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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved : 8.9.2021

Delivered : 27.9.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A.(MD) No.527 of 2021

and

C.M.P.No.7012 of 2021

Karur Taluk Lorry Owners Association,
rep. by its President,
Office at No.4, Vaiyapuri Nagar,
4th Cross, Kovai Road,
Karur-2.

... Appellant/ Appellant/ 1st Defendant

vs.

1. V.Viswanathan

2. Registrar of Societies,

Karur,

Registrar Office,

District Collector Office Building,

Thanthonimalai, Karur-7. ... Respondents 1&2/ Respondents 1&2/
Plaintiff, 2nd Defendant

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 13.8.2019 passed in A.S.No.33 of 2016 on the file of the Principal Sub Judge, Karur confirming the Judgment and decree dated 7.4.2016 passed in O.S.No.376 of 2011 on the file of the Additional District Munsif, Karur.

For Appellant : Mr.M.P.Senthil

JUDGMENT

Karur Taluk Lorry Owners Association, the first defendant, has come up with the present Second Appeal challenging the concurrent findings of the courts below in granting the relief of declaration and permanent injunction granted to the first respondent herein.

2. The factual matrix behind the filing of the Second Appeal is as under:-

(i) The appellant is an Association registered under the Societies Registration Act with the Registration No.16/1993. It was



formed with the main objection of giving benefits to Lorry Transport Operators. Since its formation, the first respondent herein, with Membership No.92, claims that he had acted a pivotal role in forming the said Association.

(ii) The first respondent herein also claims to be Member/Managing Committee Member/Executive Committee Member of various other Transport Associations and Federations.

(iii) Whiles, the first respondent herein had received a communication from the Appellant herein dated 8.3.2011 contending that the first respondent herein was removed from the primary membership of the Association as per a Resolution said to be unanimously passed by the Executive Committee.

(iv) The first respondent herein send a reply questioning the same for which, he had received a reply from the Appellant herein on 9.5.2011, according to the first respondent herein, it reiterated the contentions of the communication dated 8.3.2011.

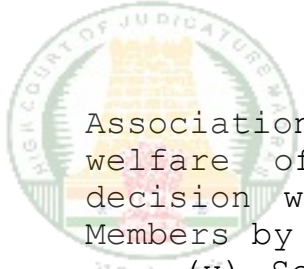
(v) The reason attributed by the Appellant herein for removal of the first respondent herein from their Membership is that he had acted in an undignified manner and with an intention to disunite the Association.

(vi) The first respondent herein challenging the said action initiated by the appellant herein, had filed the suit mainly on the ground that such an order of removal was passed without giving any prior notice or opportunity to him to putforth his case and therefore, the order passed by the Appellant herein is illegal, invalid, void, ultra vires to the bye laws and against the principles of natural justice and sought for such a declaration and permanent injunction restraining the Appellant herein from interfering with his rights.

(vii) The second respondent herein, with whom the Appellant herein had been registered, being a supervisory Body over the affairs of the Appellant herein, was added as second defendant in the suit.

(viii) The appellant herein had filed its written statement and additional written statement denying almost all the allegations contained in the plaint, sought to justify the action taken against the first respondent herein by contending that on the instructions of the Lorry Owners Federation, the Lorries belonging to the Members of the Appellant Association were checked and in that process, a lorry belonging to the first respondent herein was found to have been carrying heavy load than the prescribed limit and when it was questioned, the first respondent, having received information from the Driver, arrived at the spot and picked up quarrel using filthy language towards the Secretary of the Association and other Members of the Association and threatened them with dire consequences.

(ix) The further contention in the written statement is that when the first respondent herein was asked to pay a sum of Rs.50/- being collected per lorry towards subscription to the Association, the first respondent had agitated for the same in front of the other Members and thereby affected the unity among the Members of the



Association and acted in a manner detriment to the interest and welfare of the Association and considering his activities, a decision was taken in the General Body Meeting of the Executive Members by taking vote from majority of the Members.

(x) So far as non-issuance of show cause notice is concerned, the Appellant contended that as per Rule 11 of its Bye Laws, they are not expected to issue any show cause notice to the Member, who is sought to be removed from the Membership, in the event of his indulgence in activities detriment to the welfare and unity of the Association and the Member can be removed with the majority vote from the Members participating in the Executive Committee or General Body Meeting and the first respondent herein was removed only in such a manner and therefore, he is not entitled to challenge the same in the Civil Court and of course, he has an appellate remedy against his removal from the Membership and therefore, the Trial Court has no jurisdiction to decide the suit.

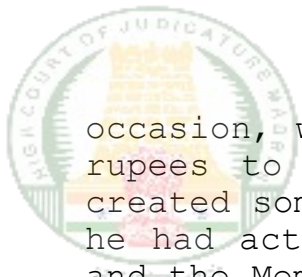
(xi) The second respondent herein being the second defendant filed a written statement contending that he had been unnecessarily impleaded and it is the dispute between the plaintiff and the first defendant and it has to be resolved between themselves and therefore, prayed that the suit as against the second defendant had to be dismissed.

