

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.06.2021

PRONOUNCED ON: 01.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 3551 of 2019

And

C.M.P.No. 23299 of 2019

THE MUDALIAR EDUCATIONAL TRUST

Represented by its Secretary K.K.Balusamy

Having registered office at:

No.1, South Hanumandarayan Kovil Street

... Petitioner/st Defendant/Petitioner

-Vs-

N.M.Sundarar

... Respondent/Plaintiff/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the I Additional District Munsif Court at Erode, dated 03.09.2019 in I.A.No. 833 of 2018 in O.S.No. 200 of 2015.

For Petitioner : Mr. P.Valliappan

For Respondent : Mr. V.S. Kesavan

ORDER

The first defendant in O.S.No. 200 of 2015 pending on the file of the I Additional District Munsif Court, Erode, is the revision petitioner herein. The revision petitioner had filed I.A.No. 833 of 2018 in the said suit. Simultaneously, the sixth defendant in the suit had also filed I.A.No. 832 of 2018. Both the Interlocutory Applications were dismissed by order dated 03.09.2019. Questioning that order, the first defendant/petitioner in I.A.No. 833 of 2018 has filed the present revision petition. The sixth defendant/petitioner in I.A.No. 832 of 2018, according to the learned counsels had not questioned the said order.

2. The suit in O.S.No. 200 of 2015 had been filed against the first defendant, a registered trust under the Societies Registration Act and other members of the first defendant and also against the District Collector of Erode and the District Registrar of Erode seeking a Judgment and Decree in the nature of a declaration that the elections to the General Council and the Executive Committee for the first defendant held on 21.02.2015 and on 01.03.2015 and conducted by the second defendant based on notifications

dated 11.02.2015 were invalid and against the bylaws of the first defendant and to declare the elections for the Executive Committee and office bearers also as invalid and for a permanent injunction restraining the third and sixth defendants from functioning as office bearers of the first defendant and also for an injunction against the eighth defendant from taking on file the list of elected body of the first defendant and for a mandatory injunction to appoint an Advocate Commissioner to conduct the election for the first defendant Trust and for such further reliefs as may be granted by the Court.

3. The suit had been meandering around without any effective progress. A written statement had been filed by the first defendant and subsequently, an additional written statement had also been filed. These had been filed in the year 2015 itself.

4. Thereafter, the first defendant filed I.A.No. 833 of 2018 to dismiss the suit as infructuous. It is seen that subsequent to the institution of the suit and pending the suit, the term of the office bearers whose election have been questioned in the suit had run its course and in the year 2018, fresh elections had also been held. That election has not been challenged or

questioned by the plaintiff. Further, the term of the office bearers elected in the year 2018 had also been completed in the year 2021 and steps to conduct fresh elections have also been undertaken by the first defendant.

5. In the affidavit filed in support of I.A.No. 833 of 2018, it had been stated that the tenure of the members, who have been elected for the period 2015-2018 was for three years and had expired in the year 2018 and subsequently in the year 2018, further elections had been held for office bearers to function from 2018 to 2021. It had also been stated that the said set of office bearers had also been recognised by the District Registrar, who had taken their names on record and they had also taken charge of their respective posts. It had therefore been stated that the suit had become infructuous and no effective Judgement can be passed with respect to the reliefs sought in the suit.

6. A counter had been filed on behalf of the plaintiff wherein the contention that the suit had become infructuous was disputed. It had been claimed that the cause of action still survive and is not wiped away merely because elections had been conducted for the subsequent period. It had been

stated that even on an earlier occasion, when a suit was filed challenging the elections conducted in the year 2000, it was disposed of only in the year 2009 and first appeal was disposed of in the year 2013 and the second appeal was disposed of in the year 2014 and the election conducted in the year 2000 was held invalid. It had therefore been stated that the application should be dismissed and the plaintiff should be permitted to proceed further with the suit.

7. As stated, another defendant, namely, the sixth defendant had also filed a similar application in I.A.No. 832 of 2018. A common order had been passed in both the applications on 03.09.2019 dismissing both the applications. The learned Judge while examining the issues in the applications had stated that the suit had been filed questioning the elections for the reason that the members, who were inducted after a particular period had no right to vote. It was stated that the actual issue was whether the list of voters prepared by the second defendant was correct or not. Reference was also made to the Second Appeal which flowed out of the earlier suit filed in the year 2000 and the order passed by this Court holding that the election of the year 2000 were invalid. It was therefore held that the

application should be dismissed.

