

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 28.04.2021

Order delivered on 21.06.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

O.A.No.727 of 2020
in
C.S.No.388 of 2020

Prithiviraj Jagannathan,
Councillor,
The Federation of Motor Sports Clubs of India,
A-25, Krishna Towers,50, Sardar Patel Road,
Chennai – 600 113. ...Applicant /Plaintiff

Vs

1. The Federation of Motor Sports Clubs of India (FMSCI)
represented by its Secretary-General
A-25, Krishna Towers,
50, Sardar Patel Road,
Chennai – 600 113.
2. Mohamed Akbar Ebrahim,
President, The Federation of Motor Sports Clubs of India (FMSCI)
3. Khazi Farooq Ahmed,
Councillor.
4. Farokh Homi Commissariat
Councillor

5. Tamal Ghosal
6. Bharat Vivek Chandhok
7. Raj Kapoor
8. Sita Raina
9. Sanjay Sharma
10. Shivu Shivappa

All respondents/ defendants have their
address at

A-25, Krishna Towers, 50, Sardar Patel Road,
Chennai – 600 113. Respondents /Defendants

Prayer in O.A.No.727/2020: To grant an order of interim injunction restraining the respondents/ defendants from giving effect to decision of the Council of the 1st Respondent/1st Defendant dated 26.10.2020 under Agenda item No.17 communicated to the Applicant/Plaintiff through e-mail dated 17.11.2020 preventing/barring the Applicant/Plaintiff from acting and functioning as a councillor of FMSCI on the ground of the status of CASC in respect of its registration, pending disposal of the suit.

For Applicant : Mr.H.Karthi Seshadri

For Respondents : Mr.S.R.Rajagopal,
Senior Counsel
for M/s.Vijayalakshmi Rajagopal for R1
Mr.Arvindevatsa
for R2 to R10

ORDER

The applicant herein is the plaintiff in the suit. The suit has been filed for declaring the decision of the Council of the 1st defendant/1st respondent dated 26.10.2020 under Agenda item No.17 communicated to the applicant/plaintiff through e-mail dated 17.11.2020 preventing/barring the applicant/plaintiff from acting and functioning as a Councillor of FMSCI on the ground of the status of CASC in respect of its registration is illegal, null and void and for permanent injunction restraining the respondents/defendants from in any manner excluding the participation of the applicant/plaintiff in the Council meetings or any other Sub-Committee meetings of the 1st defendant/1st respondent so long as he is an elected Councillor in the 1st defendant/1st respondent.

2. The brief facts which gave rise to the filing of the Suit and the present Original Application are stated hereunder.

a) The applicant/plaintiff is one of the Councillors duly elected to hold office in the 1st respondent/ defendant Company. The 1st respondent/ defendant is the Apex body in a Federation of Motor Sports Clubs of India

which is a Company incorporated under Section 25 of the Companies Act, 1956. The Company was incorporated on 03.02.1973. The object of the Company was to promote and encourage Motor Sports amongst amateurs and professionals and to issue competition licences for various motor sports. The 1st defendant is also a recognised Federation by the Ministry of Sports and Youth Affairs, Government of India and is also a recognised body with the International Federation of Motor Sports.

b) The 1st defendant is governed by Articles of Association, hereinafter referred to as 'AoA'. In terms of Clause 5 of AoA, there are 6 classes of Members namely, Founder, Ordinary, Associate, Affiliate, Registered and Provisional Registered Members. As far as the Founder Members are concerned, 5 Clubs were named in the AoA at the time of the incorporation of the Company in 1973 and they are as follows:

- i) the Madras Motor Sports Club, Madras.
- ii) the Bangalore Motor Sports Club, Bangalore.
- iii) the Coimbatore Auto Sports Club, Coimbatore.
- iv) the Indian Automotive Racing Club Ltd., Bombay.
- v) the Calcutta Motor Sports Club, Calcutta.

c) The applicant/ plaintiff herein represents one of the Founder Members, namely, the Coimbatore Auto Sports Club, Coimbatore,

hereinafter referred to as 'CASC', on being duly elected as one of the Councillors of the 1st defendant Company which is akin to the post of Director in a Company.

d) As per Clause 37 of AoA, the council shall contain minimum of 8 and maximum of 10 members and the member so elected shall be in the office for a period of two successive Annual General meetings and each Council member shall have one vote only. The applicant/plaintiff herein is admittedly an elected councillor nominated by one of the Founder Members, CASC and according to him, he has been elected and served as a President of the 1st defendant Company for several years.

