

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.09.2021

Pronounced on : 28.10.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

A.No.3075 of 2021 in
C.S.No.257 of 2021

The Bishop/Election Officer,
Kanyakumari Diocese,
Church of South India,
71-A, Dennison Street,
Nagercoil,
Kanyakumari District 629 001.

... Applicant

Vs.

1.Dr.K.Jegan

2.The Church of South India, Synod,
Rep by its General Secretary,
CSI Centre,
No.5, Whites Road,
P.O.Box.No.688, Royapettah, Chennai 600 014.

3.The Diocese of Kanyakumari,
Rep by its Secretary,
Church of South India,
71-A, Dennis Street, Nagercoil,
Kanyakumari District 629 001.

4. The Moderator,
The Church of South India, Synod,
Rep. by its General Secretary,
CSI Centre, No.5, Whites Road,
P.O.Box.No.688,
Royapettah, Chennai 600 014.

.. Respondents

PRAYER : Application filed under Order XIV Rule 8 r/w Order 3 Rule 1 of Madras High Court Original Side Rules of C.P.C., praying to revoke the leave granted to the first respondent in A.No.2915 of 2021 to file the suit against defendants 2 and 3.

For applicant : Mr.V.Selvaraj, Senior Counsel for
M/s.S.Bharathi Rajan

For respondents : Mr.V.Anand for R1
Mr.NGR.Prasad for R3
Mr.Adrian D Rozario for RR2 & 4

ORDER

The applicant herein is the third defendant in the suit. The application has been filed by him seeking revocation of leave granted by this Court in A.No.2915 of 2021, dated 26.08.2021, at the instance of the first respondent herein, the plaintiff in the suit. This Court has granted leave to file a suit against the defendants 2 and 3 in the suit under Clause 12 of the Letters Patent. This Court being satisfied with the reasons set forth in the affidavit filed in support of that application and finding a part

of the cause of action arising within the jurisdiction of this Court, has granted leave as prayed for in that application.

2. While granting leave, this Court has also taken into consideration that the election to the Kanyakumari Diocese which is the subject matter of *lis* in the suit, was a result of permission being granted by the first respondent Synod, the Apex Body of the Church of South India (hereinafter referred to as CSI), having its address at No.5, Whites Road, Royapettah, Chennai-600 014. The fourth respondent/fourth defendant is the Moderator and the head of the CSI Church, having his office as above. Having perused certain communications exchanged between the applicant herein and the Apex Body viz., the Synod, the first respondent herein, finding substance in the application seeking leave to sue, leave was granted by this Court on 26.08.2021.

3. In the above backdrop, the facts and circumstances that led to the filing of the leave application and the present one, are briefly stated hereunder:

(a) The second respondent/defendant being the Supreme Governing Body of the CSI and in control of all the dioceses spread across the Southern part of India, any election to the individual diocese is to be conducted under its supervision and oversight, in terms of the CSI Constitution. According to the applicant, the election to the second defendant Diocese was already overdue and therefore, permission to conduct election at a later point of time was to be obtained from the Apex Body, in terms of the CSI Constitution.

(b) In the above circumstances, the applicant herein, the Bishop and the Election Officer of the third defendant Kanyakumari Diocese, sought permission *vide* his letter dated 26.05.2021, from the Apex Body, the Synod, seeking extension of time for the conduct of election to the Diocese in terms of the CSI Constitution. In consideration of the request, the Apex Body which is in over all control of all the Dioceses including the second respondent Diocese, the first defendant Synod *vide* its reply dated 08.06.2021, directed the diocese to convene the council meeting within three months from the expiry of the term of the old council in terms of its

constitutional provisions. In pursuance of the exchange of communication between the first defendant and the third defendant, final notice dated 10.08.2021, was issued by the second defendant announcing the date of election to the Diocese, which is the subject matter of the main *lis* in the suit. The leave to sue had been granted in the above factual context to sue the respondents 2 and 3 herein, who are located outside the jurisdiction of this Court.

(c) The applicant herein, the third defendant in the suit appeared to have been aggrieved by the discretionary power exercised by this Court under Clause 12 of the Letters Patent, has come up with the present application to revoke the leave on two grounds.

(i) that the suit being filed in a representative capacity and against the unregistered body, permission ought to have been obtained under Order I Rule 8 of C.P.C. Failure to comply with Order I Rule 8 by the applicant/plaintiff resulted in plaint not being in accordance with the provisions of Order II of the Original Side Rules and thus, grant of leave to sue was legally impermissible;

(ii) That this Court granted leave without giving any opportunity to the applicant herein and had orally observed that the applicant counsel was not entitled to be heard at the time of grant of leave.

4. The objection of the applicant herein to the grant of leave to sue on the ground namely non-compliance with Order I Rule 8 of C.P.C., is peremptorily to be addressed first, before dealing with the allegations of denial of opportunity of hearing him before the leave was granted in the matter.

5. Mr.V.Selvaraj, learned Senior Counsel for the applicant herein who appeared at the time when the leave was granted, on behalf of the second and third defendants, at the outset, would submit that unless permission is obtained under Order I Rule 8 of C.P.C., the plaintiff cannot seek leave to sue, as the suit itself cannot be construed as properly instituted in terms of the Original Side Rules of this Court. According to him that obtaining permission under Order I Rule 8 of C.P.C., is mandatory before institution of the suit and in the absence of compliance

with the said legal requirement, grant of leave by this Court is not in order and hence, the same needs to be revoked.

6. In support of his submission, the learned counsel referred to the following decisions:

(i) ***O.A.Nos.189 & 190 of 2012 and A.Nos.1475 and 1891 of 2012 in C.S.No.174 of 2012 dated 16.05.2012, in the case of Arthur Mohan Singh Vs. Church of South India.*** According to him, the learned Judge of this Court has held that without leave under Order I Rule 8 of C.P.C., it cannot be said that there is a suit against the defendants. The learned Judge ultimately held that failure to obtain permission under Order I Rule 8 of C.P.C., to file a suit as against the defendants 1 to 3 therein, the plaint has to be returned for compliance.

(ii) The learned counsel referred to another decision reported in ***AIR 1987 Madras 187, in the case of The Assistant Commissioner, HR&CE, Salem Vs.Nattamai K.S.Ellappa Mudaliar.*** He would particularly draw the attention of this Court to paragraph Nos. 9 and 21 which are extracted hereunder:

“9. Order 1, Rule 8, Code of Civil Procedure enables one or more persons to sue on behalf of numerous persons having the same interest with the permission of the Court. If an individual seeks to advance the claim of it group of persons, he is enabled to do so, by virtue of the provisions of O. 1, R. 8, Civil P.C., but the procedure prescribed therein should be strictly followed. The benefit of the rule is available only to persons who fulfil the requirements thereof. It is well known that there is a clear legislative concern in the entire Code indicating the Court should make judicial orders only after hearing the persons likely to be affected by any decision in any cause. If a person is permitted to sue as a representative of another, or a group of persons, it is a matter of far reaching effect as it is likely to affect the interests of those who may not participate at the hearing of the suit. Such persons are obviously entitled to put forth their objections to the filing of the suit and to the capacity of the representative who seeks either to be the plaintiff or defendant and even to the merits of the cause. All that will be possible only if the party sought to be represented is given an opportunity to raise objection, if any. It is only in accordance with the said salutary principle, the procedure in O. 1, R. 8, Civil P.C. has been prescribed. The object of the rule is to avoid unnecessary

tedium and expense of litigation and to give a binding force to the decision which may be ultimately passed in the suit. A person cannot seek to advance the claims of a group of persons or community without adopting the procedure under O. 1, R. 8, Civil P.C., if the relief is prayed for only on the basis of the rights of the community as such. It is no doubt true that O.1, R. 8 , Civil P.C. presupposes that each one of the numerous persons by himself has a right of suit. If a person himself has no such right to sue, he cannot be permitted to sue on behalf of toe others who have a fight. But, the distinction has to be maintained between cases where the individual puts forward a right which he , has acquired as a member of a community and cases where the right of the community is put forward in the suit. If it is the former, the individual is not "debarred from maintaining the suit in. his own right in respect of a wrong done to him even though the act complained of may also be injurious to some other persons having the same right. If it is the latter , the procedure under O. 11 R 8 Civil P.C. has to be followed and without doing so, no relief could be granted to the individual concerned.

