

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 30.07.2021

Orders Pronounced on : 01.10.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Original Application No.251 of 2021
in
C.S.No.159 of 2021

Babu Daniel, S/o Late Thomas Daniel .. Applicant/plaintiff

Vs.

1. The Madras Medical Mission,
Rep. by its Honorary Secretary,
No.4.A, Dr.J.Jayalalitha Nagar,
Mogappair East, Chennai-600 037.

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

3. Anu Varghese .. Respondents/defendants

Judge's Summons under Order XIV Rule 8 of the Original Side
Rules read with Order XXXIX Rules 1 and 2 of the Civil Procedure Code,
1908, and Original Application (O.A). No.251 of 2021 (in Civil Suit

(C.S).No.159 of 2021), filed praying to grant interim injunction restraining the third respondent/third defendant from conducting the EGM on 23.04.2021 between 4 to 5 p.m. through video-conferencing, pending disposal of the suit.

For applicant : Mr.Thomas T.Jacob for M/s.Stella Manoharan

For respondents: Mr.Silambanan, Senior Counsel for

Mr.Hallel Ben for RR-1 and 2

Mr.P.S.Raman, Senior Counsel for

Mr.Hari Radhakrishnan for R-3

ORDER

The applicant herein is the plaintiff in the suit in C.S.No.159 of 2021. The respondents are the defendants in the said suit.

2. The abovesaid suit has been field for the following reliefs:

(i) for declaration that the notice, dated 29.03.2021 (wrongly typed as 29.04.2021) issued by the third defendant calling for an EGM to be held on 23.04.2021 between 4 am and 5 p.m. through video-conferencing as null and void; and

(ii) for awarding costs of the suit.

3. Since the issue involved in this application relates to conduct of the EGM on 23.04.2021, the other issues are not dealt with herein.

4. The brief facts which gave rise to the filing of the present application and the suit, are as follows:

(a) The applicant herein claims to be a life member of the organisation, namely Madras Medical Mission (MMM) (for short, "Society"), since 1996. He also claims himself to be a member of the Governing Board from 2001 to 2016 and presently heading the Audit Committee of the first respondent-Society.

(b) The first respondent-Society was registered on 12.01.1982 under the Tamil Nadu Societies Registration Act, 1975 (for brevity, "the Act, 1975") and has been engaged in various charitable activities. The objects of the Society are primarily to establish hospitals, conduct research studies in Medicine and run educational institutions including Medical

Colleges. The first respondent-Society is governed by its Bye-Laws, which have been framed in terms of the Act, 1975.

(c) One Dr.K.Jacob was elected as Honorary Secretary on 15.01.2009 and Mr.Chcrian Abraham, another life member of the Society, was elected as Honorary Treasurer on 09.10.2010 by the Governing Board of the first respondent-Society. The aforesaid persons had been signatories to all the financial matters and decisions taken in the administration of the first respondent-Society, being at the helm of affairs at the relevant period in the management of the Society. Many members expressed their dissatisfaction about the functioning of the above two office bearers, as it was felt that there was no accountability and transparency in their activities while managing the affairs of the first respondent-Society.

(d) On 17.09.2017, a Money Committee was appointed by the General Body of the Society to enquire into all the money matters of the Society. One Dr.Suja Issac was appointed as its Convenor, vide letter dated 19.09.2017. A report was submitted by the Money Committee and

Extraordinary General Meeting (for short, 'the EGM') of the Society was convened on 22.06.2019. The report pointed out a prima-facie irregularities amounting to Rs.186.63 Crores in the management and administration of the Society during the period of the above named two office bearers. The Governing Board appeared to have unearthed, besides the irregularities as found by the Money Committee, various other acts of mal-administration while the above mentioned office bearers were at the helm of affairs of the Society. In the circumstances, two resolutions were passed in the meeting, one, appointing five-member Audit Committee to conduct forensic audit into financial affairs of the Society, the suspension of Dr.K.Jacob and Mr.Churian Abraham, the Honorary Secretary and Treasurer respectively.

(e) In pursuance of the resolution of the General Body in the EGM, dated 22.06.2019, the second respondent, vide communication dated 19.10.2020, informed the members concerned that they were placed under suspension pending enquiry by the Commission of Enquiry headed by a retired Judge of this Court, which was stated to be completed within six

months. The suspension was challenged by members concerned, subsequently before this Court in C.S.No.329 of 2020.

(f) While matters stood thus, the Governing Board, in its meeting dated 12.02.2020, decided to admit spouses of eligible founder members, with a view to increase the membership of the Society and the consequence contribution from them. In the relevant communication, on the admission of new members, it was also clarified that the founder-member was a member admitted to the Society between 1982 and 1987, as they were the original contributors for starting the Society and for purchasing the properties of the Society at Mogappair. Based on the decision taken by the Governing Body, letters were sent on 27.02.2020 to various members asking them as to whether they were interested in having their spouses inducted as members and in case they were inclined, they were asked to complete necessary formalities towards the same. In response to the communication, 23 spouses of the founder-members, had shown interest and ultimately, they were admitted as life members of the Society, vide subsequent Governing Board meeting, dated 15.10.2020. One member, Mr. Joseph Abraham, claiming to

have been aggrieved by the induction of new members, has challenged the admission of 23 new members as life members, before this Court in C.S.No.389 of 2020, which is also pending before this Court.

(g) According to the applicant/plaintiff, on 11.01.2021, the third respondent/third defendant, i.e. Mr.Anu Varghese, a member of the first respondent-Society, submitted a letter to the Governing Board of the Society, requesting for convening of EGM. According to the third respondent, his request was supported by 59 members, calling for EGM, which was more than the members required in terms of the Bye-Laws of the Society. The request for convening of the EGM was made principally for the purpose of recalling the resolutions passed in the EGM of the Society, dated 22.06.2019, i.e. appointment of five-member Audit Committee to conduct forensic audit and the suspension of Dr.Jacob and Mr.Churian Abraham and also for recalling of the resolutions, dated 12.02.2020 and 15.10.2020 relating to expansion and the admission of the new members. The agenda of the proposed meeting further included for passing of resolution to open membership to all life members.

(h) At this, the Governing Board, which met on 06.02.2021, considered the requisition letter, dated 11.01.2021 of the third respondent and took unanimous decision to reject the request, on the ground that the request was not individually signed by 59 members of the Society, and they have not explicitly authorised the propounder Mr.Anu Varghese to convene the said meeting. The Governing Board in its meeting also rejected the request on the ground that the proposed resolutions in the meeting to be called for, are subject matters of pending civil suits before this Court.

(i) The decision taken by the Governing Board, was informed to the third respondent herein, vide Communication dated 15.02.2021. However, despite the rejection of the request made by the third respondent herein (third defendant), the third respondent issued consequent notice on 29.03.2021, addressed to all the members of the first respondent-Society, notifying that the EGM of the Society will be convened on 23.04.2021. The Agenda for the meeting were the same as stated in the letter dated 11.01.2021 of the third respondent.

(j) The Agenda that were sought to be considered in the EGM, namely, recall of the resolution of the suspension of members which is the subject matter of dispute in O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020, filed by the aggrieved suspended members, challenging the suspension. Initially, interim protection was given by this Court in the above said O.As., but ultimately, both the O.As. came to be dismissed by this Court on 29.04.2021, which is challenged and pending in O.S. Appeal. The other Agenda was to recall of the resolution appointing five member Audit Committee, admission of 23 new members, which again is an issue pending before this Court in C.S.No.389 of 2020, with a prayer seeking to declare that admission of the new members as null and void and to fresh resolution to open membership to all life members.

(k) According to the applicant/plaintiff, the calling for the EGM for discussing the proposed Agenda is mainly for the purpose of recalling of the resolution of the EGM dated 22.06.2019, as illegal, as the requisition was not in conformity with the Bye-Laws of the Society or the statutory

provisions of the Act, 1975. Therefore, the present suit has been filed for declaration that the notice dated 29.03.2021 (wrongly typed as 29.04.2021) issued by the third respondent calling for EGM on 23.04.2021, as null and void.