3. The dispute which gave rise to the filing of the present Suit arose in 2020, when one of the Councillors raised an issue as to the status of CASC, as one of the 5 Founder Members on the ground that the CASC, which had all along been representing as a registered society had been declared defunct and also struck off the rolls and was also a dissolved Society in terms of the Societies Registration Act, 1959, and therefore, not entitled to continue as a Founder Member. As a consequence of which,

CASC lost its status being an unregistered body and the applicant/plaintiff herein being a nominee of the non-existent Society, he cannot represent CASC any more, since the right to continue as a representative of the Club only on he being nominated by the Founder Member namely, CASC.

4. The dispute that was raised by one of the Councillors has ultimately snow balled into a action by the Council in their General Meeting dated 26.10.2020 wherein among various other Agendas, this particular issue was discussed under Agenda No. 17 and after deliberation, finally, a decision was taken that CASC nominee, namely applicant/plaintiff herein will not be allowed to attend or vote in any Council Meeting till such time, CASC is restored and brought on file with the Registrar of Societies. In addition, it was also resolved in the meeting that CASC shall continue to run events with the 1st defendant's permission and CASC will be restored back into the Federation (1st defendant) as a full Founder Member, once they have completed their rectification process and taken on file with the Registrar of Societies. The decision was conveyed to the applicant/plaintiff through e-mail dated 17.11.2020 which is the subject matter of lis in the

suit.

5. This Court, while entertaining the Suit has granted interim injunction restraining the defendants from giving effect to decision of the Council of the 1st respondent/1st defendant dated 26.10.2020 under Agenda item No.17 communicated to the applicant/plaintiff through e-mail dated 17.11.2020 preventing/barring the applicant/plaintiff from acting and functioning as a Councillor of FMSCI on the ground of the status of CASC in respect of its registration, vide its order dated 18.12.2020. The injunction granted by this Court is in force as on date.

6. Mr.Karthik Seshadri, learned counsel appearing for the applicant/plaintiff would make the following submissions.

a) He would, at the outset, submit that the impugned action of the respondent/1st defendant is beyond the scope of AoA and hence, the same cannot be enforced against the applicant/plaintiff. According to him, the applicant being nominated by one of the named 5 Founder Members in terms of Clause 6, the Council has no authority to remove any Founder

Member as such power is not provided for in the AoA. He would further submit that the reasons for which the impugned decision was taken are also not sustainable, as nowhere in the AoA, there is any prescription that only a registered body can be admitted as Founder Member. In fact, even at the time of incorporation of the 1st defendant Company in 1973, the CASC had become defunct according to the information furnished by the Registrar of Societies and whether CASC registration under the Societies Registration Act, 1959 is valid or not or in force or not, is immaterial, with reference to being a valid Founder Member of the 1st defendant Federation.

b) According to the learned counsel, the position that the Society had become defunct has been there for more than four decades and suddenly, the issue has been raised for a malafide reasons by some members, as there was discord leading to fissures in the relationship with reference to the functioning of the applicant/plaintiff as a Councillor and also as a President of the Council in the past. Learned counsel would draw the attention of this Court to certain averments in the plaint explaining the reasons which had been the basis for the Council to take the extreme action of barring the applicant from participation and voting for the Council. The reasons are

stated herein.