21. I have to refer to the contention urged by learned counsel for the respondents that the objection as to the maintainability of the suit for want of compliance with the

provisions of O. 1, R. 8, Civil P.C. was not taken specifically in the written statement and that here was no issue regarding the same in the trial Court. Though there is no specific issue framed by the trial Court, I find that the matter has been argued before the trial Judge and it has been dealt with in Para 21 of his judgment. He has given a categorical finding that the suit is not maintainable as the community which claims the relief is not before the Court. The objection under O. 1, R. 8, Civil P.C. has also been considered by the learned appellate Judge, though he comes to a different conclusion from that of the trial Judge. It is too late in the day to shut out the said objection on the ground that there was no specific pleading in the written statement. As pointed out earlier, R. 8 of O. 1, Civil P.C. constitutes a glaring exception to the general rule -and if it is not strictly complied with, it may result in a flagrant departure from the salutary practice of not proceeding with an 'adjudication in the absence of the parties affected thereby. The foundation of O. 1, R. 8, Civil P.C. lies in a principle which transcends the personal or parochial nature of the combatants who are arrayed as parties to the suit. It affects the rights of the persons not present before the Court. Hence, a duty is cast on the Court itself to follow meticulously the procedure prescribed by O. 1, R. 8, Civil

P.C. and it is immaterial whether the defendants raised the objection in the written statement or not. I do not see any substance in the objection of learned counsel for the respondents that the trial Court ought not to have considered the matter in the absence of a pleading and an issue, Hence, the suit has to be dismissed on that ground.”

In the above case, this Court has held that Order I Rule 8 of C.P.C., constitutes a glaring exception to the general rule and if it is not strictly complied with, it may result in a flagrant departure from the salutatory practice of not proceedings with an adjudication in the absence of the parties affected thereby. This Court laid emphasis on the mandatory nature of the compliance.

(iii) The learned counsel further referred to a decision of the ***Bombay High Court reported in AIR 1953 Bombay 334, in the case of Hubli Panjarapole and others Vs. Saraswatevva Bayappa Kala Ghatki*** and he has drawn the attention of this Court to paragraph No.5 and 6 which are extracted hereunder:

“(5) Therefore, it was perfectly open to the learned Judge to have granted leave under Order 1, Rule 8, on 2-12-1947. But that does not dispose of the point of

limitation raised before us by Mr. Kalagate. The question which we have to consider is, if when leave was granted, the suit was already barred by limitation, can it be said that the leave which is granted operates retrospectively and that the suit in its present representative form, must be taken to have been instituted on 3-3-1944? Now, the legal position appears to be that on this day, the Hubli Panjarapole had not been properly sued and technically the suit against the Panjarapole would have been dismissed on that ground alone. It may perhaps be that by obtaining leave under Order 1, Rule 8, 'new' parties 'as such' are not added, but a defect in the suit is removed by bringing before the Court either directly or constructively all the constituent members of the Panjarapole. But if the suit was materially defective when it was filed and if for removing such defect additional parties had to be brought before the Court -- may be not in their own individual lights but as constituting the Panjarapole collectively -- it seems to us difficult to hold that the suit in this altered representative form could be said to relate back to the date on which the original suit was filed. It is clear that if parties are added under Order 1, Rule 10, Section 22 Limitation Act will come into operation and the proceedings against these added parties shall be deemed

in the words of Tyabji J. to have been begun only on the service of the summons. In the present case it is possible to say that in the eye of law parties are added after leave is granted, under Order 1, Rule 8, and so the suit must really be taken to have been properly filed on 2-12-1947. But even if it is held that technically it is not a case of addition of 'new' parties as such, technically again it is equally clear that it is a case where the suit has been properly filed for the first time when leave was obtained; and if that be so, the point of limitation raised before us by Mr. Kalagate must obviously be answered in his favour. It cannot be said that in the suit as it was originally filed the defendant institution had been merely misdescribed. In fact the said institution had not then been properly brought before the Court at all; and so it is only when action is taken under Order 1, Rule 8, that the suit is properly brought against the defendant. It is thus not a case of making a formal amendment in the plaint at all. The suit which would have been dismissed as having been improperly filed is allowed to be converted into a proper and competent suit and so this material alteration in the nature of the suit cannot operate retrospectively. That in our opinion is the true legal position.

(6) We may with advantage refer to the observations

made by the Privy Council in '[Meyappa Chetty v. Subramanian Chetty](#)', AIR 1916 PC 202 (E), while they were dealing with Section 22, Straits Settlements Ordinance of 1896. This section is substantially the same as Section 22, [Limitation Act](#). Dealing with the said [Section 22](#) their Lordships observed that (P. 205) :

"...(It) contemplates cases in which a suit is defective by reason of the person or one of the persons whom the right of suit is vested not being before the Court."

On this view, the said [Section 22](#) has no application to cases in which the suit which was originally properly constituted as to parties has become defective because there has been a change or devolution of interest. Such cases do not fall within the mischief of [Section 22](#). Applying this test if the suit which was first filed against the Panjarapole by its chairman alone was defective in the sense that the Panjarapole had not been properly sued at all, and if the defect was subsequently removed and the suit became a proper representative suit after leave was granted under Order 1, Rule 8, the provisions of [Section 22, Limitation Act](#) must come into operation and the question of limitation must be dealt with on the basis that the proper suit against the Panjarapole was filed on 2-12-

1947. *In --'Seerangathuni v. Bava Vaithilinga Mudaliar'*, AIR 1921 Mad 528 (F), Wallis J. and Ramesan J. were dealing with a claim made by one of the two executors against the widow of the testator. The widow pleaded that the plaintiff alone was not entitled to sue without joining his co-executor. The said co-executor was then added as a defendant. But on the date when he was added the widow's claim of adverse possession had become, complete though it was not complete at the time when the suit was originally filed. The question which the Court had to consider was whether the later addition of the co-executor to the suit as a defendant justified the claim of adverse possession made by the widow. Their Lordships held in favour of the widow. They took the view that the original suit was defective, and when the defect was removed, the claim made against the testator's widow had been barred by adverse possession. It seems to us that similar considerations would apply to the case with which we are dealing. Therefore, in our opinion, the suit must be deemed to have been properly filed as a representative suit on 2-12-1947, and if that be so, the claim made by the plaintiff is obviously barred by limitation."

The Bombay High Court has held that only when there is a compliance to Order I Rule 8, it is to be construed that the suit has been properly filed for the first time. Therefore, the learned counsel emphasised the suit is to be construed as properly instituted only when leave is obtained in terms of Order I Rule 8 of C.P.C.

