

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

Coram

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No.588 of 2021
in
C.M.P.No.5072 of 2021

1.Sri.A.Soundararsan,
President, CMRL Employees Union,
No.16, 18th Sreet,
Shakthi Nagar, Nerkundram,
Chennai-600 107.

2.A.Elangovan,
Vice President, CMRL Employees Union,
No.16, 18th Street,
Shakthi Nagar, Nerkundram.
Chennai-600 107.

.. Petitioners

Vs

The Chennai Merto Rail Limited,
Company Registered under Companies Act,
Hereby represented through is DRO/Legal Officer,
K.Tharapagaraj,
Having Office at Chennai Metro Rail Limited,
Poonamallee High Road,
Koyambedu,
Chennai-600 107.

.. Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 03.01.2020 made in I.A.No.03 of 2019 in O.S.No.1394 of 2020 passed by the II Assistant City Civil Court, Chennai and to consequently allow I.A.No.3 of 2019 in O.S.No.1394 of 2019.

For Petitioners ... Mr.S.Ravindran
Senior Counsel
For Respondent ... Mr.C.Sankar

ORDER

The Revision Petitioners are the defendants in O.S.No. 1394 of 2019. The suit is now pending on the file of the II Assistant City Civil Court, Chennai. Questioning the order dated 03.01.2020 in I.A.No.03 of 2019, the Civil Revision Petition has been filed by the present defendants in the suit.

2.The Suit in [O.S.No.1394](#) of 2019 had been filed by the Chennai Metro Rail Limited, a Company registered under Companies Act 1956 and represented by its DRO/Legal Officer against A.Soundararasan, President, CMRL Employees Union and R. Elangovan, Vice President, CMRL Employees Union, seeking a judgment and decree in the nature of

permanent injunction restraining the defendants from interfering with the plaintiff's peaceful functioning and administration of the Chennai Metro Rail Limited by circulating unwarranted public notices, issuing unwarranted communications to the service providers of the CMRL and also for the costs of the suit.

3.The present petitioner herein had filed I.A.No.3 of 2019 under Order VII Rule 11 (d) of CPC,1908, seeking to reject the plaint, claiming it was barred by law particularly under Section 18 of the Trade Union Act, 1926.

4.The plaintiff stated that along with other projects envisaged by them, they also envisaged the creation of two corridors under Phase I. First corridor started from Washermenpet and ended at Airport for a length of 23.01 km and the corridor II started from Chennai Central and ended at St.Thomas Mount for a length of 22.0 km. The project started in the year 2009 and was completed during February -March, 2018. It was also opened for public service in the month of February 2018. It was further stated that the first and the second defendants are said to be the President and Vice

President of CMRL Employees Union and they are not employees of CMRL. It was stated that the first and the second defendants along with the employees of CMRL had formed a Union in the name of CMRL Employees Union but the same was not recognized by CMRL. The defendants had submitted representations to the CMRL regarding the formation of the said union.

5.The plaintiff further claimed that the office bearers of the defendants herein have violated the law and acted in an arbitrary and unilateral manner against the interest of the plaintiff's company. The plaintiff further claimed that in the month of February 2018, the CMRL Employees Union circulated certain pamphlets to the public causing allegations against the administration of CMRL by threatening the commuters, that the travel through Metro Rail itself was an unsafe travel and claimed that thereby the defendants created panic in the minds of the commuters. The defendants had also alleged that the functioning of the metro rail was on loss.

6. Thereafter, the plaintiff also stated that on 21.11.2018, the defendants herein had sent a communication to M/s.BVG India Limited and M/s.Karnataka Commercial and Industrial Corporations Pvt. Ltd., who are the contractors of CMRL engaged for Station Management Services like cleaning and issuing tickets on behalf of CMRL. The said contractors had also intended to agree to a letter of acceptance of CMRL for providing the service of Station Controller/Station incharge.

7. It is claimed by the plaintiff that the communication dated 21.11.2018 furnishing wrong information had been forwarded by the defendants alone with a judicial order pronounced in W.P.Nos.31491, 31492 and 31550 of 2016 claiming that M/s.BVG India Ltd., and M/s.Karnataka Commercial and Industrial Corporations Pvt. Ltd., have been restrained from taking up work relating to proposed new Station Controller Assignments with CMRL and the said communication was forwarded on 29.11.2018. The said communication had created panic on the minds of the Contractors and their staff. It is stated that the plaintiff had approached the Hon'ble Supreme Court by way of a Special Leave Petition (Civil).No.23212 of 2018 and the Hon'ble Supreme Court had stayed the

order of this Court in [W.P.Nos.31491](#), 31492 and 31550 of 2016. It had been stated that the said order of stay had been deliberately suppressed by the defendants herein. It was claimed that the defendants have no right to interfere with the functioning and administration of the CMRL and in these circumstances, the suit had been filed seeking permanent injunction restraining the defendants from interfering with the plaintiff's peaceful functioning and administration of the Chennai Metro Rail Limited by circulating unwarranted public notices and issuing unwarranted communications to the service providers of the CMRL. Along with the plaint, the plaintiff also filed 6 documents which are as follows:-

- (1).Certificate of Incorporation in the year 2007 to 2008.
- (2).Letter dated 01.10.2018 submitted by the Defendants Union
- (3)Pamphlet Circulated by the Defendants to the Public.
- (4).Letter dated 21.11.2018 submitted by the defendants to M/s.KCIC India Private Limited
- (5).Letter dated 29.11.2018 submitted by the defendants to M/s.KCIC India Private Limited.
- (6)Copy of the Affidavit and order in the Special Leave Petition dated 26.07.2018.