(c) In August 2019, the applicant/plaintiff, while he was the President of the 1st defendant was named as a co-organiser to conduct four Wheeler Indian National Rally Championship Round at Jodhpur between 20th and 22nd September, 2019. Being the President of the 1st defendant Company at that point of time, he agreed to be the 'Clerk of the Course' for the Championship. Unfortunately, in that event, an accident occurred which led to loss of a human life, generating adverse publicity in Motor Sports world. An enquiry was conducted by the council into the accident and the enquiry panel consisted of 5 members namely, 2nd, 4th and 5th defendants, apart from two other members. A report was prepared on 05.11.2019 and the applicant was ultimately, found responsible for the mishap and was handed out the punishment of ban for a period of 3 years from acting as "Clerk of the Course" and a further demotion for one year thereafter, in future events. CASC was also subjected to a penalty of a ban from organizing any National Events till 31.12.2022 and a penalty of Rs. 5 lakhs.

d) The applicant/plaintiff preferred an appeal against the decision to the Appellate Committee headed by a Former Judge of this Court and the

Committee reversed the decision after finding that there were violations of principles of natural justice. However, simultaneously, CASC filed C.S.No.20/2020 before this Court for a declaration that the penalty imposed on the Club was illegal. This Court, passed an order on 25.02.2020 in O.A.No.29/2020 granting injunction restraining the defendants from enforcing their order dated 05.11.2019.

e) The defendants took umbrage to the developments, being not able to enforce their decision against the applicant/CASC and hence, were making all efforts to ensure that CASC's further participation in the Council Meetings should be scuttled under all costs leading to the objection raised suddenly as to the legal status of the CASC.

f) Learned counsel therefore, submitted that the Society, even otherwise, is only a body of persons and in all the Income Tax returns filed by CASC, they are only described as Association of Persons and therefore, there was no change in the status at all, for the Council to take abrupt adverse view as to the status of CASC at this distance of time.

g) Learned counsel would also add that being a nominated person of the Council, the applicant herein has an individual interest in the matter and

he can maintain the Suit without CASC, being made as a party in the Suit. According to the counsel, when the resolution, the subject matter of the suit, is beyond the scope of AoA and the decision being non-est, the resolution has no legal effect at all and therefore, he can continue to represent CASC in the Council. Further, even assuming that there was a conferment of power to remove the Founder Member, in the impugned action, CASC has not been factually removed at all from the Founder Membership. Learned counsel would therefore submit that as the impugned action is *ex facie* illegal, the balance of convenience is entirely in favour of the applicant for continuance of injunction granted by this Court.

7. Per contra, Mr.S.R.Rajagopal, learned Senior Counsel appearing for the respondent/1st defendant would make the following submissions.

a) According to the learned Senior Counsel, the foremost objection is as to the maintainability of the Suit by the applicant herein. He being mere nominee, cannot maintain the suit when the Council has taken action against the Club, he represents. The applicant herein cannot have independent legal right apart from the Club he represents, as its nominee. In the absence of the

Club, CASC challenging the action by the Council under Agenda No.17, the applicant is precluded from challenging the same independently. On this ground alone, the Suit is liable to be rejected.

b) Learned Senior Counsel would further submit that in case, the suit being laid on a representative capacity, the applicant/ plaintiff ought to have filed application under Order 1 Rule 8 of CPC and ought to have taken leave of this Court. In the absence of leave by this Court under Order 1 Rule 8 of CPC, the Suit cannot be maintained in law. On this ground also, the Suit is liable to be dismissed.

c) Learned Senior Counsel would submit that CASC has all along been claiming itself to be a registered Society, thus, misleading the first defendant Company and when one of the members had obtained information in 2019-20 under the Right to Information Act that CASC was struck off and dissolved Society, action was initiated as CASC had lost its legal status and in that process, it lost its right to continue as one of the Founder Members. In fact, this position has been well known to CASC and its nominee, the applicant herein, particularly, when the applicant has been a President of the 1st defendant Company, being elected 7 times as such.