8. Heard Mr.P.Valliappan, learned counsel for the petitioner and Mr.V.S.Kesavan, learned counsel for the first respondent/plaintiff.

9. The facts had been stated above.

10. The first respondent, as plaintiff, had instituted O.S.No. 200 of 2015 which is now pending on the file of I Additional District Munsif Court, Erode. He claimed to be a permanent member of the General Council of the first defendant trust, namely, Mudaliar Educational Trust and further claimed that the said Trust runs several educational institutions at Erode and has its own bylaws, rules and regulations.

11. It is a Trust registered under the Societies Registration Act, 1975. In the suit, it had been claimed that the elections conducted in the year 2015 for the General Council and Executive Committee should be set aside and fresh election should be conducted by appointment of an Advocate

Commissioner. It had been further contended that the second defendant had been appointed to conduct the election. A report was given to the second respondent to decide the list of voters. He also had the power to decide the list of eligible voters. It was however contended that the second defendant ignored the directions given in an earlier suit. He also ignored the legal notice issued by the plaintiff. Thereafter, he had issued the election notification and then the plaintiff filed O.S.No. 94 of 2015 before the District Munsif Court at Erode, seeking a declaration that the election notification was invalid. The second defendant had however declared the elected body of the General Council Members as unopposed and thereafter had issued a paper publication advancing the elections for selecting the Executive Committee members and had actually conducted the said election. It had been stated by the plaintiff that all these constituted irregularities and therefore, the election of the year 2015 should be set aside.

12. Mr. V.S. Kesavan, learned counsel for the respondent claimed that merely because there has been passage of time, the alleged irregularities cannot be swept under the carpet. A declaration would still lie whether the office bearers who functioned between the years 2015-2018 had been

properly elected or not. In this connection, learned counsel drew inspiration from an order of this Court in a Second Appeal where a learned Single Judge of this Court in *S.A.No. 260 of 2013, Mudaliar Educational Trust, represented by its Secretary Vs. C.K.Ramanathan (died) and 30 others* by Judgment dated 11.07.2014, had directed an Advocate Commissioner to hold elections in accordance with law. The said Second Appeal arose from O.S.No. 482 of 2004, originally filed as O.S.No. 764 of 2000 challenging the elections conducted on 25.04.2000. It had therefore been contended by Mr.V.S.Kesavan, learned counsel for the first respondent that the suit in O.S.No. 200 of 2015 should be permitted to proceed and that the reliefs sought therein cannot be held to have become infructuous.

13. This contention is very seriously disputed by Mr.P.Valliappan, learned counsel for the revision petitioner. The learned counsel after pointing out the facts, relied on *AIR 2002 SC 1649 / J.M.Biswas Vs. N.K.Bhattacharjee and others*. That appeal was with respect to the South Eastern Railway Mens' Union with a membership of about 1,34,000 railway employees in six States in South Eastern Railway Zone. Originally, a Title Suit No. 105 of 1998 had been filed before the 6th Civil Judge (Senior

Division), Alipore, South Calcutta. That suit was filed by the plaintiff, who was the first respondent before the Hon'ble Supreme Court seeking a declaration that he was a duly appointed office bearer of the Union and restraining the defendants from interfering with his functioning as General Secretary. He filed an application seeking interim injunction. The Trial Court rejected the prayer for temporary injunction. The First Appellate Court however allowed the appeal by the plaintiff. That order was challenged by the defendant before the High Court. The High Court dismissed the revision petition the defendant then filed an appeal before the Hon'ble Supreme Court. It was submitted that in the meanwhile three elections had been held and different sets of office bearers excluding the plaintiff/first respondent have been elected. They have also been recognised by the management of the South Eastern Railway. It was contended that in these circumstances, the order of interim injunction should be vacated.

14. On the other hand, it had been contended on behalf of the first respondent/plaintiff that the elections are invalid as they were not held in accordance with the rules of the Union. The Hon'ble Supreme Court held as follows:-

“10. Further, successive elections have been held to elect office bearers and the office bearers so elected have been recognized by the management. In the circumstances, continuing this litigation will be like flogging the dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interest of the Union. Accepting the contentions raised on behalf of respondent No. 1 that the successive elections held in the meantime were invalid because he was not permitted to participate in it and to quash all such elections and direct holding of fresh elections under the supervision of the Court, will be contrary to democratic functioning of the employees Union. Furthermore, Courts in the present situation of exploding dockets can ill afford to stand time in such an exercise.”