(l) At the time when the suit was entertained, this Court, in O.A.No.251 of 2021, by order dated 19.04.2021, directed that the EGM scheduled on 23.04.2021, shall go on and any decision/s taken in the meeting in respect of all the Agenda, shall not be implemented until further orders from this Court. Thereafter, the matter stood adjourned from time to time and the O.A. is finally heard today.

5. Mr.Thomas Jacob, learned counsel appearing for the applicant/plaintiff would make his submissions as under:

The learned counsel, at the outset, drew the attention of this Court to the findings of the Money Committee, dated 17.06.2019, wherein it was stated that there was prima-facie evidence of gross fund irregularities of over Rs.180 crores, and the recommendation of the Money Committee was,

as follows:

- "1. For an immediate, independent, internal professional Forensic Audit to verify and validate the Report and any further information and
2. For Dr.Jacob and Mr.Chерian Abraham to step down from the Governing Board, till the Forensic Audit Report is presented to the General Body."

Thereafter, in the EGM held on 22.06.2019, a resolution was passed to suspend the Honorary Secretary and the Treasurer, i.e. Dr.K.Jacob and Mr.Chерian Abraham, respectively, from all positions held by them in the Society. The resolution was communicated by letter dated 23.06.2019 to the above said two individuals.

6. Thereafter, on receipt of the suspension communication, Dr.Chерian Abraham, the then Treasurer of the Society addressed a letter to the Society on 18.07.2019 requesting for convening of EGM for recalling the resolution passed by the EGM on 22.06.2019, namely to conduct forensic audit into the financial affairs of the Society and also his suspension along with the suspension of the other member Dr.Jacob, the

then Honorary Secretary of the Society. The communication had also been enclosed with a list of 60 requisitioning members, including the third respondent herein. However, notwithstanding the request, an independent Agency to conduct the Forensic Audit was appointed on 10.08.2019.

7. In the meanwhile, in pursuance of his earlier notice, dated 18.07.2019, the then Treasurer Cherian Abraham issued subsequent notice, dated 17.08.2019 calling for EGM on 08.09.2019. The only Agenda slated to be discussed in the so-called meeting was to recall the resolution passed in the EGM, dated 22.06.2019. Challenging the action of Mr.Cherian Abraham, the then Treasurer and others seeking to convene EGM on 08.09.2019, the present applicant/plaintiff, namely Mr.Babu Daniel filed C.S.No.523 of 2019 before this Court seeking to declare the notice, dated 17.08.2019 calling for EGM on 08.09.2019 as illegal, null and void.

8. In the said suit, the present applicant has filed O.A.No.816 of 2019 for interim injunction restraining the third respondent therein, namely Shri.Cherian Abraham from conducting the EGM on 08.09.2019. This

Court, on hearing the rival contentions of the parties, vide order dated 06.09.2019 in O.A.No.816 of 2019, granted interim injunction restraining the third respondent therein, from conducting the EGM on 08.09.2019. The matter was taken on appeal in O.S.A.No.238 of 2019, but the Division Bench of this Court, vide order dated 14.12.2020, dismissed the appeal holding the order of the learned Single Judge being reasonable and judicious and did not suffer from any perversity, no interference was called for. The order passed by the Division Bench in O.S.A.No.238 of 2019 has become final, as no further appeal has been preferred.

9. According to the learned counsel, in the meantime, a meeting of the Governing Board was held on 12.02.2020, wherein a decision was taken for expansion of membership on the basis of the request from some members. It was finally decided that the life membership will be open to those founding members, who could not bring in any new member (spouses or children), when the membership was opened up previously in 1996 or 2013. Thereafter, in the subsequent meeting of the Governing Board held on 15.10.2020, a resolution was passed for admission of 23 new members

under Agenda No.11 of the meeting. In the same meeting, in item No.12 of the Agenda, it was further resolved that for conduct of election to the vacant positions in the Governing Board to request one Mr.Jacob Kurian to be the Returning Officer along with Mr.Ron Thomas. The admission of 23 members is the subject matter of challenge before this Court in C.S.No.389 of 2020.

10. In the meanwhile, the suspension of four persons, namely Dr.K.Jacob, Mr.Chcrian Abraham, Mr.Anu Varghese, third respondent in the present O.A. and Mr.John Joseph, was put to challenge in C.S.No.329 of 2020 before this Court. This Court, while entertaining the suit, has passed an interim order in O.A.Nos.624 and 625 of 2020 on 04.12.2020 to the effect that the suspension of four members would not stand in the way of their participating or voting in any of the Society's meetings, pending disposal of the Original Applications therein. However, subsequently, this Court passed final order in the application finding no legal infirmity in the order of suspension and dismissed the applications on 29.04.2021, against which, O.S. Appeal has been filed and pending before a Division Bench of

this Court.

11. As far as the present "lis" is concerned, according to the learned counsel for the applicant/plaintiff, the request for convening of EGM is made by a member, the third respondent herein who is one of the suspended members of the Society, was not in the prescribed format. The requisition letter of the third respondent, dated 11.01.2021 regarding the convening of EGM did not contain the names or signatures of the members supporting the call for EGM. The signatures have been obtained in blank papers and enclosed with the requisition letter. The learned counsel submitted that the third respondent has obtained signatures of innocent members of the Society in blank papers and misused the signatures as if they were supporting the call for the EGM and the Agenda notified in the requisition letter. Further, the requisition is also not in the proper format as provided under the Bye-laws of the Society. In this regard, the learned counsel has drawn the attention of this Court to the format provided in the Bye-laws for the said purpose.

12. The learned counsel also drew the attention of this Court to the letter of the Society, dated 15.02.2021, wherein it has been clearly stated that the requisition is not individually signed by 59 members of the Society and they have not explicitly authorised the third respondent to convene the meeting, and further that the proposed resolutions are the subject matters of dispute that are pending consideration before this Court in various civil suits, and therefore, they are sub-judice. The third respondent hence was informed that the meeting cannot be called for.

13. The learned counsel also drew the attention of this Court to various Bye-Laws of the Society, and in particular, he referred to Bye-Laws Nos.77 to 80, which are extracted hereunder:

"Convening of Meetings:

....

77. The Governing Board may decide at any time to call for an Extra-ordinary General Meeting of the Society.

78. If one-fifth of the total membership or 50 members whichever is less request in writing to call an Extra-ordinary General Meeting, the Board shall call such meeting within 30 days of such notice. If an extra-ordinary general meeting is not called in accordance with such requisition, the requisitionists shall have the power to call

such meeting themselves.

79. Extra-ordinary Meetings can be convened at a notice less than the minimum time required if all the members eligible for such notice consent to the shorter notice in writing.

80. The Quorum of the General Body Meeting shall be 1/5 of the total membership or 20 whichever is less."

14. According to the above extracted Bye-Law No.80, the quorum of the General Body Meeting shall be 1/5 of the total membership or 20, whichever is less and as per Bye-Law No.78, for calling for EGM, there should be 1/5 of the total membership or 50 members, whichever is less. According to the learned counsel, only 10 persons voted in the EGM which was held on 23.04.2021 eventually. In fact, counter affidavit was filed in response to the present application, wherein it has not been specifically mentioned as to how many members voted in the meeting. According to the learned counsel, not only the Bye-Laws have been violated, but also the instructions issued by the Government of Tamil Nadu regarding the internal elections to the Society during Covid-19 situation, in Letter No.6666/M1/2020-2, dated 27.10.2020 from Commercial Taxes and

Registration (M1) Department, Chennai-9. The said communication of the Government stated that, in order to meet out the statutory requirements under the Act, 1975, Annual General Body meeting for the year 2019-2020 can be conducted through virtual means. According to the learned counsel, no specific permission has been obtained for the conduct of the impugned meeting by the third respondent. Even otherwise, the Government's letter contemplated only Annual General Body Meeting and the conduct of EGM was in fact not authorised at all.