Having known the position that being a defunct or struck off Society entailed serious consequences, the Club has represented to the Federation that they are taking initiative to regularise the Registration with the Registrar of Societies.

d) According to the learned Senior Counsel that the Council could have taken a drastic decision of removing the Club, but because of the long association for over 4 decades, CASC has been given a chance to overcome its defunct status. He would particularly lay emphasis on the fact that being the nominee of the Club, the applicant cannot entrench himself as a Councillor, once the impugned action has been taken against the Club. According to learned Senior Counsel, the applicant cannot be allowed to wear two hats, one as a nominee of the Club and another as a Councillor of the 1st defendant Federation.

e) Finally, the learned Senior Counsel would submit that the operation of injunction has far reaching repercussions, as it affects the effective functioning of the Council, as the 1st defendant Company has been unable to send its representatives to international body from India. Being an Apex body of Motor Sports, the Country will be deprived of its

representation in the International body due to the present dispute raised by the applicant herein. Therefore, he would submit that the injunction which is in operation as on date may be vacated and the Agenda in question may be allowed to come into force, as far as the applicant/plaintiff herein.

8. Mr.Aravind Srivatsava, learned counsel appearing for the respondents 2 to 10 and the defendants would adopt the arguments of the learned Senior Counsel, Mr.S.R.Rajagopal and would only add that CASC, though necessary party in the Suit has not been added as a party and therefore, the Suit filed by the applicant is not maintainable in law.

9. Mr.Karthik Seshadri, by way of reply, would submit that whether the CASC is necessary party or not is a technical objection but the said issue can always be tried at the time of the disposal of the Suit. According to the learned counsel, there is no necessity to take leave of this Court under Order 1 Rule 8 of CPC, since the scope of the lis in the Suit, is the person's individual right to attend the Council meetings and no community interest is involved. Learned counsel, in fact, would rely on a decision reported in

2003(8) SCC 413 (Illachi Devi (D) by Lrs. & Ors. vs. Jain Society Protection of Orphans India & Ors.) wherein the Hon'ble Supreme Court held that Society is only an association of persons whether it is registered or not. He would lay emphasis on the fact that admittedly, no resolution has been passed to remove the Founder Member namely, CASC, as on date. Learned counsel would also submit that in terms of the decision reported 1973 (2) SCC 543 (Parameshwari Prasad Gupta vs. The Union of India), a Director of a Company is entitled to notice, if any decision adverse to his interest is taken and if any decision is taken in his absence, the same is invalid and not binding on him. He would therefore, submit that the impugned resolution of the 1st defendant is ex-facie illegal and void and liable to be interfered with.

10. Mr.S.R.Rajagopal, learned Senior Counsel, in regard to the last submission of the applicant's counsel regarding Director of the Company entitled to notice would refute the said contention as misplaced for the reason that the applicant is only a nominee of the Club he represents and not the Director of a Company.

11. On behalf of the 1st defendant Company, compilation of three decisions was circulated after the arguments were over.

(i) Unreported decision rendered in W.A.No.257/2016)
State of Tamil Nadu v. Chikkaiah Naicker College Managing
Board & Anr.)

(ii) A decision reported in 2012(4) SCC 407 (Ravi
Yashwant v. District Collector, Rajgad & Ors.)

iii) House of Lords, English decision reported in 1914
AC 808 (Shearer & Anr. v. Shields)

12. Heard the Counsels/Senior Counsel for the respective parties.
The present adjudication is to be necessarily confined as to whether the
injunction which has already been granted by this Court on 18.12.2020 in
favour of the applicant herein should continue till the disposal of the Suit or
not on the basis of *prima facie* consideration with reference to the materials
and pleadings placed on record and the oral submissions made by the
respective counsels.

13. The attention of this Court has been drawn to various Clauses of

AoA which admittedly governing the functioning of the 1st defendant Company. Although great stress has been laid by the learned Senior Counsel for the 1st defendant Company that the impugned decision was taken as a consequence of that CASC being declared as a defunct Society or struck off society, the learned Senior Counsel or learned counsel appearing for the other respondents/defendants was not able to draw any specific reference to the Clauses on the basis of which the impugned resolutions were passed. This Court, after going through the relevant Clauses in AoA could not find to any specific reference to the pre-requisite or pre-condition that for being admitted as Founder Member, the Member has to be a registered body. Admittedly, CASC has been a defunct Society since 1970 and in terms of the information furnished by the Registrar of Society, the Club has not renewed its registration after 1963. The fact therefore, reveals that right from the date of incorporation in 1973 of the 1st defendant Company, and when CASC was admitted as one of the 5 Founder Member in terms of Clause 6 of the AoA, CASC happened to be a defunct Society and it continued to be with the same status, till the impugned action was taken in 2020. As rightly submitted by the learned counsel for the applicant/plaintiff,

