

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 18.01.2021

Pronounced on : 02.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Application No.2335 of 2020 in
Civil Suit No.199 of 2020

1.The Research Foundation for Jainology,
Represented by its General Secretary,
Krishna Chand Chordia,
No.18, Ramanuja Iyer Street,
Sowcarpet, Chennai - 600 001.

2.Krishna Chand Chordia,
General Secretary,
The Research Foundation for Jainology,
No.18, Ramanuja Iyer Street,
Sowcarpet, Chennai - 600 001.

3.The School Management Committee,
The Jain Vidyashram,
No.150, Othawaada Street,
Puzhal, Chennai - 600 066.

4.S.Krishna Chand Chordia,
Alleged General Secretary,
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

... Applicants /
Defendants 1, 2, 4 & 13

versus

1.Raj Chordia @ K.Manohar Raajh Chordia,
S/o.Krishna Chand Chordia

2.Esaani Chordia,
W/o.Raj Chordia,
Both residing at
No.170, Vegetarian Village,
Puzhal, Chennai - 600 066.

Respondents 1 & 2 /
Plaintiffs

3.The Jain Vidyashram,
A Unit of The Research Foundation for Jainology,
Represented by its Principal,
Having its Head Office at
No.18, Ramanuja Street,
Sowcarpet, Chennai - 600 001.

4.Jaya Prakash Lalwani,
Executive Member,
The Research Foundation for Jainology,
No.18, Ramanuja Iyer Street,
Sowcarpet, Chennai - 600 001.

5.The Karur Vysa Bank,
Red Hills Branch,
Represented by its Branch Manager,
No.5/2, Sri Subashini Complex,
Vallalar Street, Kamaraj Nagar,
Red Hills, Chennai - 600 052.

6.Shanthilal Kothari,
Alleged President,
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

7.Hans Raj M.Mutha,
Alleged Vice President
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

8.Shanti Lal Jain,
Alleged Vice President
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

9.P.Mitha Lal Jain,
Alleged Vice President
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

10.J.Mohan Lal Chordia,
Alleged Vice President
Research Foundation for Jainology,
No.18, Ramanuja Iyer Street,
Sowcarpet, Chennai.

11.Goutham Chand Mutha,
Alleged Vice President
Research Foundation for Jainology,
No.18, Ramanuja Iyer Street,
Sowcarpet, Chennai.

12.Nemi Chand Kothari,
Alleged Secretary
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

13.Amrit Lal N.Daga,
Alleged Treasurer,
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

14.Badal Chand Chhajer,
Alleged Joint Treasurer,
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

15.P.C.Chopra,
Alleged Joint Treasurer,
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

16.Mahendra Kumar Jain,
Alleged Joint Secretary,
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

17.Mahendra Chand Chordia,
Alleged Joint Secretary,
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

18.Sampath Kumar Bagmar,
Alleged Joint Secretary,
Research Foundation for Jainology,
No.18, Ramanujar Street,
Sowcarpet, Chennai.

... Respondents 3 to 18 /
Defendants 3, 5 to 12,
14 to 20

Prayer: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 8(1) of the Arbitration and Conciliation Act read with 96 of C.P.C., to refer the above C.S.No.199 of 2020 pending on the file of this Court to the Arbitration as contemplated in the Clause No.26 of the Bye Law of the Research Foundation for Jainology.

For Applicants / : M/s.R.Aparna
Defendants 1, 2, 4 & 13

For Respondents 1 & 2 / : Mr.AR.L.Sundaresan
Plaintiffs Senior Counsel
for M/s.AL.Ganthimathi

For Respondents 3 to 18 / : M/s.K.Jamuna
Defendants 3, 5 to 12, 14 to 20

ORDER

The defendants 1, 2, 4 and 13 in C.S.No.199 of 2020 pending on the file of this Court have filed this application praying to refer the above referred suit to the Arbitration as contemplated in the Clause No.26 of the Bye-Laws of the Research Foundation for Jainology.

2. Heard M/s.R.Aparna, learned Counsel appearing for the applicants, Mr.AR.L.Sundaresan, learned Senior Counsel representing M/s.AL.Ganthimathi for the respondents 1 & 2 and M/s.K.Jamuna, learned Counsel appearing for the respondents 3 to 18 through Video Conferencing.

3. The learned counsel appearing for the applicants would submit that after suppressing Clause 26 found in the Bye-Laws, which relates to the first defendant / first applicant, the respondents 1 and 2 / plaintiffs have filed the above referred Civil Suit against the applicants / defendants 1, 2, 4, 13 and others, prayed reliefs in respect to the Annual General Body Meeting held on 20.10.2019 and in respect to the resolution dated 27.02.2020 of the 2nd defendant and for various other reliefs.

