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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 97/2020, IA No.2992/2020(u/O.XXXIX R.1&2 CPC),
IA No.2993/2020(exemption from filing original documents) &
IA No.2994/2020(exemption from filing typed copies)
DINESH SINGH Plaintiff

Through: Mr. Anand Yadav with
Mr. Pradyumn Rao, Advs.

versus

S GAURISHANKAR YADAV & ORS Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **03.03.2020**

1. The plaintiff has instituted this suit against defendants no. 1 to 3, namely (i) S.Gaurishankar Yadav, (ii) L. Nandagopal Yadav, and (iii) All India Yadav Mahasabha, claiming the following reliefs:

“(a) *Pass a decree of permanent injunction against the Defendant No.1 and 2 and any voter/member of Defendant No.3 restraining them from initiating and/or continuing any litigation/legal proceedings in their name against the Plaintiff with respect to the election of President of Defendant No.3 held by Plaintiff in 2019 in Delhi or any ancillary, allied or connected or related proceedings etc. in Madras/Chennai, Tamil Nadu or any other place in India but outside Delhi.*

(b) *Pass a decree of permanent injunction against the Defendant No.1 and 2 restraining them from posting the messages on social media platform under garb of proceedings of the said suit by distorting the same and making false, incorrect, defamatory and derogatory averments, except posting the copy of the orders passed by the court in OS No.564/2017.*

(c) *Grant any other further relief or reliefs which this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the Plaintiff and against the Defendants.*

(d) *Costs in favour of the Plaintiff be awarded against the Defendants."*

2. It is the case of the plaintiff, (i) that the plaintiff has been appointed as the Returning Officer by the defendant no.3 All India Yadav Mahasabha for the elections held for the post of its President, for the years 2007, 2014 as well as 2019; (ii) that the plaintiff received phone calls from the defendant no.2 L.Nandagopal Yadav at odd hours; (iii) that though the name of the defendant no.2 L.Nandagopal Yadav was not in the voter list supplied by the defendant no.3 All India Yadav Mahasabha to the plaintiff but the plaintiff attended calls of defendant no.2 L.Nandagopal Yadav; (iv) that the plaintiff has no connection with defendants no. 1 and 2 except that in December, 2019, during the process of holding elections of President of defendant no.3 All India Yadav Mahasabha, the plaintiff received phone calls from defendant no.2 L.Nandagopal Yadav; (v) that on 18th February, 2020, the plaintiff received a notice dated 12th February, 2020 from the Court of VIIIth Assistant City Civil Judge, Madras in IA No.4/2020 in OS No.564/2017 titled ***S. Gaurishankar Yadav Vs. All India Yadav Mahasabha & Ors.,*** summoning the plaintiff for appearance before that Court in person or by pleader on 17th February, 2020, to show cause why the application of the plaintiff therein for impleadment of the plaintiff herein as party to that suit should not be allowed; (vi) that the said case is now adjourned to 11th March, 2020; (vii) that the defendant no.1 S. Gaurishankar Yadav has filed the suit being OS No.564/2017 to settle the score with various persons and

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the defendant no.3 All India Yadav Mahasabha herein is the defendant no.1 in the said suit; (viii) that the plaintiff was appointed as Returning Officer by the defendant no.3 All India Yadav Mahasabha at Delhi and issued notice dated 11th November, 2019 to members of the defendant no.3 All India Yadav Mahasabha from Delhi; the proposals for the post of President of defendant no.3 All India Yadav Mahasabha were received by the plaintiff in Delhi, opened on 28th December, 2019 at Delhi and result of the election declared on 28th December, 2019 at Delhi; (ix) that no cause of action against the plaintiff has accrued outside Delhi and none accrued in Tamil Nadu or Chennai; (x) that if anyone has any grievance in respect of the election of President of defendant no.3 All India Yadav Mahasabha, then only the Courts in Delhi have jurisdiction to entertain, try and decide the same; (xi) that the defendant no.3 All India Yadav Mahasabha has twenty one associations/sabhas of various States affiliated to it and three associations/sabhas of Union Territories are also affiliated to the defendant no.3 All India Yadav Mahasabha; (xii) that if any person or member of defendant no.3 All India Yadav Mahasabha, desirous of challenging the election conducted by the plaintiff is free to institute legal proceedings in any Court in India, the plaintiff will be forced to attend Courts all over India; (xiii) such a situation is not permissible in law and will cause harassment and humiliation to the plaintiff; (xiv) the plaintiff is a permanent resident of Delhi and no cause of action against the plaintiff with respect to the action of the plaintiff of holding election of President of defendant no.3 All India Yadav Mahasabha has accrued to anyone outside Delhi; (xv) the Courts at Delhi are the most appropriate forum having regard to the principle of *forum*

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non conveniens also; and, (xvi) the proceedings at Chennai or any other place other than Delhi would be oppressive and vexatious to the plaintiff.

3. I have enquired from the counsel for the plaintiff, the need for the plaintiff to contest the suit filed by the defendant no.1 S. Gaurishankar Yadav in respect of the elections conducted by the plaintiff as Returning Officer. It appears that the plaintiff as the Returning Officer for the election, result whereof has been declared, should not have any interest or concern with the challenge, if any, made to the election and it is for the elected candidate whose election is challenged, to contest such a challenge. It also appears that the present litigation, after paying court fee of Rs.1,99,520/- has been funded by the elected candidate or by the defendant no.3 All India Yadav Mahasabha.