15. The learned counsel further submitted that the impugned meeting called for by the third respondent, suffered from various legal infirmities and the most glaring infirmity is that the attempt by the third respondent, a suspended member to get around the orders passed by this Court on 06.09.2019 in O.A.No.816 of 2019 in C.S.No.523 of 2019. which was confirmed by a Division Bench of this Court in O.S.A.No.238 of 2019 on 14.12.2020. The very same Agenda which were sought to be recalled by the notice, dated 17.08.2019 calling for EGM to be held on 08.09.2019, had been found to be illegal on a prima-facie consideration by this Court. This

Court, by order dated 06.09.2019, has granted interim injunction in O.A.No.816 of 2019 in C.S.No.523 of 2019 and the order passed therein by the learned Single Judge, was confirmed by the Division Bench in the said O.S.A., which has become final and binding on the parties.

16. The suspended members herein, having failed to obtain any relief in their favour, have cleverly called for the present impugned EGM, vide notice dated 29.03.2021, once again, attempting to over-reach and flout the binding orders of this Court. Apart from that, it is not open for the suspended member to call for the meeting, as the third respondent's suspension itself is under dispute, pending before this Court. Although there was interim direction by this Court allowing the suspended members to participate in the Society's election, it was only an interim arrangement, but ultimately, this Court upheld the suspension, vide its order dated 29.04.2021 in O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020. The interim order passed by this Court on 04.12.2020 in O.A.Nos.624 and 625 of 2020, merged with the final order, and therefore, the third respondent has no right to claim himself to be a member of the Society in the first place, much less

convening an EGM by himself.

17. The learned counsel also drew the attention of this Court to the prayer in C.S.No.329 of 2020 seeking to declare the notice, dated 19.10.2020 issued by the second defendant therein, suspending the four plaintiffs therein from the privileges of the membership of the first defendant-Society, as illegal and null and void. The third plaintiff therein is the third respondent/third defendant herein. The Agenda in the requisition letter of the third respondent and the impugned notice, dated 29.03.2021, relate to the same subject, his suspension and of three others. In the said circumstances, the third respondent is estopped from re-agitating the same issue time and again. The learned counsel also submitted that calling for EGM is also not in consonance with the provisions of the Act, 1975, since 21 clear days' notice, has not been fulfilled in terms of Bye-Law No.76 of the Society, read with Sections 26 and 28 of the Act, 1975 and also read with Rules 25 and 27 of the Tamil Nadu Societies Registration Rules, 1978. One other objection has also been raised by the learned counsel for the applicant/plaintiff that as per sub-rule (3) of Rule 25 of the Rules, 1978,

notice calling for the EGM has not been affixed in the Notice Board of the Society.

18. The learned counsel for the applicant/plaintiff, after making the submissions relating to the facts of the case, relied upon a decision of the Honourable Supreme Court reported in 2014 (12) SCC 696 (State of Tamil Nadu Vs. State of Kerala) and in particular, referred to paragraph 157 therein, which is extracted hereunder:

"157. The question whether or not the legislature has usurped the judicial power or enacted a law in breach of separation of powers principle would depend on facts of each case after considering the real effect of law on a judgment or a judicial proceeding. One of the tests for determining whether a judgment is nullified is to see whether the law and the judgment are inconsistent and irreconcilable so that both cannot stand together. In what we have already discussed above, it is abundantly clear that on the one hand there is a finding of fact determined by this Court on hearing the parties on the basis of the evidence/materials placed on record in the judgment of this Court in *Mullaperiyar Environmental Protection Forum v. Union of India*, (2006) 3 SCC 643] and on the other in the 2006 (Amendment) Act, the Kerala Legislature has declared the Dam being an endangered one and fixed the water level in the Dam at 136 ft. If the judgment of this Court in *Mullaperiyar Environmental Protection Forum v. Union of India*, (2006) 3 SCC 643] and the 2006 (Amendment) Act are placed side by side insofar as safety of the Mullaperiyar Dam for raising the water level from 136 ft to 142 ft is concerned, it is obvious that the judgment of this Court and the law enacted by the Kerala State Legislature cannot

stand together and they are irreconcilable and inconsistent. The impugned law is a classic case of nullification of a judgment simpliciter, as in the judgment of this Court the question of the safety of the Dam was determined on the basis of materials placed before it and not on the interpretation of any existing law and there was no occasion for the legislature to amend the law by altering the basis on which the judgment was founded. When the impugned law is not a validation law, there is no question of the legislature removing the defect, as the Court has not found any vice in the existing law and declared such law to be bad."

19. According to the learned counsel for the applicant/plaintiff, the Honourable Supreme Court in the above decision, has held that even the Legislature is not empowered to usurp the judicial power, in the event the law and Judgment are inconsistent and irreconcilable and both cannot stand together. The Honourable Supreme Court further held that the law enacted by the Kerala Legislature in regard to the Mullai Periyar Dam was a classic case of nullification of the judgment-simpliciter. In this case, it is far worse that the parties themselves are attempting to nullify the effect of the order dated 06.09.2019 passed by this Court in O.A.No.816 of 2019 in C.S.No.523 of 2019, as confirmed by the learned Division Bench of this Court in O.S.A.No.238 of 2019 on 14.12.2020.

20. The learned counsel also relied on a decision of the Honourable Supreme Court reported in 2002 (4) SCC 188 (State of W.B. Vs. Karan Singh Binayak), and he referred to paragraph 19 therein, which is extracted hereunder:

"19. Further, it deserves to be noticed that if the land had vested in the State under Sections 4 and 5 of the Act on issue of notification in the year 1954 as sought to be contended, the ULC Act will have no applicability as Section 19 of the ULC Act, inter alia, provides that Chapter II of the Act, subject to provisions of sub-section (2) of Section 10 shall not apply to any vacant land held by any State Government. In the earlier writ petition filed by the respondents, the stand taken by the appellants was not that the proceedings under the ULC Act were ultra vires and without jurisdiction on the ground that the land vested in the State under Sections 4 and 5 of the Act and in view of Section 19 of the ULC Act was not applicable. Their stand was that the proceedings under the ULC Act were not genuine and were fraudulent and had been fabricated. That stand was rejected. Despite the decision of the High Court, the appellants seek to arrogate to themselves the decision-making power that the earlier proceedings were without jurisdiction. It is interesting and rather surprising to note that in the notice dated 15-3-1995 and the order dated 15-5-1995, namely, the proceedings that followed immediately after the decision of the High Court and that too without any notice to the parties concerned it is not even stated that the earlier proceedings were without jurisdiction. In this state of affairs, it is evident that actions of the appellants are far from bona fide. It was an attempt to even overreach the Court. The High Court, therefore, was right in allowing the writ petition."

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The above case is also one where the Honourable Supreme Court held that

the State action, over-turning the decision of the Court, amounted to over-reaching the Court's decision.

21. The learned counsel, thirdly, referred to a decision of a Division Bench of this Court reported in 2016 SCC Online Madras 9701 = 2016 (3) LW 419 (Sub Continental Equities Limited, Mauritius Vs. R.V.D.Ramaiah and others) and in particular, he referred to paragraphs 15 and 16, which are extracted hereunder:

"15. If really, the 1st respondent/plaintiff was not aware of the proceedings in W.P. No. 11159 of 2011, he should have approached this Court for a suitable direction or could have filed appeal against the said order. It is seen that the first respondent in the guise of filing O.S. No. 36 of 2016 before the Sub-Court, Vellore, in fact he ventured to challenge the hierarchy of the judiciary and the power of the highest court of the State. This practice has to be deprecated and prevented, failing which dangerous consequences of over reaching the higher court's order in inevitable creating chaos in the justice delivery system. By getting orders from the Sub Court, the plaintiff/1st respondent only attempted to overreach the order passed by this Court. It is nothing but abuse of process of the court. Therefore, the plaint in O.S. NO. 36 of 2016 itself is liable to struck off.