for 47 years, the relationship continued without any strain or stress. However, the issue of CASC becoming defunct or struck off as Society, assumed significance ostensibly, when some members of the Council had developed differences of opinion with the applicant/plaintiff due to certain facts which unfolded as narrated by the applicant himself in the plaint in regard to holding of a Motor Rally at Jodhpur, in September 2019. The sudden investigation into the legal status of CASC presumably appeared to be the consequence of souring relationship between some members and the applicant, which ostensibly led to the impugned action by the 1st respondent/1st defendant.

14. From the facts as narrated by the applicant and also the sequence of events which culminated into the passing of the impugned resolution, this Court can reasonably infer that the action of the 1st defendant, *prima facie* lacked in bonafides. It appears, at the instance of some members, the impugned action has been initiated and also the fact that CASC has approached this Court in another Suit in C.S.No.20/2020 and obtained interim injunction from this Court restraining the 1st defendant from

enforcing its decision. Apparently, as a matter of desperate retaliation, a bogey has been created that CASC lost its legal status as being the defunct or struck off Society and therefore, not entitled to continue as a Founder Member.

15. The above conclusion is evident from the facts that before 2019 there were no attempts to verify the status of CASC, as obviously the relationship among the members then did not come into conflict. Hence, prima facie the present dispute of the legal status of CASC is a creation of vested interest to punish the Club by adopting another means, as their earlier punishment order on 05.11.2019 could not be implemented due to this Court's intervention. Therefore, this Court finds malafides writ large on the resolution passed by the 1st defendant. Apart from the conclusion as to the colourable decision of the 1st defendant, legally, this Court finds more than one infirmity in the impugned resolution. Firstly, as rightly argued by Mr.Karthik Seshadri, learned counsel for the applicant, CASC has not been removed from the Founder Membership at all by the 1st defendant Company. In the absence of its removal, there cannot be any bar for the applicant to

represent the Club in the affairs of the Council. In that event, the applicant/plaintiff has a right to maintain the Suit as the nomination has not been withdrawn by the Club he represents.

16. This Court is also *prima facie* of the view that there are no clear provisions in AoA for removal of Founder Member nominated at the time of incorporation of the 1st defendant Company. The nearest provisions that could be referred to, are Clauses 51 and 52. Even assuming that Clause 51 or 52 was invoked implicitly, the procedure contemplated in the said provisions have not been followed at all. In fact, as rightly contended by the learned counsel for the applicant, admittedly, CASC has not been removed, even as per their own resolution with reference to Item 17 Agenda in the subject Meeting. This fact has been admitted by the learned Senior Counsel appearing for the 1st defendant, when he contended that the 1st defendant has been very lenient in not removing them, but giving them a chance to restore the status of the registered Society for them to be readmitted as a Founder Member. This Court in fact is unable to comprehend or appreciate as to where is the question of readmission or restoration of CASC as Founder

Member in the absence of valid removal of the Club in the first place? Such submission suffers from contradiction in terms and does not advance the cause of the 1st defendant a wee bit.

17. Further, this Court finds that from the cumulative reading of the Clauses contained in the AoA, there does not appear to suggest that only registered body has to be admitted as Founder Member. No such pre-condition or requirement could be fathomed in terms of the AoA governing the 1st defendant Company. Therefore, as rightly contended by the learned counsel for the applicant that for continuing as a Founder Member, the fact of CASC is a defunct society or struck off Society is immaterial or at least not mandatory. When adverse action is taken in terms of provisions of AoA, unless a specific provision is resorted to as a source of power pertaining such action, the action under challenge has to be discountenanced as being without the authority of law. In this case, precisely the subject action of the 1st defendant has been exposed to its vulnerability of interference of this Court for want of authority.