8.The plaint is now sought to be rejected under Order 7 Rule 11(d) of CPC by the defendants herein. In the affidavit filed in support of the petition certain facts have been stated. It may not be proper to examine the contents while determining an application under Order VII Rule 11 (d) of CPC.

9.The plaintiff had stated that two letters were in sent during November 2018 by the defendants to their service providers. It is alleged by the plaintiff that the defendants also circulated pamphlets to the general public. It must also be pointed out that the plaintiff had filed a Special Leave Petition before the Hon'ble Supreme Court in July 2018, much earlier to the said Pamphlets/letters said to have been circulated by the defendants. Therefore, the cause of action for institution of the present suit had arisen after the circulation of the pamphlets/letters by the defendants to the general public and to the service contractors. In the cause of action paragraph, the plaint had also stated about the said Pamphlets and letters. The suit was filed only in March 2019.

10.In the averments made in the affidavit filed in support of the application to reject the plaint, it is stated that the plaint should to be rejected as barred under law particularly under Section 18 of the Trade Unions Act 1926.

11.To trace the sequence of events, the dates and events will have to be examined. The defendants claimed that the plaintiff had deliberately suppressed material facts before this Court.

12.The defendants herein had issued a notice of strike dated 24.01.2019 under Section 22(1) of the Industrial Disputes Act, 1947 and communicated a copy to the plaintiffs herein. After this notice on 08.02.2019, the Assistant Commissioner of Labour-2 had issued a notice of conciliation and this particular notice had also been addressed to the plaintiff herein. There was a further notice issued by the Assistant Commissioner of Labour -2 on 12.02.2019 and another notice was issued on the very same day. These notices clearly indicate that the scope of dispute between the parties had moved away from the date of issuing pamphlet/ communication to the commuters/service providers. Conciliation

proceedings had been initiated. The plaintiff had participated. The defendants also participated. These facts had not been stated in the plaint.

13.The learned counsel for the plaintiff drew the attention of this Court to Section 2(g) of the Trade Union Act 1926, which is extracted here under:-

"2(g) "trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises, and"

It is pointed out that there must be dispute between the employers and workmen.

14.It was pointed out by Mr.C.Sankar, learned counsel for the plaintiff that the defendants particularly the President and the Vice President are not employees of the CMRL. But it is acknowledged that they are Office

Bearers of the Union. It is acknowledged that the members of the Union are the employees of CMRL. The issue whether the defendants namely A.Soundararasan and R.Elangovan can represent the Union is out of scope of purview of the discussions here under.

15. As per Section 18 of the Trade Unions Act, 1926, no suit is maintainable in a Civil Court as against a registered Trade Union or Officer Bearers or Members thereof with respect to any act done in contemplation or furtherance of a trade dispute and as per Section 2(g) Trade Dispute means a dispute between the employers and the workmen. The dispute which is raised is with respect to the employment or condition of labour. The definition also states that such dispute can also be raised by any person whether or not in the employment of the employer with whom the trade dispute alone.

16. On examining the plaint, the omission to mention about the proceedings before the Conciliation Officer, stares on the face of the plaintiff. Subsequent to the issuance of pamphlets/letters and prior to the institution of the suit, the parties have moved before the Conciliation

Officer, who had also advised them not to take any coercive action as against each other. Once a trade dispute had been raised by the parties, then a Civil Suit is barred under Section 18 of the Trade Union Act, 1926.

17. In (1976) 1 SCC 496, *the Premier Automobiles Limited vs Kamlekar Shantaram Wadke of Bombay and others*, in paragraph No.9 with respect to a dispute under the Industrial Dispute Act, 1947, it had been held as follows:-

"9.....The Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event civil Court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognized by and enforceable under the Act alone."

18. Mr. S. Ravindran, the learned Senior Counsel appearing for the plaintiff stated that the documents filed on behalf of the defendants have not been referred in the order under question. The learned judge has to

examine the averments in the plaint and the documents filed along with plaint. But when the plaint itself is barred by any Special Law, particularly as in this case under Section 18 of the Trade Union Act, 1926, in my considered opinion, the sequence of events will have to be examined not only as stated by the plaintiff, but, if any fact had been suppressed by the plaintiff, then that fact has to be examined. I am consciously not examining each one of the documents filed by the defendants, in view of the limitation imposed while examining a application under Order 7 Rule 11(d) of the CPC. But I am of the opinion that I am justified in narrating the sequence of events.

19.This sequence indicates that the pamphlets/letters were issued by the Union due to a dispute which arose and later the parties moved forward to settle the issues before the Conciliation Officer. The Conciliation Officer invited both the plaintiff and the defendants and advised to them to reconcile the issues. Thereafter, the plaintiff had filed the present suit basing the cause of action on the pamphlet/letters issued by the defendants herein but had suppressed information about the Conciliation processes which took place before the Conciliation Officer and before the institution of the suit.

That is a suppression of a material fact and the plaint suffers on that ground. Quite apart from the suppression of material facts, the plaint itself is barred under Section 18 of the Trade Union Act 1926.

20.In view of the all these facts, I hold that the suit cannot be permitted to stand on the file of the II Assistant City Civil Court, Chennai. Accordingly, the Revision Petition is allowed and the order of the learned Judge is set aside. No order as to costs. Consequently, the connected miscellaneous petition is closed.

17.04.2021

Index:Yes/No
tta

To
II Assistant City Civil Court, Chennai

C.V.KARTHIKEYAN,J.,

tta



C.R.P. (NPD) No.588 of 2021

WEB COPY

17.04.2021