16. As rightly pointed out by the learned counsel for the petitioner, the allegations made in paragraph Nos. 8, 9 and 10 of the plaint are repetition of paragraph Nos. 5 and 6 of the affidavit filed in support of W.P. No. 12543 of 2013. Therefore, this Court cannot brush aside the contention of the learned counsel for the civil revision petitioner that the 1st respondent/plaintiff has been set up by the petitioner in W.P. No. 12543 of 2013, namely, Mr. P.S.P.K. Maragatharaja

Pandian, who failed to obtain favourable orders from this Court. Approaching the Civil Court to overcome the orders passed by this Court is a fraudulent Act. The parties are expected to approach the Court with clean hands. If any of the parties abuse the forum, the said proceedings are liable to be struck off as held by the Honourable Supreme Court in *K.K.Modi Vs. K.N. Modi and others*, reported in (1998) 3 SCC 573. The Honourable Apex Court, in the said judgment, held that “Relitigation is an abuse of process of Court” and paragraph 44 of the said judgment is usefully extracted as follows:

“44. One of the examples cited as an abuse of process of the court is relitigation. It is an abuse of process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.”

In the above case before the learned Division Bench, the parties having

failed to obtain favourable orders before the High Court in a Writ Petition, had approached the Civil Court on the same issue and the Division Bench of this Court in that context, held that it amounted to abuse of process of Court and the proceedings are liable to be struck down, as the parties have approached the Court with unclean hands.

22. The learned counsel also referred to the following decisions on the aspect of "Restitution Principle":

(i) In, 2010 (9) SCC 437 (Kalabharati Advertising Vs. Hemant Vimalnath Narichania), this Court's attention has been drawn to paragraph 15 therein, which is extracted hereunder:

"Case dismissed/withdrawn — Effect on interim relief

15. No litigant can derive any benefit from the mere pendency of a case in a court of law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking

the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the court. [Vide *A.R. Sircar (Dr.) v. State of U.P.* [1993 Supp (2) SCC 734 : 1993 SCC (L&S) 896 : (1993) 24 ATC 832] , *Shiv Shankar v. U.P. SRTC* [1995 Supp (2) SCC 726 : 1995 SCC (L&S) 1018 : (1995) 30 ATC 317] , *Arya Nagar Inter College v. Sree Kumar Tiwary* [(1997) 4 SCC 388 : 1997 SCC (L&S) 967 : AIR 1997 SC 3071] , *GTC Industries Ltd. v. Union of India* [(1998) 3 SCC 376 : AIR 1998 SC 1566] and *Jaipur Municipal Corpn. v. C.L. Mishra* [(2005) 8 SCC 423] .]"

(ii) In, 2020 (8) SCC 129 (Indore Development Authority (LAPSE-5.J) Vs. Manoharlal), this Court's attention has been drawn to paragraph 335, which reads as under:

"In re: Principle of restitution

335. The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In *South Eastern Coalfields Ltd. v. State of M.P.* [*South Eastern Coalfields Ltd. v. State of M.P.*, (2003) 8 SCC 648] , it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of restitution. It is rather a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to

do complete justice. This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In exercise of such power, the courts have applied the principle of restitution to myriad situations not falling within the terms of Section 144 CPC. What attracts applicability of restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order. This Court observed in *South Eastern Coalfields Ltd. v. State of M.P.*, (2003) 8 SCC 648] thus : (SCC pp. 662-64, paras 26-28):

“26. In our opinion, the principle of restitution takes care of this submission. The word “restitution” in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan v. Board of Revenue, U.P.* [*Zafar Khan v. Board of Revenue, U.P.*, 1984 Supp SCC 505]). In law, the term “restitution” is used in three senses : (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See *Black's Law Dictionary*, 7th Edn., p. 1315). *The Law of Contracts* by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that “restitution” is an ambiguous term, sometimes referring to the disgorging of something

which has been taken and at times referring to compensation for the injury done:

‘Often, the result under either meaning of the term would be the same. ... Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.’

The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. ...

27. ... This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (*A. Arunagiri Nadar v. S.P. Rathinasami* [*A. Arunagiri Nadar v. S.P. Rathinasami*, 1970 SCC OnLine Mad 63]). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the “act of the court” embraces within its sweep all such acts as to which the court may

form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. ... the concept of restitution *is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order* even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

(emphasis supplied)"

(iii) 2011 (1) SCC 216 (Nava Bharat Ferro Alloys Ltd. Vs. Transmission Corpn. of A.P. Ltd.), in which, paragraph 38 has been relied upon, which reads as under :

"38. It is manifest from the above that both on the question of restitution of the benefit drawn by a party during legal proceedings that eventually fail as also on the general principle that a party who fails in the main proceedings cannot benefit from the interim order issued during the pendency of such proceedings, this Court found against the consumers and upheld the demand for payment of additional charges recoverable on account of the delay in the payment of the outstanding dues. Far from lending any assistance to the appellant Company the decision squarely goes against it and has been correctly appreciated and applied by the High Court."

23. In the above cases, the ratio that has been laid down by the Honourable Supreme Court is that the act of the Court shall prejudice no one. According to the Honourable Supreme Court, the principle was founded on the idea of doing complete justice at the end of the litigation and the parties have to be placed in the same position, but for the litigation and the interim order, if any passed in the matter.

24. The learned counsel emphasised the above legal position contending that, though the impugned meeting was allowed to be proceeded with by this Court, when the matter was heard on 19.04.2021 in the present O.A.No.251 of 2021, the position today is that, the learned Judge of this Court has eventually dismissed O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020 on 29.04.2021 and upheld the suspension of the four members of the Society. One of the suspended members is the third respondent herein, who has called for the EGM by notice dated 29.03.2021, which is under challenge in the present suit.

25. According to the learned counsel, in view of the above

development on 29.04.2021, the meeting called for by the third respondent, vide notice, dated 29.03.2021, is to be declared as void-ab-initio as on date. The third respondent cannot be allowed to reap the benefit of the interim order passed in O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020, dated 04.12.2020 and O.A.No.251 of 2021 on 19.04.2021 by this Court in the face of the application of the restitution principle. He would in the circumstances submit that the application is deserved to be allowed in favour of the applicant herein.

26. Per contra, Mr.P.S.Raman, learned Senior Counsel appearing for the third respondent, at the outset, would submit that the present suit itself is not maintainable for the reason that all the requisitionists have not been made parties and only the third respondent has been made a party in the present suit. The learned Senior Counsel would further submit that the requisition has been made by 59 members, which was much more than 1/5, i.e., as stipulated in Bye-Law No.78 of the Society, which has been extracted supra. Therefore, the argument that there was lack of requisite membership, is contrary to facts and liable to be rejected.

27. Referring to the requisition letter, dated 11.01.2021 of the third respondent, the learned Senior Counsel submitted that it is always open to the members of the Society to call for convening of the Annual General Meeting/EGM any time. The requirement is that if such meeting is called for, it should be in terms of the Bye-Laws of the Society and the provisions of the Tamil Nadu Societies Registration Act, 1975 and the Rules framed thereunder. According to the learned Senior Counsel, the concept of sub-judice, is alien to the present subject proceedings and the plea raised on that aspect, ought to be discountenanced both in law and on facts.

28. In reply to the arguments of the learned counsel for the applicant/plaintiff that the members have signed in the blank papers without knowing the contents of the requisition letter, the learned Senior Counsel for the third respondent referred to requisition letter, dated 11.01.2021, in which in the penultimate paragraph, it has been clearly stated that the letter is annexed with original requisition signed by 59 life members of the

Society as required by the Bye-Laws. The argument that there is a particular format being available, is also not supported by any evidence, as any requisition with the adequate sponsorship of life members, in consonance with the relevant Bye-Laws, would be sufficient and valid for calling for the EGM.

29. The learned Senior Counsel also submitted that when specific allegation is made that the life members who have signed the requisition letter, dated 11.01.2021, have signed in the blank papers without knowing the contents of the letter, a minimum effort ought to have been taken by the applicant/plaintiff by obtaining supportive affidavit from any one of the 59 members that he or she had signed the requisition letter, dated 11.01.2021 without knowing its contents. In the absence of any such affidavit or any communication from the signatories, it is not open to the applicant/plaintiff to raise the allegation, recklessly.

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30. As regards the contention that 21 clear days' notice has not been given as provided under the Bye-laws of the Society and the Act, 1975

and the Rules, 1978, the learned Senior Counsel submitted that the notice was given on 29.03.2021 and the EGM was held only on 23.04.2021 and no one had complained that they had not received the communication or he or she was not aware of the meeting. According to the learned Senior Counsel, out of the total 133 members, 120 members attended the meeting, including the majority of 23 newly admitted members and four suspended members.