18. Further as regards the contention of the counsel representing the respondents that being a defunct or struck off Society, CASC is not entitled to continue as a Founder Member and in that bargain the applicant/plaintiff herein cannot continue as its nominee of the Council, this Court is not inclined to draw any fragile conclusion in the absence of any material showing that by virtue of the Society becoming defunct or struck off, it attracted any disqualification in terms of any particular Clause of AoA. 21. In this regard, the respondents/defendants have materially failed to impress upon the Court with any clinching material while resisting the interim protection sought by the applicant herein.

19. Learned Senior Counsel appearing for the 1st defendant vehemently submitted that the applicant cannot have an independent right to have his grievance redressed in a Suit proceedings in the absence of the Club he represents being a party in the proceedings. But as stated above, as a matter of fact the Club being not removed from the Membership by any valid resolution, the applicant continues to be the nominee and in that legal context, he has an independent right to question the action of the 1st

defendant. Moreover, whether the Club should be made a party or not for maintaining the suit, such an issue can always be decided at the time of determination of the suit, in future.

20. The other objection raised on behalf of the defendant, namely Order 1 Rule 8 CPC, since this Court finds that the applicant herein has an independent right to maintain the Suit on a *prima facie* consideration that his nomination is still valid and in force, being a duly elected councillor of the last General Meeting, he is under no legal obligation to obtain leave under Order 1 Rule 8 C.P.C. As rightly contended by the learned counsel for the applicant/plaintiff, the applicant being a nominee, has an independent right to attend all the meetings of the Council in the facts and circumstances of the case.

21. In any event, the CASC has been part of the 1st defendant Company as the Founder Member for the past 48 years and admittedly, the applicant/plaintiff has been the nominee of CASC and the President of the Council the 1st defendant for 14 years. In that circumstances, his

continuance till the lis is comprehensively settled would not be prejudicial to the rights of the 1st defendant. On the other hand, if the applicant's debarment is to be upheld, the valuable right of one of the 5 Founder Members namely, CASC would stand negated. This is particularly so that in terms of Clause 37 of AoA, the Council shall contain maximum of only 10 members and hence every vote in Council Meetings will have significant value and effect in running the affairs of the Federation.

22. As stated above, on behalf of the 1st defendant, a compilation of decision was submitted, but this Court does not find any of the decisions could be applied to the factual matrix of the present case. This Court, in fact, finds that though the compilation was circulated, no particular reference has been drawn to any ratio in the decisions which could be squarely applied to the present case on hand. More particularly, in the ***House of Lords 1914*** decision enclosed therewith no particular reference is pointed out as to its relevance to the case on hand. In the said circumstances, the decisions relied on, on behalf of the defendants are not referred to specifically, as this Court finds the same of no particular and

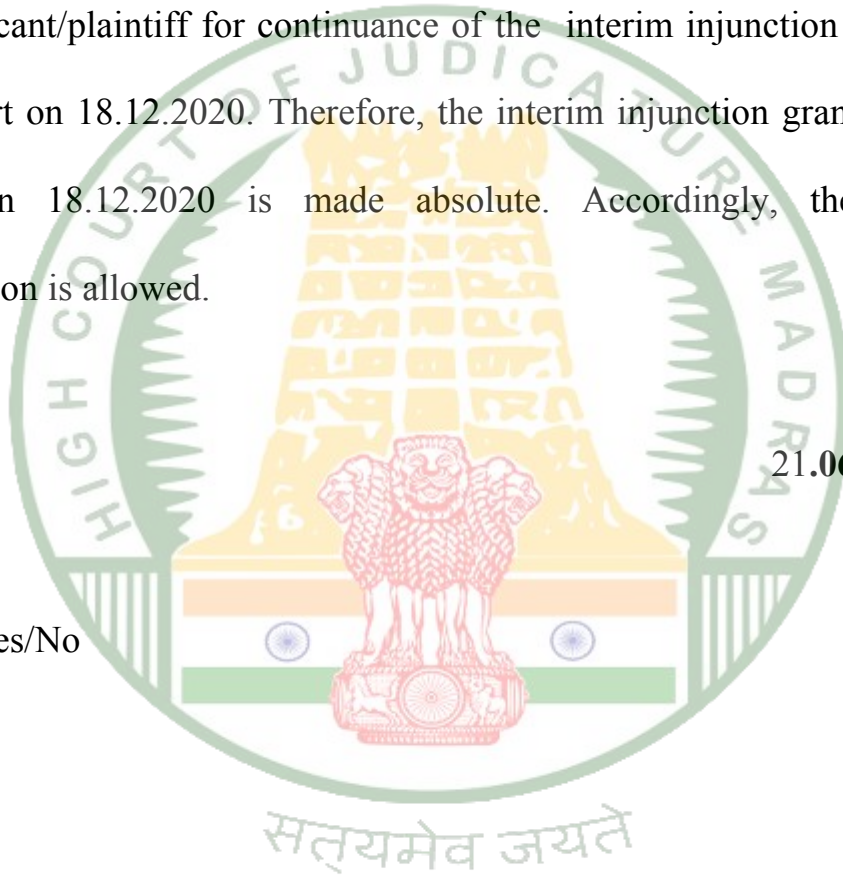
significant legal guidance for its application.

