprehension of the orders of superior forums in the proper perspective will go a long way in resolving the dangers inherent in deciding an interim matter on issues that may have a close connection with those arising in the main suit."

16.3. Likewise, in para 26 of the decision of the Hon'ble Supreme Court in the case of International Confederation of Societies of Authors and Composers (ICSAC) V. Aditya Pandey reported in 2017 (11) SCC 437, it was held that, while dealing with interim orders, the Court must refrain from expressing any opinion whatsoever touching upon the merits of the controversy, lest, the same may prejudice either of the parties in the suit.

16.4. By adopting the ratio laid down in the aforesaid decisions of the Hon'ble Supreme Court, it would not be appropriate for this Court to render a finding on the 'Proxy Vote' issue. In this backdrop, consideration of the ratio in Sundar V. Srinivasan's case (supra), relied upon by the appellant, would be a futile exercise.

17. Secondly, any findings on the legality of the inclusion of proxy vote in the proposed EGM would tantamount to deciding the main relief in the suit itself. The suit has been filed challenging the validity of the notice issued by a suspended member, in which, one among the issues of inclusion of proxy votes as a mode of voting, has been challenged. When the legality of the notice itself is under challenge, consideration for conducting the EGM by proxy votes, by this Court, will effectively decide the main relief claimed in the suit, without subjecting the parties to a proper trial and framing of the relevant issues, which exercise, could be impermissible. If this Court is to render its findings on the permissibility of

proxy votes and consequently declare the outcome of the EGM, there would be no issues pending for adjudication in the main suit and the relief claimed therein may become infructuous.

18. With regard to the legality of the order of the learned Single Judge, it is a settled proposition of law that grant of interim injunctions should be on three major attributes. Among the catena of decisions rendered in this regard, the Hon'ble Supreme Court, in Neon Laboratories Limited Vs. Medical Technologies Limited and others reported in 2016 (2) SCC 672, reiterated these aspects in the following manner:

"6. Before granting an ad interim injunction, the Court in seisin of the litigation has to address its attention to the existence or otherwise of three aspects-

a) Whether a prima facie case in favour of the applicant has been established;

b) Whether the balance of convenience lies in favour of the applicant;

c) Whether irreparable loss or damage will visit the applicant in the event injunctory relief is declined."

19. On a prima-facie view, the learned Single Judge had considered the magnitude of the irregularities of a huge amount of Rs.186.63 Crores and felt that the forensic audit that was pending, should come to a logical conclusion before conducting the EGM proposed under the notice impugned in the suit. The learned Single Judge had also taken into consideration the order of a Co-ordinate Bench of this Court in the case of The Madras Medical Mission rep. by its Hon. Secretary K.V. George Vs. State of Tamil nadu rep. by its Chief Secretary to Government, Fort St. George, Chennai and 6 others reported in 2003(4)LW213, which pertains to the present second respondent's own society, holding that proxies are permissible only for special resolution and in the light of the reliance placed in the second respondent's own society's case, the learned Single Judge had declined to follow the ruling of the Co-ordinate Bench in the case of Sundar V.Srinivasan (supra). These aspects, undoubtedly creates a strong prima-facie case for grant of an interim injunction, which the learned Single Judge had rightly done so.

20. If the interim injunction had not been granted and the EGM proposed in the impugned suit-notice was permitted to be proceeded with, irreparable injury could have been caused to the applicant and therefore, the balance of convenience was also in favour of the applicant. Thus, by taking into account the establishment of a prima-facie case and the balance of convenience in favour of the applicant, as well as the irreparable loss that would have occurred if the interim

injunction was not granted, the learned Single Judge had rightly ordered the interim injunction application. The order being reasonable and judicious and since does not suffer from any perversity, no interference is required to the same.

21. In view of the final decision of the EGM left open and in the background of the reasonings arrived at in this order, no further exercise requires to be made and the outcome of the EGM held by the learned Judge Commissioner, pursuant to the interim orders of this Court dated 21.11.2019, shall stand dissolved. Consequently, this Original Side Appeal is dismissed. Connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+2cc to Mr.Hari Radhakrishnan, Advocate, S.R.No. 40607
+1cc to Mr.Stella Manoharan, Advocate, S.R.No. 40585

O.S.A.No.238 of 2019
and

CMP.Nos.20735 & 20737 of 2019

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