31. The learned Senior Counsel also submitted that there are five resolutions/subjects which are sought to be taken up for consideration in the separate meeting. The suspension of four members is one of the resolutions in Resolution No.IV and there are other subjects like induction of spouses of all life members of the Society as against the restricted admission of select 23 members (Agenda V), resolution to recall the appointment of forensic audit to conduct enquiry into the financial affairs of the Society, etc. Except admission of 23 members, other subjects are not the subject matter of consideration before this Court, and therefore, the question of the objection of the matter being sub-judice, is completely misplaced and liable to be rejected.

32. The learned Senior Counsel has also drawn the attention of this Court to the procedures followed in the EGM, by referring to the consolidated scrutiniser's report, dated 24.04.2021, wherein the resolutions came to be passed in respect of five subjects taken up for consideration.

33. According to the learned Senior Counsel, the election was conducted by an Agency, by name Central Depository Services Limited (CDSL), which is a service provider and an entity approved by the Ministry of Corporate Affairs of the Government of India. The Agency was engaged only with a view to avoid any allegation of electoral mal-practice by any member. The members were given option to log in for discussion in the subject and not even one member logged in and exercised their option. According to the learned Senior Counsel, though e-voting remained open from 20.04.2021, the EGM was held only on 23.04.2021. Therefore, there is clear 21 days' notice towards compliance with the Bye-laws and statutory provisions.

34. The learned Senior Counsel once again emphasised the fact that the sub-judice is alien to the concept of common law remedy and the only closest principle that could apply anywhere near the said principle, is the principle of res-judicata. The principle of res-judicata cannot be applied in this case, since the parties are different and the issues are not exactly the same. Therefore, the question of applying the principle of sub-judice or res-judicata, does not arise in this case. Even otherwise, if any violation of the interim order of this Court, it would only amount to "contempt", but the action per-se may not be called illegal on the ground of sub-judice.

35. The learned Senior Counsel strongly objected to the applicant's case here that it is not open to the individual members to challenge the wisdom of the General Body without pointing out any infirmities in the face of the EGM being conducted as per the Bye-Laws of the Society and the statutory provisions. According to him, in the entire plaint, only two grounds have been raised, one, that the requisition letter is not signed by the members of the Society knowing the contents of the letter and the other is that the e-voting is not permissible. But in the course of

arguments, learned counsel for the applicant/plaintiff has developed several objections which have not been mentioned in the plaint at all. Therefore, the learned Senior Counsel requested this Court to reject those arguments.

36. The learned Senior Counsel finally submitted that disposal of the applications by this Court in O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020 on 29.04.2021, is only on a prima-facie consideration, and the rights of the parties have not been decided conclusively, which can be decided only at the time of disposal of the suit and therefore, the disposal of the above suit and O.As. may not be held against the third respondent herein for convening of the EGM on 23.04.2021.

37. The learned Senior Counsel, in regard to the legal contentions, relied on a decision of this Court reported in MANU/TN/0811/2013 = 2013 (3) LW 20 (MARumugam Vs. State of Tamil Nadu and others), and in particular, he referred to paragraphs 111 and 112 therein (in Manupatra), which are extracted hereunder:

"111. Thus the composition of the Board is the reflection of the composition of the general body and is a

representative of the interests of the society in all matters. Thus, if one can repose confidence in the capacity of members of the general body to elect members of the Board, it is totally illogical to think otherwise that the general body does not possess the competency or expertise to judge an applicant's merit so as to admit a member in the society. It must be kept in mind that the constitution of a cooperative society is made up of like-minded members who have joined together to form a society with a common object or purpose. For the purpose of achieving the object, for better conduct of business of the society which is a corporate body, powers are entrusted to a Board elected by the general body. Section 39 states "the registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted."

112. In the background of the above provisions of the Act and the powers of the Board which are exercised on matters specified under the byelaws and the statute, one can only say that it is a representative body of the larger body, to represent the interests of the society at large. It performs such duties as are conferred under the Act, Rules and the byelaws. Hence, the wisdom with which the Board acts, is the reflection of the collective wisdom of the general body and so too the collective wisdom of the general body reflected in the collective wisdom of the board. We do not find there exists any reason or facts to attribute and recognise greater wisdom and ability in the Board than the general body in the matter of appointment of new members. It must be remembered that while forming the society is the result of the consensus borne out of free will, the members associate with each other with a common purpose to be achieved. Thus, the Board is only an entity created out of the larger body to represent the larger body of the society consisting of the general body. Thus, the Board is only a convenient agency appointed to transact the business of the society on behalf of the society. Thus, unlike a Special Officer appointed only for the purpose of carrying on the day-to-day affairs of the society, till such time the elected body is appointed, the Board does not and cannot have powers larger than that of the general body which created it and it derives its strength only from the larger body. It is too pretentious

to think otherwise that the Board alone has the competency and the ability to decide on the admission of new members. Thus, all that the amendment seeks to achieve is to regulate the admission of new members from among the eligible members through the general body whenever the Board is not there. This is only a temporary measure till such time that the board is elected. Unlike the experience of the past 11 years where no elections were held, after the 97th amendment, in the context of Articles 243ZK and Article 243-ZL mandating the holding of the election to be before the expiry of the term of the board and suspension of the board for not more than six months, the present amended provision empowering the general body to admit new members is only a transitory provision. However, this aspect is not the only ground to hold that the provision is valid. As already pointed out, the capacity of the general body cannot, in any manner, be undermined to say that the Board alone has the expertise to admit new members. The need for observing transparency, deliberation and application of mind in the admission of new members are not qualities that the general body may have to search for, for, the scales that the general body possesses while electing members of the board is not less onerous than that the general body may have to have while admitting new members. Given the fact that the general body alone is the only authority to elect the board, the authority given to the Board in admitting new members could, only be regarded as the delegation of authority of the general body to the Board to appoint new members. Given the fact that the general body is the ultimate authority in a society Section 21 could only be regarded as the regulatory provision in the matter of admitting members, there could be no clash of interests between the board and the general body, that the board shall be recognised statutorily as having the authority to admit new members. It is also relevant to note that Section 33 itself states that the Board shall have such powers and perform such duties as may be conferred on or imposed by the Act, Rules and the byelaws, that under Section 25, an expulsion of a member of a registered society acting adversely to the interests of the society could be only through a resolution of the general body passed at a special meeting convened for the purpose, by the votes of not less than two-thirds of the total members present and voting at the meeting. The proviso to Section 25 states that for this, no such special meeting shall be called by the Board except upon the

requisition in writing by not less than one fourth of the total number of members of the society or 25 members, whichever is less. In the background of the above facts, it is difficult to treat the Board alone as the only supreme body having the capacity to admit members. Thus, if the State has the authority to regulate the admission of new members through one forum in a society, it has equally the authority to empower the only other forum in the society, in the event of the first empowered forum lying dormant or suffering incapacity to act in terms of the provisions of the Act, Rules and the byelaws. Given the fact that the general body alone is the one and only forum in the society in the place of the Board to admit members, rightly, the amendment filled up the vacuum, so that admission of new members to the society does not suffer. In so providing, we do not find any violation of Article 19(1)(c) or any unreasonableness to attract Article 14 of the Constitution of India. It is no doubt true that admission of a new member requires adjudication on the merits of the candidature of eligible person seeking admission. Thus, when the amended provision provides for admission of new members by the general body in the absence of the Board, in the same manner as has been done by the Board, one cannot visualise the admission by the general body as less voluntary, irrational or without application of mind. Thus, when the amended provision keeps intact the authority of the society to admit persons into its membership voluntarily with even option to either admit or reject the application, we do not find anything unconstitutional or unreasonable in the amended provision to hold that the amended provision does not protect the rights of the society/members to continue the association with the membership chosen voluntarily to retain its character and composition."

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38. The above decision has been relied on by the learned Senior Counsel in order to emphasise the point that the General Body is the ultimate authority in the administration of the Society and any decision

taken is binding on all the members. In this connection, he also referred to Bye-Law No.62 of the Society, which re-affirms the legal position. In particular, the said Bye-Law No.62 says that all decisions taken by the Board, shall be ratified by the General Body.