(iv) Lastly, the learned counsel relied on a decision reported in ***AIR 1959 Kerala 379, in the case of Narayanan Nambudiri Vs. Kurichithanam Educational Society***, this Court's attention has been drawn to the observation of the Kerala High Court in paragraph No.3 as extracted hereunder:

“(3) Then there is the objection that the suit itself is not properly constituted and that therefore the sanction under O.1, R.8 should not have been issued. It is pointed out that the plaintiff in the suit is the Kurichithanam Educational Society which is an unregistered society and that such an unregistered society is not a juridical person and cannot figure as a plaintiff. Even though the society is described as the plaintiff the individual claiming to be its present President has brought forward the suit as its

representative. Since the society is itself an unregistered one, the individual claiming to be its President cannot represent the society and maintain the suit on behalf of the society.

It is for curing that defect that the said individual has applied for the sanction of the Court under O. 1, R. 8 to institute the suit for and on behalf of the society. With the issue of such sanction, the defect in the frame of the suit stands remedied. After the publication of the notice as directed by the lower Court, the suit will be treated as a suit instituted with the sanction under O.1, R.8. It cannot be said that the lower Court acted illegally in issuing the necessary sanction for converting the suit into a representative suit under O.1, R.8 instituted by the particular individual who claims to be the present President of the Kurichithanam Educational Society.”

The Kerala High Court also emphasised the importance of compliance with Order I Rule 8 of C.P.C., in cases of unregistered Society being represented in judicial proceedings.

7. In view of the above decisions, consistently holding the mandatory nature of application of Order I Rule 8 of C.P.C., the plaintiff

seeking to represent a group of persons and suing unregistered bodies ought to have complied with Order I Rule 8 of C.P.C., before seeking leave of this Court to sue under Clause 12 of the Letters Patent.

8. Per contra, the learned counsel for the first respondent/plaintiff would submit that the parties as arrayed in the plaint are represented by the competent office bearers and therefore, the question of obtaining leave under Order I Rule 8 of C.P.C., does not arise in this case. As far as the plaintiff is concerned, he is only seeking a relief for himself and therefore, he does not seek to represent any one. As far as the defendants are concerned, the learned counsel would submit that the Synod, the Apex Body of the CSI, the first defendant is represented by its General Secretary and the second and third defendants viz., the Kanyakumari Diocese is represented by the Secretary and the Bishop/Election Officer and the fourth defendant is represented by the Moderator who is highest religious authority of the CSI body. In view of the defendants being represented by the office bearers, there is no necessity for seeking any permission under Order I Rule 8 of C.P.C., at all.

9. The learned counsel would submit that even otherwise, the compliance with Order I Rule 8 is permissible at any stage of the pendency of the suit proceedings and not necessarily that compliance to be a condition precedent, before instituting the suit, as held by the Courts. The learned counsel would also submit that as far as leave granted by this Court under the provisions of the Letters Patent, the same cannot be revoked on the ground that the plaintiff has not obtained leave under Order I Rule 8 of C.P.C. In support of his above contentions, the learned counsel would rely on a decision reported in ***AIR 1996 SC 1211 in the case of Singhai Lal Chand Jain Vs. Rashtriya Swayam Sewak Sangh.*** The learned counsel would refer to paragraph Nos.8 to 10 of the order of the Hon'ble Supreme Court of India, which are extracted hereunder:

“8. Procedure is the handmaid to the substantive justice. The suit was laid against the Sangh represented by the Manager, Mr. Gorelal Soni, the President, Shiv Behari Srivastav, a practising advocate and also a member who is no other than a Head Master of a school, three of them had Jointly filed the written statement with the defence available to them. The trial Court had proceeded on that basis. After framing the appropriate issues, the trial Court had accepted

the plea of the defendants and dismissed the suit. On appeal, when the correctness thereof was canvassed, the respondents defended the action. The High Court on consideration of the evidence, did not accept the plea of the Sangh and accordingly, granted a decree. The matter did not rest there, they came in appeal by way of special leave which was argued by one of the most eminent members of the Bar on behalf of the Sangh. The leave was refused by this Court. Thus it can be concluded that the Sangh was properly represented by the President, the Manager who was at the relevant time in office on behalf of the Sangh and also member of the Sangh who was no other than a Head Master and a practising advocate as President. The High Court, after hearing counsel on either side, considered the case and decreed the suit. With dismissal of the special leave petition by this Court, the decree became final, Therefore, it cannot be said to be a collusive suit nor a shadow of negligence is traceable so as to treat the decree a nullity. It is true that no permission of the Court was taken to be sued in a representative capacity by or on behalf of the Sangh. But clause (b) of Order 1, Rule 8 indicates that it may sue or be sued, or may defend such suit, on behalf of, or for the benefit of all persons so interested, Clause (b) clearly applies to the facts in this

case. The President of the Sangh, the Manager of the Sangh and a Member have duly represented the Sangh and defended the suit for the benefit of all the persons so interested in the Sangh.

9. Having been thus defended, the question arises: whether the decree operates as a res judicata. Section 11, Code envisages principle of res judicata, i.e., no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them, claim, litigating under the same title, in a suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. Explanation VI to Section 11 is relevant in this behalf and reads thus:

"Where persons litigate bona fide in respect of a public right or a private right claimed for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

10. Therefore, the respondents now claim under the same title in the previous suit and thereby they are bound by the decree. The doctrine of evolved the public policy to prevent trial of an issue twice over. It clearly applies to the

facts of the case. Accordingly, they are precluded to raise objections on behalf of the Sangh by filing the objections.”

In the above order, the Hon'ble Supreme Court, after taking note of the fact that the order I Rule 8 had not been complied with, but the suit had been decreed and in order to protect the decree granted in the matter, the Court has held that the unregistered bodies therein had been duly represented by the President, Manager, Member etc., defended the suit for the benefit of all persons so interested in the body. Likewise in the present case, the defendants are duly represented by their office bearers and therefore, the question of separately complying with Order I Rule 8 of C.P.C., would amount to a redundant exercise.

10. The learned counsel would draw the attention of this Court to an order passed in ***Application Nos.1174 and 2870 of 2013 in C.S.No.731 of 2013 dated 12.12.2013, in the case of the Rt.Rev.Dr.V.Devasahayam Vs. St.George Cathedral Trust***, by the learned Judge of this Court. The learned counsel particularly relied on the observations of the learned Judge of this Court who after adverting to the rival submissions of the parties

therein, has held that the application under Order I Rule 8 is only procedural in nature and the same could be obtained at any stage of the suit proceedings. The learned Judge finally has held that the non compliance with Order I Rule 8 r/w Order 3 Rule 2 of Original Side Rules cannot be a ground to reject the plaint.