4. The learned counsel would further contend that since the arbitration clause is available in the Bye-Laws, if any dispute arise between the members of the first defendant Society, the same has to be necessarily referred to arbitration. But the respondents 1 and 2 / plaintiffs without choosing that mode, filed a suit, which is against the arbitration clause as

contemplated under clause 26 of the Bye-Laws of the first defendant. Therefore, it is necessary to refer the above suit for arbitration.

5. In response to the contention raised by the learned counsel appearing for the applicants, Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of the plaintiffs / respondents 1 and 2 would contend that the dispute now referred in the suit is not arbitral. Further, the said arbitration clause now stated by the applicants can be used only to resolve the dispute, which arise between the members of the first defendant Society. On the other hand, here it is a case, the second plaintiff is the wife of the first plaintiff, who is not a member of the first defendant / Research Foundation for Jainology. Therefore, the said arbitration clause could not be invoked in respect to the dispute having by the plaintiffs with the defendants and accordingly, he prayed to dismiss this application.

6. I have considered the rival submissions made on either side and perused the records carefully.

7. It is not in dispute that the first defendant, viz., The Research Foundation for Jainology is having Bye-Laws, in which, Clause No.26 reads as follows;

"26. ARBITRATION.

Should any dispute arise between any member or members of the Foundation relating to any alleged deviation from the objectives or violation of any of these by-laws or rules framed thereunder or regarding any other subject which cannot be satisfactorily settled under the procedure already laid in these by-laws for such purpose, such dispute shall be settled by arbitration. Each party shall appoint an arbitrator and the arbitrators shall appoint an umpire. Only members of the Foundation shall be appointed as arbitrators or as umpires. Decision of the arbitrators or, in the event of their disagreement, the decision of the umpire shall be final and binding on all parties. No member of the Society can have any recourse to Courts of Law without first submitting to the arbitration."

8. On whole reading of the above said clause, it reveals the fact

that the dispute arise between any member or members of the Foundation

relating to any alleged deviation alone can be referred to arbitration. But here it is a case, the learned counsel for the respondents 1 and 2 would specifically contend that the second plaintiff is not a member of the first defendant Society. Therefore, the said circumstances alone is sufficient to hold that the prayer sought for by the applicants cannot be granted.

9. In this regard, it is necessary and useful to see the judgment of our Honourable Apex Court in **SUKANYA HOLDINGS (P) LTD. vs. JAYESH H. PANDYA** reported in **(2003) 5 SCC 531** wherein it has held as follows;

“15. The relevant language used in Section 8 is: "in a matter which is the subject matter of an arbitration agreement". The court is required to refer the parties to arbitration. Therefore, the suit should be in respect of a “matter” which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced - "as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words “a

matter” indicate that the entire subject-matter of the suit should be subject to arbitration agreement.”

10. Therefore, applying the ratio laid down in the above referred judgment, in this application, since the second plaintiff is not a member in the first defendant Society, she cannot be compelled to go for arbitration.

11. Secondly, now on going through the plaint, the plaintiffs / respondents 1 and 2 had prayed the following reliefs;

“a) declaring the alleged Annual General Body Meeting held on 20.10.2019 for the 1st defendant Society and the alleged election of Defendants 2 and 7 to 20 as the Executive Committee Members as illegal and void;

b) declaring that the resolution dated 27.02.2020 of the 2nd defendant on behalf of the 3rd defendant circulated on 10.03.2020 as illegal, null and void and not binding on the plaintiffs;

c) declaring that the resolution dated 04.03.2020 of the 2nd defendant as illegal, null and void and not binding on the plaintiffs;

d) declaring that the resolution dated 09.03.2020 of the 2nd defendant as illegal, null and void and not binding on the plaintiffs;

e) permanent injunction restraining the defendants 2, 7 to 20 from in any manner claiming, acting or discharging any functions or duties or powers as Executive Committee Members of the 1st defendant Society pursuant to the alleged election dated 20.10.2019 or on any other date;

f) permanent injunction restraining the defendants 2, 7 to 20 from in any manner interfering with the plaintiffs continuing the function as Members of the 4th defendant School Committee, in charge of the administration, management and financial control of the 3rd defendant School;

f) permanent injunction restraining the 5th defendant from in any manner acting in the affairs of the 3rd defendant based on the Resolution dated 27.02.2020 circulated on 10.03.2020.”