39. The learned Senior Counsel also submitted that in the meeting held on 23.04.2021, the list of members is shown who had participated and voted in the meeting. The learned Senior Counsel, while objecting to the principle of sub-judice being raised by the learned counsel for the applicant/plaintiff, has also relied upon a decision of the Supreme Court reported in MANU/SC/0307/2013 = 2013 (4) SCC 333 (Aspi Jal and others Vs. Kushroo Rustom Dadyburjor), wherein the Honourable Supreme Court held that Section 10 CPC is not applicable when few matters in issue were common and would apply only when the entire subject matter of controversy is the same. In fact, the Honourable Supreme Court in the abovesaid decision, had set aside the order of the High Court, which held otherwise.

40. The learned Senior Counsel submitted that, in this case, there are other Agenda which have been dealt with in the EGM, dated 23.04.2021 and therefore, the argument that the resolution contemplated therein amounted to re-agitating the issue, is without any substance and the same is liable to be rejected. The learned Senior Counsel summed up that there is no merit in the suit and particularly, the balance of convenience is not in favour of the applicant herein and therefore, prayed for dismissal of the O.A.

41. Mr.Silambanan, learned Senior Counsel appearing for the first respondent-Society (Madras Medical Mission (MMM)) submitted that calling for EGM by the third respondent and others, on the same subject amounted to nullifying the order of this Court, dated 06.09.2019 passed in O.A.No.816 of 2019 in C.S.No.523 of 2019, as confirmed by the Division Bench of this Court in O.S.A.No.238 of 2019 on 14.12.2020. The Society therefore rightly rejected the request of the third respondent, when the same was made on 11.01.2021. However, the EGM was convened illegally, towards sub-serving the personal interests of the third respondent and the other three suspended members. The learned Senior Counsel for the Society

thus adopted the arguments of the learned counsel for the applicant/plaintiff on the other aspects of the matter.

42. Heard the learned counsel/Senior Counsel for the parties, perused the pleadings, materials and the judicial decisions placed on record.

43. The most vital issue that falls for consideration herein is as to whether the third respondent herein and others, are entitled to call for the EGM at all, in view of the pending suit(s) before this Court touching upon various aspects of dispute, qua, the parties. As a corollary, another crucial consideration is whether at the instance of the suspended member of the Society, the suspension having been upheld by this Court, vide this Court's order dated 29.04.2021 in O.A.Nos.624 and 625 of 2020, though subsequently, after calling of the EGM, vide impugned notice dated 29.03.2021, would invite disapproval from this Court or not.

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44. The above issues being the fulcrum of the challenge in the proceedings, the same need to be answered focussing the attention of this

Court on them first. This Court would also examine in the judicial discourse of the other objections raised on behalf of the applicant/plaintiff in regard to the violation of the procedures while calling for the EGM by the third respondent.

45. The learned counsel for the applicant/plaintiff has placed focal reliance on the core purpose and essence of calling for the present EGM. According to him, the convening of the impugned EGM on 23.04.2021 amounted to re-agitating the same issues, which have already been considered by this Court and orders have been passed in O.A.No.816 of 2019 in C.S.No.523 of 2019 on 06.09.2019, confirmed by the Division Bench of this Court on 14.12.2020 in O.S.A.No.238 of 2019. Having failed in the attempt to succeed in convening EGM earlier, with similar Agenda and having invited adverse order against holding of the EGM from this Court, whether it is still open to call for the EGM once again with the same Agenda and purpose, is to be incisively examined by this Court as hereunder.

46. The starting point of the present controversy could be traced to a letter dated 18.07.2019 of one of the suspended members Mr.Cherian Abraham, former Treasurer of the Society, requisitioning for convening of EGM in terms of Section 28 read with Section 26 of the Act, 1975 and as per Bye-Laws of the Society. In the slated meeting, it was proposed to recall the resolutions passed by the EGM, dated 22.06.2019. The resolutions which were sought to be recalled, relate to the appointment of five member Audit Committee to conduct a forensic audit into the financial affairs of the Society and relating to the suspension of Dr.Jacob and himself from all positions of the Society.

47. The suspension of Dr.Jacob and Mr.Cherian Abraham, is the subject matter of challenge in C.S.No.329 of 2020 before this Court. However, before the suit was laid, challenging the suspension by the affected members, including Mr.Cherian Abraham, the suspension was sought to be undone by seeking a resolution to be passed by recalling of the same in the EGM to be convened on the basis of the request as conveyed by the said Cherian Abraham in his letter dated 18.07.2019. Along with the

said letter, dated 18.07.2019, the list of requisitionists was also enclosed. Thereafter, the said Cherian Abraham, on 17.08.2019, called for convening of the EGM on 08.09.2019. The only Agenda which was stated to be considered in the meeting was, "voting on recall of the resolutions passed at the Extra-Ordinary General Meeting of the Madras Medical Mission dated 22nd June, 2019".

48. The effect of the recall of the resolutions of the meeting dated 22.06.2019 was to overturn the decision of the Governing Board appointing five member Committee for forensic audit into the financial irregularities appeared to have been unearthed during the time of the said Cherian Abraham, the then Treasurer and the Honorary Secretary Mr.Jacob, and the decision suspending the above office bearers.

49. The applicant/plaintiff therein, who is also the applicant herein, in the above circumstances, approached this Court in C.S.No.523 of 2019 seeking to declare the EGM notice, dated 17.08.2019 as illegal, null and void on various grounds set out therein. Mr.Chерian Abraham was

arrayed as third defendant in that suit. Along with the Suit, Original Application in O.A.No.816 of 2019 was filed for interim injunction restraining the third respondent therein (Mr.Cherian Abraham) from convening the EGM on 08.09.2019. The above Original Application came up for hearing finally and after hearing the rival contentions, the learned Judge of this Court, on being convinced on a prima-facie consideration, had granted interim injunction as prayed for, vide order dated 06.09.2019. This order of the learned Single Judge has also been confirmed in appeal in Original Side Appeal (OSA).No.238 of 2019 by a Division Bench of this Court on 14.12.2020. No further appeal has been filed against the said order of the Division Bench and the order of the learned Single Judge in O.A.No.816 of 2019 in C.S.No.523 of 2019, has become final and binding on the parties.

50. The learned Judge in O.A.No.816 of 2019 in C.S.No.523 of 2019, while granting the interim injunction as prayed for, has, after adverting to the facts, clearly held that the enquiry had been initiated against the alleged irregularities and the investigation should be allowed to come to

a logical conclusion. It is useful to refer the observations/findings of the learned Single Judge in O.A.No.816 of 2019 in C.S.No.523 of 2019, in paragraphs 16 to 20, which are extracted hereunder:

"16. In the present case, it is not in dispute that one Dr.K.Jacob and the third respondent were elected as Honorary Secretary and Honorary Treasurer of the Governing Board of the first respondent in the year 2009 and 2010 respectively. It is the case of the applicant that for the check period 2011 to 2016, both of them had acted without transparency and accountability and hence, Money Committee was appointed to enquire into the money matters of the Society in the General Body Meeting on 17.09.2017. According to the applicant, Money Committee found financial irregularities amounting to Rs.186.63 Crores, but the Governing Board did not take the matter seriously. The factum of convening the Extraordinary General Body Meeting on 22.06.2019 and in the EGM, 5 Member Committee was appointed to conduct a Forensic Audit of the financial affairs of the Society, are not disputed and the third respondent has also not challenged the Resolution.

17. It is an admitted fact that the Forensic Audit is not yet completed and in the meanwhile, the third respondent issued the notice dated 17.08.2019 to recall the Resolutions passed in the meeting on 22.06.2019. Though the learned Senior Counsel appearing on behalf of the third respondent contended that Members of the first respondent-Society have been prevented to

participate in the EGM and their proxy votes were not taken note of, no materials have been produced in support of the contention. It is pertinent to note that the Money Committee was formed in the year 2017 and they found huge irregularities in the functioning of the first respondent-Society amounting to Rs.186.63 Crores. Considering the magnitude of the amount involved in this case, in my considered opinion, it should be allowed to come to a logical conclusion.