23. In the upshot of the above judicial discourse, this Court is of the considered view that the balance of convenience is prima facie in favour of the applicant/plaintiff for continuance of the interim injunction granted by this Court on 18.12.2020. Therefore, the interim injunction granted by this Court on 18.12.2020 is made absolute. Accordingly, the Original Application is allowed.

21.06.2021

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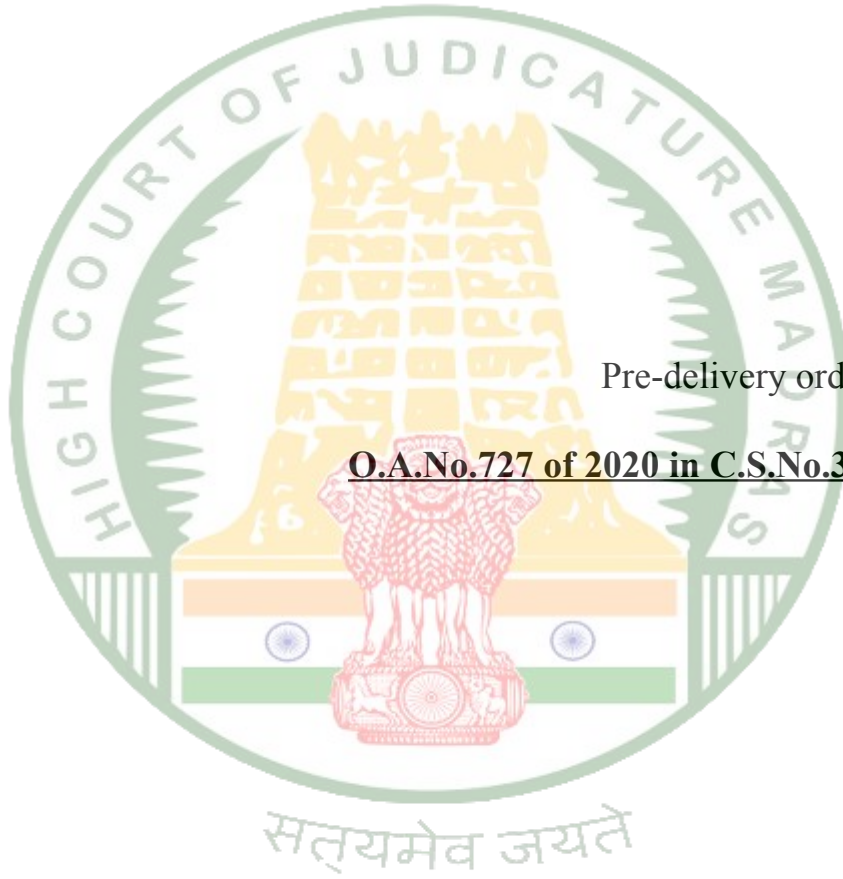
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