11. The learned counsel has drawn the attention of this Court to another decision of a learned Judge of this Court in ***O.A.Nos.9 and 10 of 2020 in C.S.No.8 of 2020 dated 10.01.2020***. In this case, the same legal objection was raised on behalf of the Synod of the CSI and the objection was overruled by the learned Judge. The learned counsel particularly relied on paragraph No.8 and 9, relating to the objections and paragraph No.17 to 24 of the counsels' submission and findings, which are extracted hereunder:

“8. In response, to the contrary, Mr. V.Prakash, the learned Senior Counsel for the respondents 1 and 4 made submissions. He raised two preliminary objections to the suit and and applications. His first preliminary objection is that the Church of South India is an unregistered and an

*unincorporated body. Therefore, he submits that leave under Order I, Rule 8 of the Civil Procedure Code should have been obtained before instituting the suit. In support of this submission, he referred to and relied upon the judgement of this Court in **Rev.Noble Gambeeran and others Vs. Peter P.Ponnan for himself and as representative of members of C.S.I Christian Community** reported in 1999 (1) MLJ 392, and in particular to paragraphs 19 and 21 to 23 thereof. In the said judgement, it was held that a suit against the C.S.I, Vellore Diocese should be instituted after obtaining leave under Order I, Rule 8 of the Civil Procedure Code. On the facts of that case, the Court also rejected the application for interim injunction on that basis.*

*9. The learned Senior Counsel for respondents 1 and 2 also relied upon a judgement of the Division Bench of this Court in **The Executive Committee of the Synod Church of South India and another Vs. Rt.Rev.Dr.V.Devasahayam and others** reported in 2009 (5) CTC 398 (Mad) and in particular to paragraphs 15 to 17 and 20 thereof, wherein, the Division Bench of this Court also held that leave under Order I, Rule 8 of the Civil Procedure Code is necessary for filing a suit against an unincorporated bodies.*

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17. *Mr.Selvaraj, learned counsel made submission thereafter, on behalf of the third and fifth respondents. Once again, he reiterated that the Church of South India is an unregistered religious body. In fact, he referred to paragraph 2 of the plaint, so as to point out that the plaintiff was also fully aware when the suit was instituted. Consequently, he submitted that under Order I, Rule 8 of the Civil Procedure Code and Order 3, Rule 2 of the O.S Rules of Madras High Court, would be applicable and that therefore, the present suit is not maintainable. He also pointed out that the local bodies under the Tirunelveli Diocese were elected in the year 2011 and that they cannot be allowed to remain in office interminably.*

18. *By way of rejoinder, Mr.S.Prabakaran, the learned Senior Counsel for the applicant referred to the judgement of this Court in **The Victoria Edward Hall Vs. M.Samraj (Madras)** reported in **2001 (3) CTC 129**, wherein, at paragraphs 12 and 14, it was held that an application for*

leave under Order I, Rule 8 of the Civil Procedure Code can be filed even at the Appellate Stage. He also relied upon a Division Bench judgment of this Court in O.S.A.Nos.88 and 98 of 2011, dated 09.04.2011, wherein the Division Bench held that Order I, Rule 8 of the Civil Procedure Code can be complied with the substance if the relevant parties are before this Court. The last judgement that was relied upon by him was the order dated 21.03.2011 in A.Nos.1600 and 1628 of 2011 in C.S.No. 7 of 2011 in particular, he relied upon paragraphs 32 and 34 of the said judgement, whereby, this Court held that the Order I, Rule 8 of the Civil Procedure Code had been complied with in substance on the facts of that case and that therefore strict compliance cannot be insisted upon.

19. By way of a brief rejoinder, the learned Senior Counsel Mr.V.Prakash conceded that an application under Order I, Rule 8 of the Civil Procedure Code may be filed even subsequently. However, he submitted that until such application is filed, allowing the suit is not proper.

20. I considered the submissions of the learned Senior Counsel / counsel and examined the relevant records. For the limited purpose of the application for interim relief, the question to be considered is as to whether the interim application can be considered inspite of the alleged non

compliance with Order I, Rule 8 of the Civil Procedure Code.

21. In this connection, it has to be held that the judgement in the **Rev.Noble Gambeeran and others Vs. Peter P.Ponnan for himself and as representative of members of C.S.I Christian Community** case (cited supra) and the judgement in the **Thoothukudi Nazareth Diocese Rep.by its Treasurer & another Vs. The Church of South India & another** reported in 2009 (4) LW 742 of this Court that the Order I, Rule 8 of the Civil Procedure Code is required to be complied with, in order to institute a suit against an unregistered body.

22. However, in the judgement of the **Victoria Edward Hall Vs. M.Samraj (Madras)** (cited supra) which was cited by the learned Senior Counsel for the applicant, it has been held that such application can be filed even at the appellate stage. Thus, the non-filing of an application under Order I, Rule 8 of the Civil Procedure Code does not render the institution of the suit as null and void. Consequently, the question that is required to be considered is as to whether an application for interim injunction can be considered in this context.

23. On the facts of this case, it is seen that the suit has been laid against the Church of South India represented by

its General Secretary and the Most Rev. Moderator, the Rt.Rev.Deputy Moderator, the General Secretary and the Treasurer of the said Church of South India have been arrayed as parties both in the plaint and in the interim application. The said parties are also represented by the Senior Counsel/Counsel. Therefore, it is clear that persons in a position of authority and responsibility as regards the said Church, are before this Court.

24. In these facts and circumstances, I am of the view that prejudice would not be caused, if the interim application is considered, notwithstanding the non filing of an application under Order I, Rule 8 of the Civil Procedure Code.”

12. In fact, the learned counsel submitted that the counsel who is now appearing for the applicant, the third defendant herein, was the counsel therein, whose objection was overruled. But, unfortunately, this fact has not been brought to the knowledge of this Court in this application seeking to recall the leave granted by this Court. The learned Judge of this Court on the basis of several judgments on the subject matter, has clearly

held that the non-filing of application under Order I Rule 8 of C.P.C. does not render the suit as null and void. The learned Judge has also held that persons in a position of authority and responsibility as regards the said Church, are before this Court. After concluding as such, the learned Judge proceeded to consider the interim application.

13. Therefore, in the light of the above ruling, the learned counsel submitted that notwithstanding the non-compliance with Order I Rule 8 of C.P.C., the present objection is unsustainable in law and more particularly, in this case, the non-filing of application under Order I Rule 8 of C.P.C., cannot at all be a reason for revoking the leave granted under Clause 12 of the Letters Patent. In fact, it was not the case of the second and third defendants that there was no cause of action at all for this Court to grant leave. He would therefore submit that the present application filed by the applicant/third defendant is liable to be dismissed as being mischievous, without merit and substance.

14. On behalf of the defendants 1 and 4, no serious arguments were advanced, despite the fact that they were parties in the earlier proceedings in *O.A.Nos.9 and 10 of 2020 in C.S.No.8 of 2020* and raised the same objections with reference to the compliance with Order I Rule 8 of C.P.C. In fact, this Court finds that the learned Senior Counsel representing the Synod, conceded before the learned Judge that the application under Order I Rule 8 of C.P.C., may be filed even subsequently as could be seen in paragraph 19 of the order. It is unfortunate that the learned counsel on record herein who assisted the learned senior counsel in the above proceedings, has not chosen to bring to the notice of this Court of the order of the learned Judge and his succinct observation dated 10.01.2020.

15. It is also equally unfortunate that the learned counsel appearing for the applicant herein has also not thought fit and appropriate to bring the crucial observation of the learned Judge to the notice of this Court. The learned counsel having raised the same objection and was overruled by the learned Judge, is duty bound to bring it to the knowledge of this Court. In a show of competitive astuteness, rationing of facts has become part of the

acceptable court craft, when winning a case alone mattered. May be the counsel felt plausibility of applying the principle (compliance with Order I Rule 8 of C.P.C.,) on the facts and the circumstances of this case.