15. Mr.P.Valliappan, learned counsel also referred to *AIR 2004 SC 2093 [Shipping Corporation of India Limited., Vs. Machado Brothers and*

Others], wherein the Hon'ble Supreme Court while considering subsequent events had observed as follows:-

“25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not. ”

16. In the present case, I hold that pursuing with the suit in O.S.No. 200 of 2015 would serve no purpose. With the passage of time, the reliefs sought by the plaintiff have become infructuous. The blame for the same cannot be laid on the first defendant/revision petitioner. They had filed the

written statement in the year 2015 itself. Subsequently, elections have been held in the year 2018. The plaintiff had not thought it fit to question the same. He should have asserted his rights at every point of time.

17. Keeping the suit on file would only ensure that, without any effective progress, the suit will be just pending in the Court of law. At some point, the respondent/plaintiff should realise that subsequent events have over ridden his grievances and it is only in the interest of all parties that they are taken note of and a litigation which would not result in any effective decree being passed is put to an end.

18. The allegations of the petitioner with respect to the voter list or with respect to the conducting of the elections could have been raised before the District Registrar but it is seen that the District Registrar had accepted and recognised the list of office bearers who were declared elected. He also recognised the list of office bearers who have been elected in the year 2018. I hold that keeping the suit on file and re-examining the issues would only be, as the Hon'ble Supreme Court put it, "*flogging a dead horse*". The result of the litigation will benefit none of the parties to the suit. Therefore, I

would interfere with the order passed in I.A.No. 833 of 2018 and put an end to the tortorous suit which is now pending, namely, O.S.No. 200 of 2015 before the I Additional District Munsif Court, Erode. The suit is accordingly directed to be struck off the records and dismissed as infructuous.

19. The contention that the sixth defendant had not filed any revision petition cannot be pressed to the disadvantage of the revision petitioner herein, who as first defendant, had thought it fit to agitate the order dated 03.09.2019 in I.A.No. 833 of 2018 before this Court,

20. This Civil Revision Petition is allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

01.07.2021

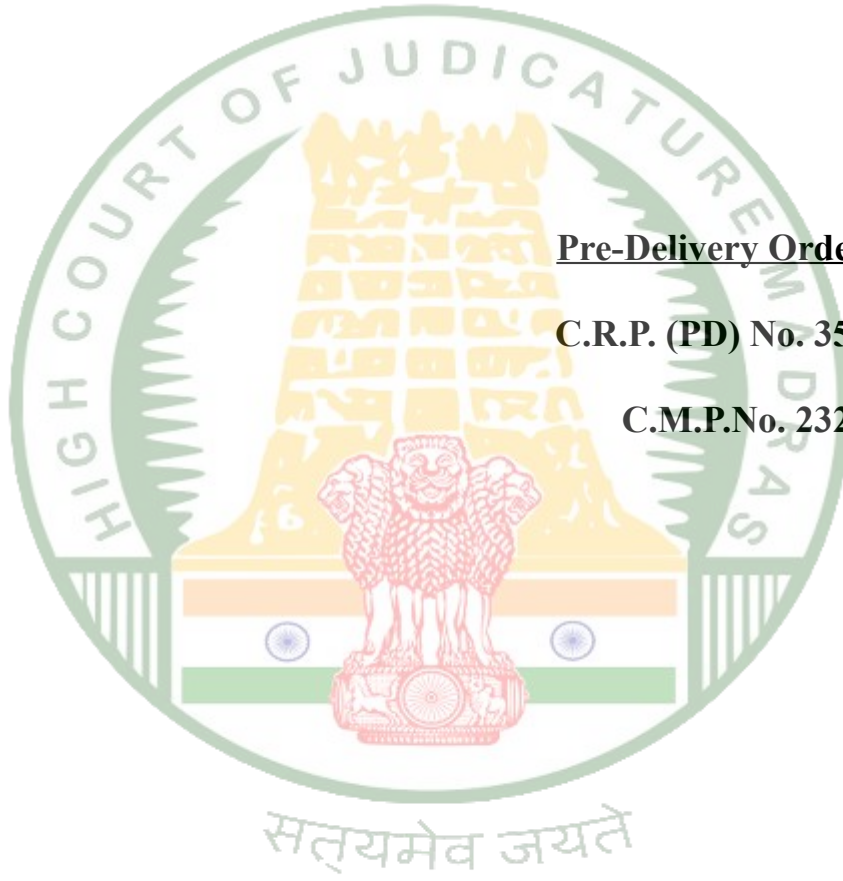
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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

C.V.KARTHIKEYAN, J.



Pre-Delivery Order made in

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And

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