18. It is relevant to note that the impugned notice has been issued to convene EGM for voting on the Agenda of recall of the resolutions passed at the EGM held on 22.06.2019. So, any decision to be taken in the meeting would certainly have impact on getting a report from Forensic Agency. Hence, this Court does not find any force in the contention of the learned Senior Counsel for the third respondent that no decision will be taken at the EGM on the report of the Minority Committee.

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 Division Bench of this Court in CDJ 2003 MHC 1638 (The Madras Medical Mission and others Vs. State of Tamil Nadu) 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 Division Bench referred supra, it would not be appropriate to permit the parties to hold EGM as per the impugned notice. The decision referred by the learned Senior Counsel for the third respondent is distinguishable on facts and in view of the earlier judgment on the same point, with great respect, I am not able to follow the decision of the Division Bench in [(2018) 2 Mad LJ 330] (Sundar V.Srinivasan Vs. T.Ramasatyanarayana).

20. For the foregoing reasons and discussions, this Court is of the considered opinion that the applicant has made out a strong prima-facie case for grant of interim injunction. In that view, this application is ordered as prayed for."

51. In the appeal against the said order dated 06.09.2019 passed in O.A.No.816 of 2019 in C.S.No.523 of 2019, the Division Bench of this Court has categorically concluded as under in paragraph 20:

"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."

52. From the above, it could be seen that calling for the EGM on 08.09.2019 at the instance of one of the suspended members, facing enquiry was to completely undo the decision taken in the earlier EGM held on 22.06.2019, appointing Committee to conduct Forensic Audit into the financial irregularities and the suspension of members allegedly responsible for the same. This Court, both by the learned Single Judge as well as the Division Bench strongly observed that the appointment of the Committee to conduct forensic audit into the financial irregularities cannot be stalled or derailed and in that view, injunction was granted against the convening of the EGM on 08.09.2019. The finding of the learned Judge was that the Money Committee formed in 2017 found huge irregularities amounting to

Rs.186.63 crores, considering the magnitude, the enquiry should be allowed to come to a logical conclusion. This is as far as the dispute relating to the enquiry into the financial irregularities is concerned.

53. The other dispute, namely suspension of members, the same was sought to be recalled by passing resolution in the meeting dated 08.09.2019. Eventually, as it turned out, the suspension has been put to challenge in C.S.No.329 of 2020 by the affected four individual members. Although initially a learned Single Judge of this Court has passed an order on 04.12.2020 in O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020, permitting the suspended members to participate and vote in the meetings of the Society, notwithstanding their suspension, yet this Court ultimately upheld the suspension, vide its order dated 29.04.2021, thereby bringing to an end the interim order enjoyed by the suspended members.

54. In the face of the above developments, there are two important legal aspects to be examined. Firstly, whether at all it is open to the affected members to re-agitate the issues once again in the face of the injunction

granted by this Court against the EGM scheduled on 08.09.2019 or not? Further, the injunction order having become final and binding, the present attempt of convening of the EGM subsequently for the very same purpose, is legally permissible or it amounted to over-reaching the decision of this Court. Secondly, whether taking note of the subsequent development, namely the suspension of the third respondent being upheld by this Court, vide order dated 29.04.2021 in O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020, the present notice calling for the EGM by a suspended member, could be held valid or not ?

55. Although the learned Senior Counsel for the third respondent vehemently submitted that there was no concept of sub-judice in common law remedy and also cited decision on the application of Section 10 of the Civil Procedure Code (CPC) and res-judicata, such submissions are reductive in nature, missing sight of the apparent oblique motive of the suspended members to get around the binding order of this Court deviously calculated to serve their ends. The parties may be different herein and one or two marginal issues may have a different scope and application, yet in

consideration of the kernel of the dispute, the impugned EGM called for by the third respondent in substance and essence is to recall the resolutions passed by the EGM on 22.06.2019, which was the core subject matter of consideration in C.S.No.523 of 2019. As rightly contended by the learned counsel for the applicant/plaintiff, the affected members having failed to obtain any relief in the above said proceedings before this Court, has once again resurrected the settled issue by calling for the EGM, vide communication, dated 11.01.2021 of the third respondent. The call for the EGM with the same Agenda, particularly at the instance of the third respondent, is amounted to nullifying the decision of this Court in the above said proceedings.

56. In the considered view of this Court, the request of the third respondent for convening an EGM with the alleged support of several members of the Society, as conveyed by his communication, dated 11.01.2021, is a brazen ploy to hood-wink and over-reach the orders of this Court passed in O.A.No.816 of 2019 in C.S.No.523 of 2019, dated 06.09.2019, which was confirmed in O.S.A.No.238 of 2019 on 14.12.2020

by the Division Bench of this Court.

57. This Court, while holding as above, is nevertheless conscious of the fact that it is always open to the Society to recall its own resolution, if the General Body of the Society genuinely is of the opinion that its earlier resolution required re-consideration due to any change of circumstances like for example forensic audit report, ultimately, not finding any wrong doing on the part of the members concerned. But in this case, the affected members are in the forefront of convening the EGM for recalling of the earlier Governing Board's decisions taken against them. The intention is so bare, blatant and unconcealed, the call for the impugned EGM on 23.04.2021 cannot furtively be claimed as a bona-fide action of the General Body in furtherance of the interest of the Society. A member cannot be allowed to call for the EGM with malicious purpose of reversing the decisions of this Court, when the very convening of the EGM with the identical purpose and Agenda, was the subject matter of challenge and the orders were passed by this Court against convening of the EGM, which has become final and binding on the parties.

58. In the above circumstances, if this Court were to allow the EGM to go ahead, it would amount to giving a stamp of approval for the machination of the third respondent intended to serve his own ends. There are two aspects of the civil litigation touching upon the management and affairs of the registered Society. One is non-interference and the other is interference. Every dispute relating to the internal management of Society does not perforce call for interference, as Court would be cautious and wary while making its foray into the internal administration of the Society. But, at the same time, there are situations where interference is the inevitable remedy to protect and safeguard proper management of the Society concerned. This is one such case where exercise of power of interference, appears to be the peremptory option for this Court in the over-all appreciation of the facts and circumstances of the case.

59. Moreover, this Court has also taken into consideration the pending suits touching upon various disputes among the parties, which also have a vital relevance for its interference in this case. The suit in

C.S.No.329 of 2020 related to the challenge of the suspension by the affected four members, which had ended in final orders being passed by the learned Single Judge in O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020, dated 29.04.2021. If the present EGM is allowed to go ahead with this malicious Agenda, as this Court finds them on a prima-facie consideration that the abovesaid order passed by the learned Single Judge, dated 29.04.2021 in the aforementioned O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020, would also be rendered infructuous, at the instance of one of the suspended member himself. When the effect of allowing EGM to proceed further would unmistakably enure to the advantage of the suspended members, this Court certainly would not become a party to the scheme behind calling for the impugned EGM. Although the learned Senior Counsel argued on behalf of the third respondent that there are other Agenda proposed in the EGM like admission of 23 new members, etc., yet, even the issue of admission of 23 members, is the subject matter of "lis" in another suit in C.S.No.389 of 2020, which has also been heard together for disposal along with the present application. As regards opening up admission to all life members, the said agenda would be part of the context,

qua, parties in the above suit.

60. In a nut-shell, what the present EGM is seeking to achieve is to set the clock back, restoring status-quo-ante that was prevailing prior to the EGM held on 22.06.2019. In simple terms, the affected individuals, as a consequence of the decision of the EGM on 22.06.2019 and the decision of this Court in O.A.No.816 of 2019 in C.S.No.523 of 2019, dated 06.09.2019, confirmed in appeal in O.S.A.No.238 of 2019 on 14.12.2020, are mischievously attempting to outmanoeuvre the action taken by the General Body and the orders of this Court.