16. Be that as it may, the core question before this Court is as to whether the non-filing of application under Order I Rule 8 of C.P.C., even before seeking leave of this Court to sue under Clause 12 of the Letters Patent, would render any leave granted by this Court, a nullity or the same to be recalled on that account or not? The answer very much lies in the judgments cited by the learned counsel on behalf of the applicant herein himself. This Court need not to traverse anywhere else in order to come to a conclusion as below. The first decision referred by the learned counsel for the applicant in ***O.A.Nos.189 & 190 of 2012 in A.Nos.1475 & 1891 of 2012 in C.S.No.174 of 2012 dated 16.05.2012***, it is contextually relevant and useful to refer to the discussion and the reference to various decisions in the subject matter and the conclusion of the learned Judge from paragraph Nos.16 to 26, which are extracted hereunder:

“16. On the contrary, the learned counsel appearing for the plaintiffs submitted that the plaintiffs have filed Application No.1361 of 2012 to grant permission to institute a suit as against the defendants in a representative capacity on behalf of the members of the Karnataka Central Diocese Church of South India. The Master of this Court has allowed the said application by order dated 15.03.2012. That apart, the plaintiffs have also filed an application in A.No.1199 of 2012 to grant leave to sue against defendants 3 to 5 since they are residing outside the jurisdiction of this Court and leave was granted on 09.03.2012. Therefore, it is incorrect to state that the suit has been filed by the plaintiffs without obtaining necessary orders from this Court. Since leave was granted by the Master of this Court, permitting the plaintiffs to file a suit in a representative capacity, the application filed by defendants 3 and 4 to reject the plaint on the ground that Form No.10 has not been served on them as per Original Side Rules before granting leave, is not legally sustainable.

17. Learned counsel for the plaintiffs by producing a judgment reported in E.C.of the Synod Church of South India .vs. Rt.Rev.Dr.V.Devasahayam Bishop ((2009) 8 MLJ 329), has submitted that only in the event of no permission

was sought for or granted under Order I Rule 8 C.P.C., it could be said that the suit is not maintainable. For the same analogy, the learned counsel has relied upon the judgment reported in The Victoria Edward Hall .vs. M.Samraj (2001 (3) CTC 129) and reiterated that in the instant case, the Court has already granted leave under Application No.1361 of 2012 by order dated 15.03.2012 and as such, the submission made by the learned senior counsel for defendants 3 and 4 that without conducting the enquiry, the Master had granted leave, has no legs to stand. That apart, by relying upon a judgment reported in D.Gopal .vs. Raghava Naicker (AIR 1990 Madras 314), the learned counsel for the plaintiffs submitted that even assuming that the procedure prescribed under Order I Rule 8 of the Original Side Rules has not been complied with, it follows that the plaintiff had given up or waived the normal procedure prescribed and the non-compliance with these Rules would not in any manner render the proceedings in any suit or matter void, unless directed by Court. Thus, no case has been made out by defendants 3 and 4 for rejecting the plaint with regard to the leave granted by this Court permitting the plaintiffs to file the suit in a representative capacity. That apart, the learned counsel submitted that the power of this Court is derived under clause 12 of the Letters

patent and not under sections 17 and 20 of C.P.C. Under such circumstances, it is not correct to state that there is no cause of action for filing the suit.

18. The learned counsel for the plaintiffs further submitted that under Order VII Rule 11 of C.P.C., the plaint could be rejected on two circumstances, (i) if the suit is barred by any law for the time being and (ii) if the suit does not disclose any cause of action. But, in the instant case, a reading of entire averments would show that the cause of action is made out as against the defendants to file a suit before this Court. In this regard, elaborate arguments were made by the learned counsel for the plaintiffs, by inviting the attention of this court to the entire averments made in the plaint as against the defendants that the appointment of administrative committee by the 2nd defendant to manage the affairs of the Karnatake Central Diocese Council by postponing the election would detrimental to the entire community in general which would frustrate the image and reputation of the religious institutions and, therefore, he insisted for the appointment of a retired High Court Judge as an interim observer measure to discharge the duties and functions of the Administrative Committee of the 3rd defendant. With regard to the other submissions made by the

learned senior counsel for defendants 3 and 4 that the administrative committee was appointed by the Synod only pursuant to the order of this Court in the civil revision petitions, the learned counsel for the plaintiffs submitted that contrary to the order passed in the revision petitions, the Synod, instead of conducting the election, appointed the administrative Committee thereby postponing the election. Under such circumstances, the plaintiffs have every right to question the act of the 2nd defendant. Therefore, no infirmity could be found in the prayers sought for by the plaintiffs and thus, he prayed for the dismissal of the application.

19. Learned counsel appearing for defendants 1 and 2 submitted that though the plaintiffs have obtained leave under Order I Rule 8 of C.P.C. to file the suit in a representative capacity, they have not obtained permission to institute the suit against the unregistered bodies, namely, 1st and 3rd defendants. Therefore, on this ground, the suit is not maintainable and hence, the application to reject the plaint filed by defendants 3 and 4 is liable to be allowed. In this regard, the learned counsel has relied upon a judgment reported in Rev.Noble Gambeeran .vs. Peter P.Ponnan (1999 (I) M.L.J.392).

20. The learned counsel for the plaintiffs, by way of

reply, submitted that once permission is granted by this Court to file a suit in a representative capacity, now it cannot be said that no permission was obtained separately to file a suit against an unregistered body and an application under Order I Rule 8 could be made at any stage. Therefore, there is no need to reject the plaint merely on the reasoning that no permission was obtained for filing the suit as against defendants 1 and 3 being the unregistered bodies.

21. This Court has paid its anxious consideration on the submissions made by the learned counsel on either side and perused the materials available on record.

22. The submission made by the learned senior counsel appearing for defendants 3 and 4 is mainly on two folds;

(i) before granting leave, as required under Order III Rule 2 of Original Side Rules, Form No.10 was not issued to the defendants and no enquiry was conducted by the Master; and

(ii) no cause of action has been made out to file the suit before this Court.

23. With regard to the first fold of submission, it is the reply of the learned counsel for the plaintiffs that the Master had granted leave in A.No.1361 of 2012 permitting the plaintiffs to institute a suit in a representative capacity and this court has also granted leave to file a suit as against defendants 3 and 5 in A.No.1199 of 2012 under clause 12 of the Letters Patent since the said defendants are residing outside the jurisdiction. When the suit has been filed with the leave of this Court, now no infirmity could be found in the procedure adopted by the Master in allowing the application No.1361 of 2012. In support of his contention, the learned counsel for the plaintiffs has relied on the decision reported in (2009)8 MLJ 329 (supra), wherein it has been held that so long as no permission was either applied or granted, it cannot be stated that the suit is in order. But, in the instant case, as contended by the learned counsel for the plaintiffs, leave was granted by this Court. Further, from the dictum laid down in the judgment reported in AIR 1990 Madras 314 (supra), I am of the opinion that non-compliance with the Original Side Rules in granting leave under Order I Rule 8 of Original Side Rules would not in any manner render the proceedings in any suit or matter void, unless so directed by the Court. The relevant portion from the said judgment is as follows:

"4. Ordinarily, when an application seeking leave to institute a suit in a representative capacity is filed under O.3, R.2 of the Original Side Rules read with O.1, R.8 of the Code of Civil Procedure, such an application should be dealt with under O.14, R.10(14) of the Original Side Rules by the Master. However, in instant case, the appellant had moved before the Judge on the Original Side. Presumably, the appellant was obliged to do so because he wanted to secure orders in the other application filed, which could not have been dealt with by the Master of this Court. Obviously, therefore, when the appellant moved the Judge on the Original Side, it follows that the appellant had given up or waived the normal procedure prescribed in O.14, R.10(14) of the Original Side Rules with reference to such an application, namely, a disposal of the same by the Master. It is also pertinent to point out that under O.1, R.8 of the Original Side Rules, non-compliance with these rules would not in any manner render the proceedings in any suit or matter void, unless directed by Court. The proceedings could not be characterised as non est, for, the outcome of the proceedings, was only the result of the course adopted by the appellant himself and even as per O.1, R.8 of the Original Side Rules, non-compliance with these rules would not render the proceeding void, unless directed by the Court..."

