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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2021

PRONOUNCED ON : 08.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1010 of 2008

Jagadesh Prasad Sharma

... Appellant/Plaintiff

Vs.

Madras Adi Gaur Sabha, (regd.)
Rep.by its Preident
Shri Ramnarayana Gaur,
261, thambu Street,
Chennai - 600 001.

... Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.11.2007 passed in A.S.No.515 of 2006 on the file of the 1st Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 27.02.2006 passed in O.S.No.2593 of 2002 on the file of XIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Devendran

For Respondent : Mr.A.K.Venkatesan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 12.11.2007 passed in A.S.No.515 of 2006 on the file of the 1st Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 27.02.2006 passed in O.S.No.2593 of 2002 on the file of the XIII Assistant Judge, City Civil Court, Chennai.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The plaintiff in O.S.No.2593 of 2002 is the appellant in the second appeal.



4.Suit for Declaration and Permanent Injunction.

5.Briefly stated, according to the plaintiff, the defendant's society is formed for the welfare of the members of Gaur Community and it is governed by the Bye Laws of the defendant's society and the plaintiff was an active member of the defendant's Sabha for several years and the defendant convened a meeting of the committee on 17.03.2002 for discussing the date, venue and modalities to be followed for celebrating the Holi Festival and the said meeting however could not be conducted as there was no requisite quorum and the meeting was adjourned to 24.03.2002, for which, the notice was issued by the President on 18.03.2002. However, the plaintiff was shocked to receive a separate communication from the President of the defendant's Sabha calling upon the plaintiff to explain his alleged misbehaviour at the meeting held on 17.03.2002. The plaintiff was at a loss to understand as to what was the act of misconduct alleged against him and sent a reply denying the allegations and pointing out that no valid meeting was conducted on 17.03.2002 and also sought for an apology from the President of the defendant's Sabha for tarnishing his image in the eyes of the members of the Sabha. Despite the same, a meeting was convened by the defendant's Sabha on 05.04.2002, for which, notice was received by the plaintiff on the previous date and the plaintiff could not attend the said meeting due to insufficient notice and in the abovesaid meeting, an unilateral decision was taken to drop the plaintiff from the Committee for the remaining period and the defendant's sabha suspended the plaintiff from the membership of the Sabha for one year and the same was communicated to the plaintiff vide letter dated 05.04.2002. The abovesaid decision of the committee is ultra vires of the Bye Laws of the Sabha and the abovesaid decision has been taken without providing adequate opportunity to the plaintiff to put forth his case and with a view to get rid of the plaintiff from the committee, the abovesaid decision had been taken without giving any notice and against the principles of natural justice and hence, the plaintiff issued a legal notice on 17.04.2002 through his advocate demanding the withdrawal of the abovesaid decision as communicated in the letter dated 05.04.2002 and as there was no compliance of the same on the part of the defendant, according to the plaintiff, he has been necessitated to institute the suit for appropriate reliefs.

6.The defendant sabha resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and the defendant's society has been formed for the welfare of the members of the Gaur Brahmin Community. The Executive Committee meeting of the defendant's Sabha was held on 17.03.2002 and without waiting for the completion of the



meeting, the plaintiff had been insisting to adjourn the meeting on the ground of absence of quorum, however, though the other members present endeavoured to pacify the plaintiff at that point of time, the plaintiff exceeded his limits uttering filthy and unparliamentary language and also would state that he would beat the Joint Secretary with his shoes and consequently, the said meeting was adjourned to 24.03.2002, for which, due notice has been issued to the plaintiff. Meanwhile, the defendant had issued a letter dated 18.03.2002 calling upon the plaintiff to give his explanation for his misbehaviour committed by him on 17.03.2002, instead of giving explanation, the plaintiff sent a letter dated 27.03.2002 containing false and unsustainable allegations and also demanded apology from the defendant's Sabha by seeking the withdrawal of the letter dated 18.03.2002, the abovesaid reply would only expose that the plaintiff has no manner of respect to the defendant's sabha and the plaintiff did not attend the meeting on 24.03.2002 despite the notice. An emergency meeting was convened on 05.04.2002 for discussing the misbehaviour of the plaintiff and the plaintiff had not chosen to attend the said meeting and in the abovesaid meeting, it has been resolved to drop the plaintiff from the present working committee and suspend him from the primary membership of the Sabha with immediate effect for one year and the abovesaid decision was taken in accordance with the Bye Laws of the Society and communicated to the plaintiff and only to get rid of the action contemplated by the defendant against the plaintiff, the plaintiff has come forward with the suit after issuing the legal notice without any basis and hence, the suit laid by the plaintiff is liable to be dismissed.

7. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A9 were marked. On the side of the defendant, DWs1 to 3 were examined and Exs.B1 to B4 were marked.

8. On an appreciation of the materials placed on record, both oral and documentary and the submissions made, by the respective parties, the trial Court was pleased to direct the defendant to conduct an enquiry against the plaintiff, after providing adequate opportunity and to take appropriate decision and also further directed the plaintiff to cooperate with the enquiry to be initiated by the defendant and with the abovesaid observation, dismissed the plaintiff's suit and the same has also been confirmed by the appellate Court in the appeal preferred by the plaintiff. Impugning the judgment and decree of the Courts below, the present second appeal has been preferred by the plaintiff.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:



Considering the materials available on record, the Courts below deemed it fit to direct the defendant to conduct a fresh enquiry with reference to the issue involved in the matter by providing due opportunity to the plaintiff to defend him and thereafter, take a decision in the matter and also further directed the plaintiff to cooperate with the enquiry. Considering the materials placed on record, particularly, the Bye-Laws of the defendant's society as well as the various communications between the defendant and the plaintiff in connection with the issue involved in the matter, it is noted that the decision had been taken against the plaintiff by the defendant's Sabha, though according to the defendant after issuing the show cause notice dated 18.03.2002, however, it is found that for the decision taken on 05.04.2002, the plaintiff had not been properly issued the notice. In such view of the matter, the Courts below are found to be justified in resultantly directing the defendant to conduct a fresh enquiry after providing due opportunity to the plaintiff to defend him within two months from the date of the judgment and also in further directing the plaintiff to cooperate with the enquiry and accordingly, with the abovesaid direction rightly dismissed the plaintiff's suit. In such view of the matter, it is for the defendant to take further action based on the direction given by the Courts below.

13.From the materials placed on record, it is found that the interim relief sought for by the plaintiff has ended in vain both in the trial Court as well as in the appellate Court. Considering the issue involved between the parties, the Courts below are found to be justified in not granting the relief to the plaintiff as prayed for and when the direction has been given to the defendant to conduct a fresh enquiry on the part of the defendant in respect of the issue involved in the matter, it is for the plaintiff to put forth his stand before the defendant's committee in the manner known to law in the proposed enquiry to be initiated against him and instead of moving in that direction, the plaintiff is found to have come forward with the present second appeal.

14.Considering the issue involved in the matter and the appreciation of the same by the Courts below and on that basis, considering the direction given by the Courts below as pointed out supra, the same being on factual matrix and not involving any substantial questions of law, in such view of the matter, I do not find any merit in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal for the reasons aforesaid, are, accordingly answered against the plaintiff and in favour of the defendant and the points raised by the plaintiff by way of the second appeal are to be decided only in the enquiry to be conducted by the defendant as per the directions given by the Courts below.



15. In view of the abovesaid factors, the second appeal does not merit acceptance. Resultantly, the Judgement and Decree dated 12.11.2007 passed in A.S.No.515 of 2006 on the file of the 1st Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 27.02.2006 passed in O.S.No.2593 of 2002 on the file of XIII Assistant Judge, City Civil Court, Chennai, are confirmed and the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sms

To

1.The 1st Additional Judge,
City Civil Court,
Chennai.

2.The XIII Assistant Judge,
City Civil Court,
Chennai.

3.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to M/s.A.K.Venkatesan, Advocate Sr.No. 7288

+lcc to M/s.M.Devendran, Advocate Sr.No. 7037

S.A.No.1010 of 2008

CNR (CO)
PR (28/09/2021)