4. Attention of the counsel for the plaintiff has further been invited to Section 41(a) and (b) of the Specific Relief Act, 1963 which bar the Court from granting an injunction to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings, or to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought.

5. The Court of the VIIIth Assistant City Civil Judge, Madras is not subordinate to this Court and the restraint sought is not necessary to prevent multiplicity of proceedings. In this regard, it may be noted that the defendant no.1 S. Gaurishankar Yadav as well as defendant no.2 L.Nandagopal Yadav are shown in the memo of parties as residents of

Chennai and the counsel for the plaintiff also agrees that they are not within the jurisdiction of this Court.

6. The counsel for the plaintiff, while stating that no one else is funding this litigation, in response to the legal query, has referred to ***Modi Entertainment Network & Anr. Vs. W.S.G. Cricket Pte. Ltd.*** AIR 2003 SC 1177, particularly to paragraphs 9 and 23 thereof.

7. Supreme Court in the aforesaid judgment has held, that (i) anti-suit injunction is but a species of injunction, grant of which is an equitable relief; (ii) Courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction; (iii) however this power will be exercised sparingly because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another Court; and, (iv) before granting anti-suit injunction, the Court must be satisfied (a) that if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; (b) of the principle of comity; (c) that where more than one forum is available, which is the appropriate forum (forum conveniens) having regard to convenience of parties.

8. The counsel for the plaintiff, as aforesaid, admits that the defendant no.2 and 3 who are sought to be enjoined, are not within the jurisdiction of this Court. Once it is so, as per law laid down in ***Modi Entertainment Network*** supra itself, anti-suit injunction restraining the defendant no.1 S. Gaurishankar Yadav from prosecuting the suit instituted by him in the Court of Court of VIIIth Assistant City Civil Judge, Madras cannot be granted.

9. The counsel for the plaintiff has also stated that the plaintiff is required to contest because any finding against the plaintiff would defame the plaintiff.

10. Once the plaintiff has agreed to become the Returning Officer for the election to the post of the President of defendant no.3 All India Yadav Mahasabha and which President is the President 'for India' of All India Yadav Mahasabha, and which election is held all over India, the plaintiff cannot be heard to complain as is being done by filing the present suit.

11. It is not open for this Court to adjudicate the pleas in the plaint, of Chennai not having territorial jurisdiction. Such pleas have to be urged before the Court whose jurisdiction is challenged and adjudicated by that Court and this Court cannot appropriate to itself the adjudication of jurisdiction of another Court to adjudicate a *lis* before it.

12. As far as the argument of *forum non conveniens* is concerned, the convenience is not only of the plaintiff and the defendant no.3 All India Yadav Mahasabha but also of the defendants no. 1 and 2 who are at Chennai and participated in the election from Chennai and the only remedy of the plaintiff, if desirous of contesting the suit at Chennai, is to object to the jurisdiction of the Chennai Court which has been invoked by the defendants no. 1 and 2 and not by way of instituting its suit in Delhi where no other challenge to the election is pending.

13. I may also mention that the Division Bench of this Court in ***Horlicks Ltd. Vs. Heinz India*** (2009) 164 DLT 539 (DB) and ***Mcdonald's India Pvt. Ltd. Vs. Vikram Bakshi & Ors.*** 2016 SCC OnLine Del 3949 has held that the principle of *forum non conveniens* is a principle of international law

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and has no application as far as domestic forums are concerned. It was held that the Code of Civil Procedure, 1908 (CPC) does not permit it; the Court in which a suit is initiated, if it has jurisdiction, has to proceed with the suit even if there is another Court where also the suit could have been instituted; the provision of stay of suit under Section 10 CPC also does not contemplate a forum non conveniens situation; neither does the provision of Order VII Rule 10; but if there are two Courts of competent jurisdiction, then if the suit is instituted in one Court which is inconvenient to the defendant, the defendant could invoke the provisions of Section 24 CPC or Section 25 CPC as the case may be – therefore in India, the statute provides for situations where the common law equitable principles of forum non conveniens and the like would be applicable. I may add, that it follows that the equitable common law principle of forum non conveniens has no applicability to suits filed in domestic Courts save as provided under the CPC.

14. Once it is so, the argument of the plaintiff of inconvenience disappears and the plaintiff if at all requires to and is desirous of contesting the suit, has to contest it in Chennai including on jurisdiction of the Chennai Court.

15. I may in this context also notice that the plaintiff, along with the plaint has only filed a copy of the application filed in the Chennai Court for impleadment of the plaintiff as a party to the suit and the application for interim relief but not the plaint and it is not the case of the plaintiff that any allegations have been made against the plaintiff for the plaintiff to be required to contest the said allegations.

16. The counsel for the plaintiff states that though he had not received / perused the plaint earlier, but now has the copy of the plaint and on specific query, states that there is no allegation in the plaint against the plaintiff.

17. The relief in the plaint being barred by law, the suit is misconceived and is dismissed; however no costs.

18. Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 03, 2020

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