Therefore, I am of the opinion that when the Master had granted permission and when this Court had also granted leave to sue and when the defendants have not chosen to file an appeal against the order passed by the Master of this Court in A.No.1361 of 2012, now the defendants cannot turn round and say that the plaint has to be rejected since Form No.10 has not been issued to them as per the Original Side Rules.

24. With regard to the next fold of submission, I find that it is the main grievance of the learned counsel for the plaintiffs that the defendants have colluded and postponed the election process of the Karnataka Central Diocese at their convenience. It is the further grievance of the plaintiffs that though this Court has made an observation in the order passed in civil revision petitions that the Synod would take a decision within a reasonable period with regard to the election process, the synod by appointing the administrative committee has postponed the election. Therefore, the plaintiffs have filed the suit challenging the decision taken by the synod, which is situated within the jurisdiction of this Court.

25. After going through the materials, I find that with regard to the declaration prayer sought for by the plaintiffs, the suit is maintainable before this Court since the synod, which had appointed the administrative committee, is within the jurisdiction of this Court. Moreover, a reading of the plaint averments would show that there is a cause of action for filing the suit against the defendants before this Court; however, I am of the opinion that the present suit is not maintainable as against the defendants 1 and 3 for the reason that no permission was obtained by the plaintiffs to file the suit as against the respondents/defendants 1 and 3, which are the unregistered bodies under Order I Rule 8. In this regard, it would be appropriate to refer the judgment delivered in the similar set of facts reported in 1999(I) M.L.J.392 (supra) and the relevant paragraphs are extracted hereunder:

"7. Along with the suit, plaintiff filed an application under O.I, Rule 8, C.P.C., seeking permission for himself to represent the other members of the C.S.I. Christian Community to file the suit. He also filed another application, namely, I.A.No.536 of 1998 for temporary injunction to restrain defendants 2 and 3 from exercising any Executive, Administrative and disciplinary powers including convening of any committee and board meeting in respect of

C.S.I.Vellore Diocese giving effect to the illegal transfer of the Pastors and initiating any further disciplinary actions against the Pastors and subordinates, etc., till the fourth defendant finally adjudicates the complaints against the third defendant, pending disposal of the suit, and also to grant an ad-interim injunction.

....

21. From the cause-title of the plaint, it is seen that the third defendant is impleaded only in his official capacity. Second defendant is the Executive Committee of the C.S.I.Vellore Diocese represented by its Honorary Secretary, and it is said that even though third defendant is named, he is the Bishop and he is carrying out his business in his office at Vellore. Though the plaintiff has filed an application under O.I, Rule 8 C.P.C., to permit him to institute the suit as representative of the Christian community, as against the second defendant, no such application is filed. Admittedly, second defendant is an unincorporated body. A Church is also an unincorporated body, and a suit against them is not maintainable without getting permission under O.I, Rule 8, C.P.C. Section 26 of the Code of Civil Procedure says thus: "Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed".

For instituting a suit in a representative capacity or for

filing a suit against a representative body, the procedure under O.I, Rule 8, C.P.C. has to be complied with. It says that "where there are numerous persons having the same interest in one suit, (a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit on behalf of or for the benefit of all persons so interested. (Remaining portion omitted as unnecessary). Therefore, institution of the suit itself must be with permission of the court. Again, under O.7, Rule 4, C.P.C., when the plaintiff sues in a representative character, the plaint shall show not only that he has an actual existing interest in the subject matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it. "O.7, Rule 9, C.P.C. provides the procedure for admitting the plaint, and Sub-rule (2) of the said Rule also says that 'where the plaintiff sues, or the defendant or any of the defendant is sued in a representative capacity, such statement shall show in what capacity the plaintiff or defendant sues or is sued".

22. In Kalyan Singh .vs. Smt.Chhori (1990) 1 S.C.C.266, in paragraph 13 of the judgment, their Lordships have said that for a representative suit, the court's permission under O.1 Rule 8 of the Code of Civil Procedure

is mandatory". Admittedly, as against the second defendant, no such permission has been sought for. So long as there is no permission granted and has not been applied for, it cannot be said that there is a suit against it. At this juncture, learned counsel for plaintiff represented that as per the constitution and By-laws of the Church, the Honorary Secretary is competent to represent the Diocese and he can sue and be sued. According to me, when the church itself is an unincorporated body, it cannot be considered as a legal person. When a separate procedure is provided under O.I, Rule 8, C.P.C., without complying with that provisions, no suit could be instituted even if their By-laws provide for the same. For that view, I take support form the decision reported in Corporation of Trivandrum v. K.Narayana Pillai, 1968 K.L.T.285. That was a suit against a Football Association, which was an unincorporated body. An argument was taken before the High Court that the Rules of the Football Association, provide that the Secretary of the Association can represent the association in suits and, therefore, it would be enough if the secretary is impleaded in his capacity as secretary, as a decree obtains with him on the party array would bind the association. Repelling the contention the learned Judge has held thus:

"....The Foot Ball Association is an unincorporated body. I

do not know how I can pass an order for impleading such an Association. In this case, it may be noted, only the honorary treasurer of the Association has been impleaded. Appellant's counsel submitted that as the Rules of the Foot Ball Association provide that the Secretary of the Association can represent the Association in suits, it would be enough if the Secretary is impleaded in his capacity as Secretary as a decree obtained with him on the party array would bind the association, and, therefore, this Court may direct the impleading of the Secretary of the Association. I am not sure whether by impleading the Secretary of the Association the appellant will be able to get a decree binding on the Foot ball Association. Even if Rules of the Association provide that the Secretary can represent the Association in suits by or against it, I do not know whether a decree obtained against the Secretary in his capacity as Secretary would bind the Association. The Secretary of a club or other association cannot sue alone in respect of a matter in which the Association is interested even if he is authorised so to do by a resolution of the members of the association. The suit must be brought by all the members of the Association, or by the Secretary on his own behalf and on behalf of the other members under O.I, Rule 8 (See: Mohammedan Association v.Bakshi, (1884) I.L.R. 6 All.284). I think, the same would be,

the result, if a suit is brought against the Secretary as representing the Association.....".

.....

24. In this case, Rev.Y.Williams is the name of the Honorary Secretary representing the Executive Committee. He becomes representative of the Executive Committee only when he is allowed to represent the Executive Committee by filing an application and it becomes a representative suit only after issuing a notice on the application. As on date, there is no representative suit against the second defendant at all. If there is no suit, naturally, it also follows that no injunction can be granted,. O.39 Rule1, C.P.C.provides that an injunction must be against a party to the suit".

26. The dictum laid down in the said judgment is squarely applicable to the facts of the case on hand. Hence, I am of the view that since defendants 1 and 3 are the unregistered bodies, the applicant/plaintiff ought to have obtained permission of this Court to sue defendants 1 and 3 as required under Order 1 Rule 8 C.P.C. As on date, there is no representative suit against defendants 1 and 3 since no permission was obtained to file a suit against them, which are the unregistered bodies. Though it is the submission of

*the learned counsel for the plaintiffs that they have obtained leave under Order I Rule 8, the said permission was obtained only to enable the plaintiffs to file the suit in a representative capacity on behalf of the other members of the Diocese. But no permission was obtained by them to file the suit as against the unregistered bodies, namely, defendants 1 and 3. If no permission is obtained from the Court to file a suit against the unregistered body, it cannot be said that there is a suit against them. The decree that is going to be passed against the unregistered body will not have a binding effect on them. However, as found earlier, permission could be obtained at any stage. In this regard, a reference could be placed in the judgment reported in *Krishnan Vasudevan and others .vs. Shareef and others* ((2005) 12 SCC 180) and the order is extracted hereunder:*

"1. Leave granted.

