



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM

THE HONOURABLE MR. JUSTICE PARESH UPADHYAY
AND

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

O.S.A.No.309 of 2021
& CMP No.17782 of 2021

P.Arunkumar .. Appellant/2nd Respondent/
2nd Defendant

Vs

1.D.V.Sridharan .. 1st Respondent/Applicant/
Plaintiff

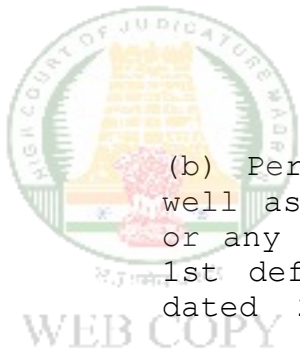
2. Thyagaraya Nagar Social Club
(T.Nagar Social Club),
Regd.S.No.12/1931-32,
No.1, Nageswara Road,
Off.Venkatnarayana Road,
Panagal Park, T.Nagar,
Chennai - 600 017.
Rep. By its Hony.Secretary.

..2nd Respondent/1st Respondent/
1st Defendant

Appeal filed under Clause 15 of the Letters Patent against the order dated 07.10.2021 passed in O.A.No.631 of 2021 in C.S.No.309 of 2021.

Prayer in O.A.No.631 of 2021 : To interim injunction restraining the 1st respondent/Defendant club as well as its members, the 2nd respondent/defendant, his men servants, agents or any person claiming under him from conducting the EGM of the 1st respondent/Defendant club on 24.10.2021 as sought for in the notice dated 28.09.2021 circulated by the 2nd respondent/Defendant.

(a) To declare that the Agenda/notice dated 28.09.2021 circulated by the 2nd defendant seeking to conduct the EGM of the 1st defendant club on 24.10.2021 in the premises of the 1st defendant club as illegal and opposed to the constitution and byelaws of the 1st defendant club



(b) Permanent injunction restraining the 1st defendant club as well as its members, the 2nd defendant his men servants agents or any person claiming under him from conducting the EGM of the 1st defendant club on 24.10.2021 as sought for in the notice dated 28.9.2021 circulated by the 2nd defendant.

For Appellant : Mr.R.Radha Pandian

For Respondents : Mr.S.Thankasivan for R2

JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

This appeal arises from the order of learned single Judge in O.A.No.631 of 2021 in C.S.No.309 of 2021 dated 07.10.2021.

2.Learned single Judge has, by the impugned order, granted interim injunction in favour of the original plaintiff. Para 4 thereof reads as follows:

4.In view of the above facts and circumstances of the case, this Court is of the view that the applicant/plaintiff has made out a prima facie case and the balance of convenience is also in favour of the applicant/plaintiff and if interim injunction is not granted, it will cause great prejudice to the applicant/plaintiff. Hence there shall be an order of interim injunction as prayed for in O.A.No.631 of 2021 till 25.10.2021.

3.Learned advocate for the appellant/original second defendant has made the following submissions:

3.1. It is submitted that it is unusual for the president of the club to file a suit against the club, since the plaintiff is the president and the club is the first defendant.

3.2. It is also submitted that though no confidence motion was moved by about 170 members of the club, all 170 members ought to have been joined as party defendants which the plaintiff did not and therefore, the suit suffers from the vice of non-joinder of necessary parties.

3.3. Learned advocate for the appellant has taken this Court through the agenda of the Extraordinary General Body Meeting, which was supposed to be convened on 24.10.2021 (at page No.228).



3.4. It is further submitted that no resolution was passed by the Committee to continue the office bearers though the term had expired in January 2020.

3.5. Learned counsel has also made reference to Regulation No. 31 of the Club and also Section 36 of the Tamil Nadu Societies Registration Act.

3.6. It is noted that learned advocate for the appellant has addressed the Court at length on merits of the matter and has submitted that the impugned order be interfered with.

4. The respondent club appears on caveat. Learned advocate for the club has also appeared before the court. Since we do not consider it necessary to call upon any of the respondents in this appeal, learned advocate for the club is not heard.