12. Further, in the plaint averments, the plaintiffs / respondents 1 and 2 herein categorically stated that the election will be conducted only upon the regulations and procedures contemplated in the Bye-Laws. In this regard, since the relief prayed for by the plaintiffs is in respect to the conducting of election itself, that amounts to challenge the validity of the

Bye-Laws and other things. Now applying Section 26 of arbitration clause with the prayer sought for by the plaintiffs, it could be concluded as the allegation levelled by the plaintiffs in respect to the conducting of election and other things is not arbitral in nature.

13. In this regard, in the case of **BOOZ ALLEN AND HAMILTON INC. vs. SBI HOME FINANCE LTD.** reported in (2011) 5 SCC 532 our Honourable Apex Court has held as follows;

“34. The term “arbitrability” has different meanings in different contexts. The three facets of arbitrability, relating to the jurisdiction of the Arbitral Tribunal, are as under :

(i) Whether the disputes are capable of adjudication and settlement by arbitration? That is, whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties (the Arbitral Tribunal) or whether they would exclusively fall within the domain of public fora (courts).

(ii) Whether the disputes are covered by the arbitration agreement? That is, whether the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the

“excepted matters” excluded from the purview of the arbitration agreement.

(iii) Whether the parties have referred the disputes to arbitration? That is, whether the disputes fall under the scope of the submission to the Arbitral Tribunal, or whether they do not arise out of the statement of claim and the counterclaim filed before the Arbitral Tribunal. A dispute, even if it is capable of being decided by arbitration and falling within the scope of arbitration agreement, will not be “arbitrable” if it is not enumerated in the joint list of disputes referred to arbitration, or in the absence of such joint list of disputes, does not form part of the disputes raised in the pleadings before the Arbitral Tribunal.”

14. Therefore, applying the ratio laid down in the above referred judgment by our Honourable Apex Court with the facts of this case also, since the plaintiffs challenged the validity of election, the same is not come under the scope of arbitration.

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15. Therefore, I am of the view that though there was arbitration clause found in the Bye-Laws of the first defendant, because of the above referred two reasons, the same cannot be invoked at this stage.

16. Accordingly, this application is dismissed.

02.02.2021

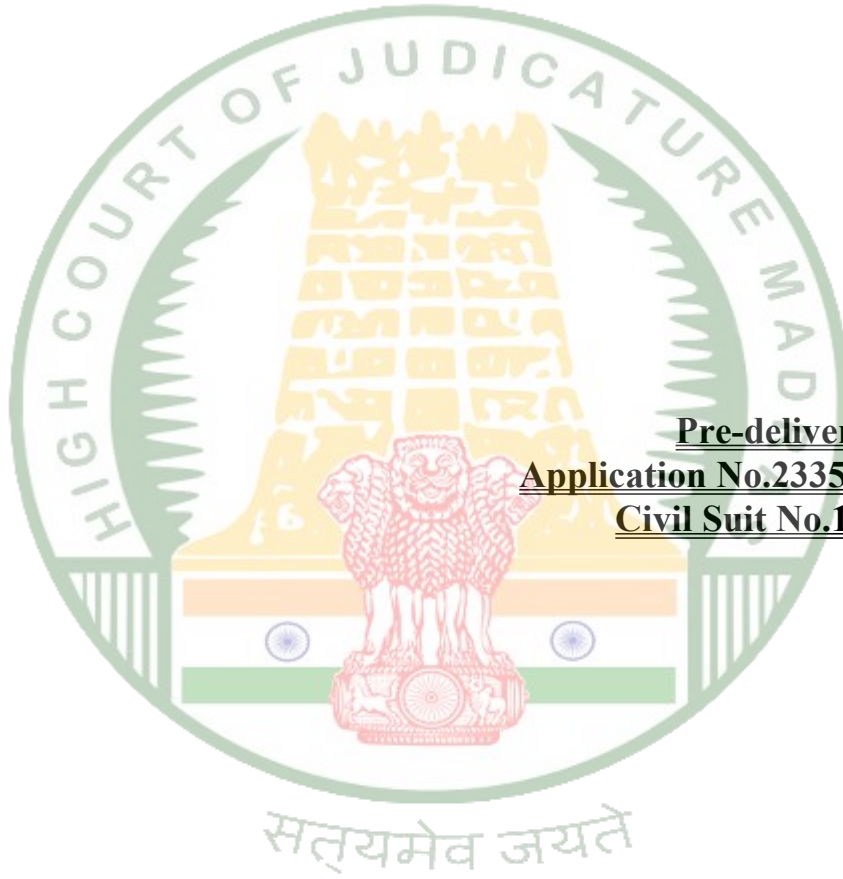
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R.PONGIAPPAN, J.

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Pre-delivery order in
Application No.2335 of 2020 in
Civil Suit No.199 of 2020

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