2. After permitting an amendment in the plaint, the trial court refused to hear an application under Order 1 Rule 8 CPC filed by the plaintiffs on the ground that such an application could not be entertained at that stage.

3. Order 1 Rule 8 CPC does not prescribe any stage at which the application can be filed. In our opinion, the trial court ought to have heard and decided the application on its own merits without regard to the stage at which it was filed.

The error committed by the trial court should have been corrected by the High Court.

4. The appeal is allowed. The impugned order of the High Court dated 13-10-1997 and the order of the trial court dated 12.11.1996 are both set aside. The application under Order I Rule 8 CPC shall be heard and decided on its own merits by the trial court".

Therefore, I am of the opinion but for the failure to obtain permission to file a suit as against defendants 1 and 3, the suit is in order and hence the plaint has to be returned for compliance with Order I Rule 8 to enable the plaintiffs to get necessary permission to sue as against defendants 1 and 3. In view of the said finding, this court is not dealing with the other submissions with regard to the merits of the case. Hence, the other applications, viz., O.A.Nos.189 and 190 of 2012 and the Sub-Application No.1475 of 2012 are not dealt with at present."

17. One need not go through the above order in depth, but even a cursory reading of the same, it can easily be deduced without any iota of doubt that Order I Rule 8 of C.P.C., compliance does not prescribe any stage at which the application is to be filed. In fact, the Hon'ble Supreme

Court has held so in the decision reported in **2005 12 SCC 180, in the case of Krishnan Vasudevan and others Vs. Shareef and others**, which has also been referred as above. The Hon'ble Judge after referring to the decision reported in **AIR 1990 Madras 314, in the case of D.Gopal Vs. Raghava Naicker**, held that the non-compliance with the Original Side Rules in granting leave under Order I Rule 8 of C.P.C., would not in any manner render the proceedings in the suit as void, unless so directed by the Court. However, the learned Judge on the basis of the finding of fact in that order, directed the Registry to return the plaint for non-compliance. But, the legal principle as laid down is indisputable that merely because there was no application under Order I Rule 8 of C.P.C., the suit proceedings would not become non-est or void, unless the Court takes a decision with reference to several facts and circumstances that formed the basis of filing of the suit. In this case, the proceedings have not even come to that stage of consideration of any interim application. This Court has merely granted leave to sue under Clause 12 of the Letters Patent and yet to take up the suit and the application for adjudication.

18. In regard to the Bombay High Court judgment relied on by the learned counsel for the applicant, it was rendered in the context of limitation being applicable by adding new parties after obtaining leave under Order I Rule 8 of C.P.C. However, the Court also observed that if new parties as such are not added, the defect in the suit is removed by bringing before the Court either directly or constructively all the constituted members interested in the litigation. The proper construct of the observation of the Court is to mean that the suit need not be held as not maintainable, but it is only a curable defect. In this case, even if there is going to be compliance with Order I Rule 8, the parties in substance will remain the same. Therefore, the observation of the Bombay High Court Judgment in a way support the contention of the plaintiff, but ultimate finding by the Court is on the factual matrix of that case.

19. As far as the Kerala High Court Judgment is concerned, it has held that the application seeking sanction of the Court under Order I Rule 8 of C.P.C., to institute the suit for and on behalf of the Society and with the issue of such sanction, the defect in the frame of the suit shall stands

remedied. The Court thereafter went on to hold that it cannot be said that the lower Court acted illegally in issuing necessary sanction for converting the suit into a representative suit under Order I Rule 8 of C.P.C.

20. The decision relied on by the learned counsel for the applicant reported in *AIR 1987 Madras 187 in the case of The Assistant Commissioner Vs. V.Nattamai K.S.Ellappa Mudaliar*, also relating to the compliance with Order I Rule 8 of C.P.C. But, the decision never held that at what stage it should be complied with. Although the learned Judge of this Court has held that the compliance is mandatory, but from the discussions and reference to other decisions in the judgment, what emerges is that the Court has to fully satisfy itself as whether the suit has been laid for enforcing individual right and that the unregistered body/bodies are represented adequately in the larger interest of all the stake holders in the *lis*. Which means that the Court can come to a conclusion one way or the other, if any objections are raised on behalf of the defendants in their written statement or otherwise if the objections are valid, the suit could be converted into a representative suit. The effect of such consideration

would inevitably point towards unambiguous legal position that non-compliance with Order I Rule 8 of C.P.C., *per se* cannot render the very institution of the suit as void, but the Courts in the course of its judicial discourse and adjudication, can rule on the maintainability of the suit or otherwise due to non-compliance with Order I Rule 8 of C.P.C. To encapsulate the ratio is, non-compliance with Order I Rule 8 of C.P.C., is a procedural infraction first and curable, but later the non-compliance may proved to be fatal on the ruling of the Court and not *per se* by mere applicability of the provisions as such.

21. As far as the decision relied on by the learned counsel for the first respondent/plaintiff, reported in ***AIR 1996 SC 1211, in the case of Singhai Lal Chand Jain Vs. Rashtriya Swayam Sewak Sangh***, the Apex Court, on the basis of facts therein, had concluded that even the non-compliance with Order I Rule 8 cannot render the decree granted, a nullity. The Apex Court found on facts in that case that the bodies though unregistered, were represented by the duly elected office bearers and therefore, it is deemed to have represented all the interested parties. In any

case, the Hon'ble Supreme Court did not lay down any legal principles in that case.

22. Lastly, as far as the decision rendered by the learned Judge of this Court on **10.01.2020, in O.A.Nos.9 and 10 of 2020 in C.S.No.8 of 2020**, the learned Judge has referred to several decisions as could be seen in the extracted portion supra and clearly held that the compliance with Order I Rule 8 of C.P.C., can be resorted to at any stage of the suit proceedings and it depends on the facts and circumstances of each case. Therefore, the Courts enjoy a latitude to weigh the facts and circumstances of the case, in order to come to a conclusion as to whether the non-compliance with Order I Rule 8 is fatal to the grant of any relief in the suit proceedings or not. Till that time that the suit proceedings cannot be rendered void or non-est merely because of the procedural non-compliance.

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23. From the various case laws placed for consideration of this Court by the respective counsels, it could be seen that the compliance with

Order I Rule 8 though is mandatory, but, at what stage the mandate is to be ruled and applied depends on the facts and circumstances of each case. The provision itself does not envisage at what stage it should be resorted to. That stage of consideration has not come as yet for this Court to hold whether the non-compliance is fatal or not, in the facts and circumstances of the present case.

24. As a matter of fact, it was emphasised on behalf of the applicant about the suit being not instituted in terms of Order III Rule 2 of the Original Side Rules, due to the non-compliance with the Order I Rule 8 of C.P.C. The Order III and Rule 2 are extracted hereunder:

ORDER III
LEAVE TO SUE

1....

Applications to sue on behalf of numerous persons.

2. An application under Order I, Rule 8 of the Code, shall be supported by an affidavit stating the number or approximate number of the parties, and the places where they respectively reside; that they have all

the same interest in the subject-matter of the suit, and the nature of the said interest; and the best means of giving notice of the institution of the suit to the said parties, and the probable cost thereof. If the application is made before suit, it shall be entitled as in Rule 1 of this Order mentioned, and shall be accompanied by the plaint, or a copy thereof.