61. In the above consideration, the decisions relied on by the learned counsel for the applicant/plaintiff, reported in 2014 (12) SCC 696 and in 2002 (4) SCC 188, the relevant paragraphs have been extracted supra, the Honourable Supreme Court clearly ruled that it is not open to the State to nullify the well-considered decision of the Court. One of the tests to find out any usurpation of judicial power by the Legislature is to see whether the law and the judgment are inconsistent and irreconcilable so that

both cannot stand together.

62. When the Legislature itself is denuded of its power to nullify the effect of the order of the Courts in certain circumstances, the case on hand is far worse and it requires no great discussion to discountenance the call for the impugned EGM on 23.04.2021 by a suspended member of the Society, in utter disregard to the ruling of this Court in the aforementioned proceedings.

63. On behalf of the applicant/plaintiff, one other decision of a Division Bench of this Court, was also cited, reported in 2016 SCC Online Madras 9701 (supra), wherein, in paragraphs 15 and 16 extracted supra, the Division Bench has held that when a party failed to obtain orders before the High Court and moving Civil Court for the same relief, the proceedings initiated by a party be struck-off on the ground that the party approached the Court with unclean hands. In the case on hand also, the affected parties having failed to obtain any relief from this Court, despite contest, the impugned notice dated 29.03.2021 by the third respondent/third defendant

is to be held as tainted with mala-fides.

64. On behalf of the applicant/plaintiff, there are other decisions relied upon on the legal aspect of the interim order merging with the final order [2010 (9) SCC 437 (supra)], and also in regard to the Doctrine of Restitution [2020 (8) SCC 129 (supra)]. The learned counsel for the applicant/plaintiff particularly emphasised the principle of restitution, as succinctly observed by the Supreme Court of India in the decision reported in 2020 (8) SCC 129 (supra), wherein in paragraph 335, while quoting the earlier judgment of the Supreme Court in South Eastern Colafields Ltd. Vs. State of M.P. [2003 (8) SCC 648] by referring to paragraphs 26 to 28 in that judgment, has held that the principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure (CPC), 1908. The scope of the provision was held to be wide enough to include almost all kinds of variations, reversal, setting aside or modification of a decree or order. On the same lines regarding the restitution principle, one other decision was also referred to by the learned counsel for the applicant/plaintiff, reported in 2011 (1) SCC 216 in paragraph 38, which

has been extracted supra. It is worth to again extract the important observations of the Honourable Supreme Court in paragraphs 26 to 28 in the case of South Eastern Coalfields Limited, as under:

“26. In our opinion, the principle of restitution takes care of this submission. The word “restitution” in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan v. Board of Revenue, U.P.* [Zafar Khan v. Board of Revenue, U.P., 1984 Supp SCC 505]). In law, the term “restitution” is used in three senses : (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See *Black's Law Dictionary*, 7th Edn., p. 1315). *The Law of Contracts* by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that “restitution” is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:

‘Often, the result under either meaning of the term would be the same. ... Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.’

The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. ...

27. ... This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (*A. Arunagiri Nadar v. S.P. Rathinasami* [*A. Arunagiri Nadar v. S.P. Rathinasami*, 1970 SCC OnLine Mad 63]). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the “act of the court” embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. ... the concept of restitution is *excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order* even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money

had remained in operation.”

(emphasis supplied)"

65. The above rulings of the Supreme Court, relied on by the learned counsel for the applicant/plaintiff, in the opinion of this Court, are apposite and deserve to be squarely applied to the factual matrix of this case, more importantly, in the back-drop of the present development that, on 29.04.2021, the suspension of the third respondent along with three others, has been upheld by the learned Single Judge of this Court in O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020.

66. Although this Court is conscious of the fact that the third respondent had the benefit of the interim order passed by this Court on 04.12.2020 in O.A.Nos.624 and 625 of 2020 in C.S.No.329 of 2020, allowing him to participate and vote in the election by virtue of the order and he had even contested the election, yet, in retrospect, when this Court finds that the very suspension order being upheld in O.A.No.624 and 625 of 2020 in C.S.No.329 of 2020, the interim order passed by the learned Single

Judge automatically merged with the final order. In that view of the matter, when the dispute, qua, parties is taken up for consideration, this Court cannot lose sight of the fact of the order passed by the learned Judge, dated 29.04.2021 upholding the suspension of the third respondent and others.

67. This Court, though informed about the filing of the O.S.A. against the said decision, but it appeared that no orders were passed in the appeal or atleast it was not brought to the knowledge of this Court when these matters were heard and reserved for orders. In the said circumstances, the principle of restitution comes into play as a necessary consequence of the conclusion of this Court in these proceedings. The third respondent thus ought not to be allowed to reap any outdated advantage of the interim order obtained by him in the present proceedings.

68. It is a fundamental principle in law that suspended member of the Society cannot have any right to question the activities or affairs of the Society, nor he can initiate any action calling for any meeting, except questioning his or her own suspension. As the suspension of the third

respondent being upheld by this Court, the third respondent has lost his locus-standi in convening of the EGM himself, vide his notice, dated 29.03.2021. On the short ground alone, the interim injunction as prayed for by the applicant, has to be granted, without any hesitation.

69. As stated above, the other Agenda in the meeting, namely admission of 23 additional members and also opening up membership to all life members, is again a subject matter of inter-se dispute in C.S.No.389 of 2020, which is also pending consideration by the Court along with the present proceedings. Therefore, the contention that there are other Agenda, besides the suspension issue, are merely a ruse for the call of the EGM, which in the opinion of this Court is without any substance or merits.

70. In regard to the contention that all requisitionists are not made parties in this suit, and therefore, the suit is to be dismissed for non-joinder of parties, this Court is unable to appreciate the said contention at this stage, as it is always open to the applicant/plaintiff to implead necessary and proper parties, if need arises in future. In any event, such submission at this

stage, certainly cannot tilt the scales of consideration of balance of convenience in favour of the third respondent herein.

71. The other objection raised on behalf of the applicant that the requisition made by the third respondent on 11.01.2021, is not in proper format as provided under the Bye-Laws, and rebutted by the learned Senior Counsel for the third respondent that no affidavit has been obtained from any of the signed members to the effect that they were not aware of the contents of the requisition letter. In the opinion of this Court, the contentions raised on behalf of the applicant in this regard, has some force. Enclosure of blank sheets containing only the signatures of 59 members, attached to the requisition letter dated 11.01.2021, calling for the EGM by the third respondent, raises a reasonable doubt as to whether any member was fully aware of the contents of the letter or not. The requisition letter as such contains the signature of the third respondent alone and all others have affixed their signatures in the blank sheets. The argument that no affidavit is filed by any signatory to the letter dated 11.01.2021 claiming ignorance of the contents of the letter and therefore, the allegation is contrary to fact or

records, may be a good defence at the time of the trial of the suit. But prima-facie, obtaining signatures in blank sheets from all members sponsoring the registration, nevertheless gives rise to a reasonable and genuine inference against the reliability of the sponsorship of 59 members in calling for the subject EGM.

72. There are other contentions as to whether 21 clear days' notice was given or not, before fixing the date of EGM. The rival contentions have been to the effect there was a clear 21 days' notice available, as the meeting was slated only on 23.04.2021 and on the other hand, it has been contended that e-voting had remained open from 20.04.2021 onwards itself and if this date is taken into consideration, there was no clear 21 days' notice. In the opinion of this Court, this submission whether the notice in fact, complied with 21 days mandate or not, does not merit serious consideration at this stage, as on more substantive grounds, the call of the impugned EGM, vide notice dated 29.03.2021, is to be held on a prima-facie consideration, illegal and cannot be sustained in law.

73. In the circumstances, the present O.A.No.251 of 2021 in C.S.No.159 of 2021, is allowed as prayed for. No costs.

74. As the Resolution calling for the EGM itself is now held to be illegal, any resolutions passed in the meeting held on 23.04.2021, will have no legal effect and the same is incapable of being legally enforced.

75. List the suit for filing written statement on 29.10.2021, along with C.S.Nos.389, 364 and 329 of 2020 and 204 of 2021.

01.10.2021

Index: Yes/no

Speaking Order: Yes

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V.PARTHIBAN, J

CS



Pre-delivery Judgment
in O.A.No.251 of 2021
in C.S.No.159 of 2021

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Order pronounced on 01.10.2021