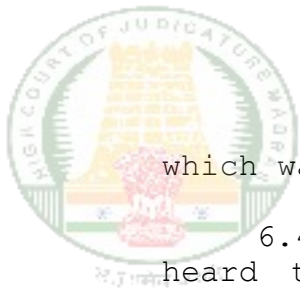
5. At the outset it is noted that, the reasons recorded in the impugned order shall be treated to be part of this order as well.

6. Having heard learned advocate for the appellant/original second defendant and having considered the material on record, more particularly, the reasons recorded in the impugned order, this Court finds as under:

6.1. The reasons for not holding the Annual General Meeting are stated in detail in the plaint, which are duly noted by learned single Judge in the impugned order. It is principally to the effect that because of the covid situation, the said meeting could not be convened and when it was attempted by the office bearers, the same was not permitted by the State authorities for valid reasons.

6.2. The committee members, including the president (plaintiff) persisted and ultimately the Annual General Meeting is decided to be convened on 31.10.2021. It is at that stage, some elements represented by the present appellant set the wheels in motion inter alia to remove the office bearers from their position and for that purpose, they sought to convene Extraordinary General Body Meeting (EGM) on 24.10.2021.

6.3. Once the Annual General Meeting is scheduled on 31.10.2021 and the main agenda of which is to elect the office bearers for next years, no useful purpose would have been served by moving the no confidence motion against the office bearers, who themselves have been trying to hold the meeting to elect new office bearers. This itself would be a ground not to interfere with the order of learned single Judge which has stayed the EGM



which was scheduled to be convened on 24.10.2021.

6.4. We make it clear that only because this appeal is being heard today i.e. 25.10.2021 itself is not a ground, not to entertain this appeal which pertains to EGM which was scheduled to be convened on 24.10.2021. However, this appeal is being considered on merits and on conjoint consideration of the material, this Court finds that no interference in the impugned order is warranted.

7. It is noted that the impugned order is exparte and the present appellant could move the learned single Judge for modification of the order, which he has not opted. That was his choice and this appeal is being considered on merits.

8. The arguments with regard to (i) non joinder of necessary party, (ii) unusual approach on the part of plaintiff instituting suit against club - as perceived by the present appellant and (iii) breach of the Regulations of the club and the provisions of the Act, as noted in para 3.5 above will not take the case of the appellant any further in the present case.

9. We note that, there is also material on record which would show lack of bonafide on the part of the present appellant.

9.1. The agenda for EGM dated 24.10.2021 (at page 228) inter-alia refers to one item (at No.4) "New members who have joined after 03.03.2021 are not eligible to attend EGM & cannot vote".

9.2. There is one more factor against the present appellant. Para 5 of the stay petition reads as under:

"5.I state that unless EGM is conducted as scheduled for 24.10.2021 the competence of 1st respondent/1st plaintiff to contest the elections could be decided. At any rate the validly convened EGM to be held on 24.10.2021 has to be conducted, as the outcome of which alone would be decided the eligibility to contest the election."

(emphasis supplied)

9.3. The above would show that, on one hand the office bearers of the club (including the plaintiff) have already called AGM on 31.10.2021, principally to elect office bearers for the new term and on the other hand the present appellant intends to go with agenda item for EGM (24.10.2021) coupled with averments in stay petition quoted above. The above would go to



show that, the present appellant wants that the plaintiff, who is the president of the club, should be treated as ineligible to even file nomination for the next year. It is under these circumstances, we arrive at the conclusion that not only the balance of convenience is in favour of the plaintiff as accepted by the learned single Judge, with the pleadings on this appeal there is additional material which further tilts balance in favour of the original plaintiff and against the present appellant.

9.4. For the above noted additional reasons also, no interference is required in the injunction granted by learned single Judge.

10. This original side appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IX)

//True Copy//

Sub Assistant Registrar

mmi

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

O.S.A.No.309 of 2021

SSD (CO)
K.RK. (17.11.2021)