If leave is granted, the plaint shall state that the plaintiff sues on behalf of himself and all other persons interested in the subject-matter of the suit, or sues the defendant as representing all persons so interested; and the summons to the defendant shall contain the notice set forth in Form No.10.

If the application is made by a defendant, notice thereof shall be given to all parties to the suit; and, if permission is granted, the plaint shall be amended by inserting a statement that the defendant is, with the leave of the Court, sued as the representative of all persons interested in the subject matter of the suit.

25. The above provision does not say as to the stage of application to be filed under Order I Rule 8 of C.P.C. In fact, the provision also provide for an application to be made by the defendant for converting the

suit into a representative suit. Therefore, it cannot be gainsaid that the leave to sue under Order III Rule 2 of O.S.Rules has to be filed even before leave to sue under Clause 12 of the Letter Patent. The arguments put forth in this regard are not supported by the provisions and therefore, the same have to be rejected as being devoid of merits.

26. Be that as it may, the recall of the leave on the stated grounds, is premised on a completely erroneous understanding of the legal position. The leave that has been granted by this Court was in terms of Clause 12 of the Letters Patent. The exercise of power towards grant of leave is only to sue on being satisfied as to the cause of action either wholly or in part has arisen within the original jurisdiction of this Court with reference to the facts presented before this Court. If the leave is to be revoked, unless it is shown by the applicant who is seeking to revoke, that no part of cause of action has arisen within the jurisdiction of this Court, such leave cannot be revoked or recalled at all.

27. However, in this case, unfortunately, the applicant herein has not

whispered anything relevant in the affidavit on the leave to sue ordered by virtue of the power vested in this Court under Clause 12 of the Letters Patent. But, leave is sought to be revoked by barking up the wrong tree as if non-compliance with Order I Rule 8 of C.P.C., even at the pre-institution stage of the suit would render the leave vulnerable to revocation. In the opinion of this Court, the present application premised upon such erroneous understanding is to be discountenanced in law. On the other hand, the revocation of leave prayed on the ground that the non-compliance with Order I Rule 8 of C.P.C., is therefore misconceived and to be rejected outright as being completely without any legal basis. Accordingly, this application in A.No.3075 of 2021 stands dismissed. It is clarified that this application is dismissed only with reference to the grounds raised in the affidavit filed in support of this application in so far as the same seeking to revoke the leave granted by this Court under Clause 12 of the Letters Patent.

28. The above dismissal of the application is on the consideration of the first ground raised in the application by the applicant (non-compliance with Order I Rule 8). As far as the second ground raised in the affidavit filed in support of this application, it is alleged by the applicant viz., the third defendant Bishop, that this Court was pleased to orally observe that his counsel was not entitled to be heard at the time of grant of leave and since the leave was granted without giving him an opportunity to state his case, the revocation of leave application has been filed. In paragraph 11 of the affidavit, it is stated by the deponent that despite plea made on his behalf that he should be heard before the grant of leave, this Court observed as above.

29. The applicant being a religious leader though not expected to be conversant and familiar with Court procedure, ought to have taken atleast a proper legal advice before making a reckless statement on oath finding fault with the procedure adopted by this Court, while granting leave to sue on 26.08.2021. His assumption that he was entitled to be heard even in the absence of any caveat from his side in the proceedings is a sordid

exhibition of his audacious ignorance on one hand and on the other, a vile attempt to malign the procedural fairness adopted by this Court in the grant of leave. Such statement contextually is nothing but a subtle insinuation against the fair conduct of the proceedings of this Court. The applicant's imperious assumption is a reflection of his poverty of understanding of the Court procedure. He being a revered religious preacher and a leader, his obtrusive foray into the legal domain outside his ecclesiastical, churchly confines and coming up off-hand statements on oath expose his lack of respect and deference expected of him towards this Court. If benign or innocuous statements on oath made by the deponent in the usual course would have been wisely and consciously overlooked. But, in this case, denial of hearing opportunity to the deponent at the time of grant of leave to sue has been trumped up as one of the two grounds seeking to recall the leave granted by this Court. In fact, the expressions used by the deponent that “grant of leave is void and it should be revoked” do not sound like a submission of a counter case, but a fiat and a command to this Court to revoke the leave.

30. This Court, in these circumstances, is constrained to take exception to the statements made by the applicant in his affidavit and is of the considered view, that the applicant ought to be directed to explain the framework of his understanding of the procedure followed by this Court and also the circumstances that impelled him to make the statements in the affidavit filed in support of this application. On a *prima facie* consideration, the relevant averments in the affidavit amounted to transgressional conduct on the part of the applicant herein.

31. This Court therefore directs the applicant herein, the third defendant in the suit, to appear before this Court through Video Conference and explain his conduct on 10.11.2021, failing which, this Court would be constrained to initiate further action against him as it deems fit and proper in the circumstances of the case.

32. Post the matter for the appearance of the applicant herein and further hearing in the suit on 10.11.2021.

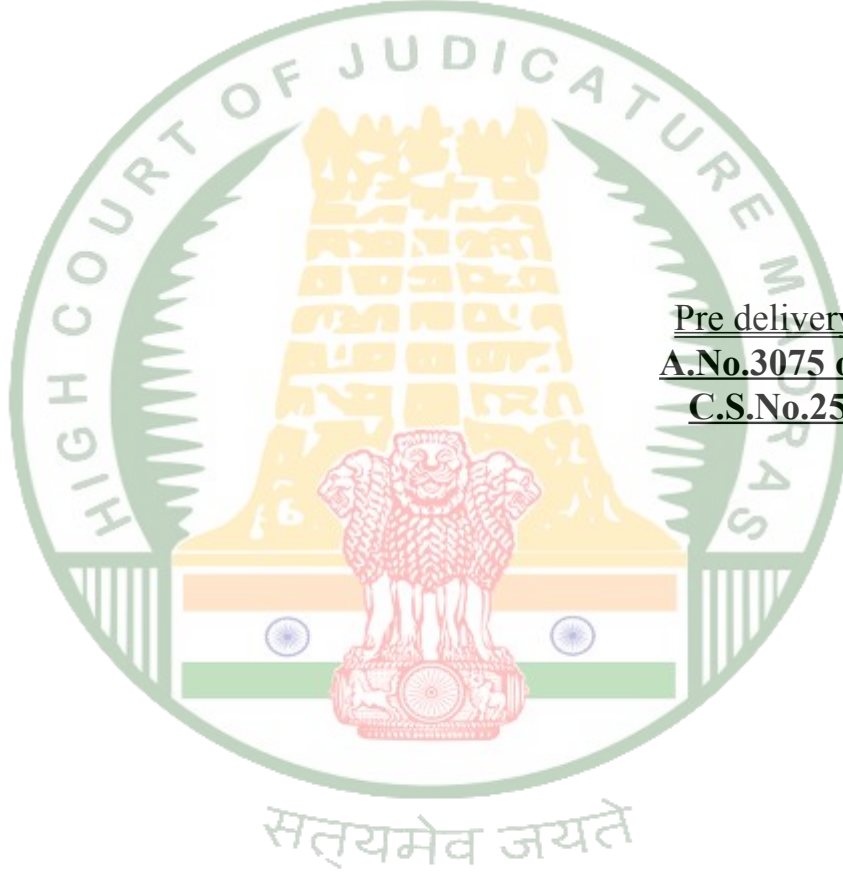
28.10.2021

gsk

A.No.3075 of 2021 in
C.S.No.257 of 2021

V.PARTHIBAN, J.

gsk



Pre delivery Order in
A.No.3075 of 2021 in
C.S.No.257 of 2021

28.10.2021

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