(xii) The suit was taken up for trial. The plaintiff/first respondent herein examined himself as PW1 and produced 4 documents as Exs.A1 to A4 viz., the initial communication sent by the Appellant to the first respondent, the reply by the first respondent to the Appellant questioning their action, the reply sent by the Appellant for the letter sent by the plaintiff/first respondent and the Byelaws of the Association respectively. On the side of the defendants, 4 witnesses were examined and as many as 37 documents were marked as Exs.B1 to B37.

(xiii) The Trial Court, after considering the issue as to whether the first respondent/plaintiff is entitled to declaration and permanent injunction sought for by him on the basis of the oral and documentary evidence produced, granted the relief of declaration and permanent injunction sought for while rejecting the plea of the Appellant herein that the Trial Court has no jurisdiction to try the suit.

(xiv) On appeal filed by the first defendant, the Appellate Court had concurred with the finding of the Trial Court holding that the Trial Court has got jurisdiction to try the suit and on analysing the oral and documentary evidence once again in depth, had dismissed the Appeal filed by the Appellant herein. Aggrieved against such findings, the present Second Appeal has been filed.

3. Learned counsel for the appellant/first defendant would submit that in compliance of the instructions from the Lorry Owners Federation, when the first respondent herein was questioned about the heavy loading in his Lorry he had picked up quarrel and abused the Secretary of the Association and other Members and on another



occasion, when he was asked to pay the monthly subscription fifty rupees to the Association, he had not obliged for the same but, created some confusion in the minds of the other Members and in all, he had acted in a manner defaming the Association among the public and the Members of the Association.

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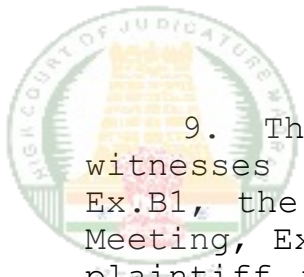
4. The learned counsel for the Appellant would further submit that the removal of the first respondent herein from the Membership of the Association was done in accordance with Rule 11 of Bye Laws of the Association which does not contemplate issuance of any show cause notice and as against the order passed by the Appellant herein, the first respondent has got appeal remedy and therefore, the Civil Court has no jurisdiction to try the suit, however, the Trial Court, ignoring these aspects, granted the relief of declaration and permanent injunction which had been confirmed by the Appellate Court without appreciating the above aspects in a proper perspective.

5. Though the Courts below have rendered detailed and verbose judgments, the issue in a nutshell is whether the removal of the plaintiff/first respondent herein by the first defendant/Appellant herein is in accordance with law or bad in law.

6. Before entering into the merits of the case, it would be apposite to deal with the issue of jurisdiction of the Civil Courts raised by the Appellant. In this regard, this court is of the view that the courts below have rightly observed that the Bye Laws are silent about two aspects, one being time limit and other details with regard to filing of Appeal by the aggrieved Member and the other being non-mentioning of specific bar for the Civil Courts to entertain the suits, in the Bye Laws of the Appellant-Association.

7. So far as the correctness or legality of the order passed by the Appellant removing the first respondent herein is concerned, the stand taken by the Appellant is that they are not expected to serve any show cause notice in view of Rule 11 of their Bye Laws marked as Ex.A4/B1, when they intend to initiate action for removal of any Member in the event of such Member's indulgence into activities detrimental to the welfare of the Society, whereas the grievance expressed by the first respondent/plaintiff is that he was not afforded with opportunity of hearing before passing such order of removal and it was not also communicated to the second respondent herein, the supervisory Authority to have sanctity for such order and therefore, it has to be declared as void, illegal and against the principles of natural justice.

8. The issue to be resolved is two fold, one being whether the plaintiff/first respondent had indulged into any such activities and the other being whether the action taken against him is legally valid or not.



9. The first defendant/appellant herein had examined four witnesses and marked 37 documents whereas except the Bye Laws, Ex.B1, the notification inviting the Members to participate in the Meeting, Ex.B9, the note placed for taking a decision to remove the plaintiff from the Membership, Ex.B10 and the Resolution passed in the General Body Meeting to remove the plaintiff from the Membership, Ex.B11, none of the other documents appear to be related with the allegations levelled against the plaintiff/first respondent herein. No evidence has been produced to show that any criminal proceedings were initiated against the plaintiff/first respondent herein for the alleged quarrel picked up by him with the office bearers of the Association or for the intimidation made by him with dire consequences which itself would speak much. These aspects have been properly appreciated by the courts below and only thereafter, they had eschewed the oral and documentary evidence produced on the side of the first defendant. Therefore, this court does not find any reason to interfere with such a finding, rather this court is of the view that the trivial issue appears to have been exaggerated unnecessarily by the Appellant herein.

10. Therefore, the issue remains to be decided is whether the action taken by the Appellant herein against the first respondent herein is legally valid or not. Of course, the view taken above with regard to the alleged root cause for the proceedings initiated by the Appellant itself would dilute the other issue. But, still, this court feels that to arrive at a just decision in this regard, the question to be decided is whether the silence of the Bye Laws on issuance of show cause notice by the Appellant-Association to the Member, who would be aggrieved by any action taken by the Association against such Member, can be taken advantage by the Appellant-Association to deny the basic right of hearing guaranteed by the law. The answer for the same will certainly be negative.

11. To throw some light on the issue, this court feels that it is relevant to refer here the decision in **Smt. Maneka Gandhi v. Union of India (AIR 1978 SC 597)**, wherein it has been observed as under:-

"It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action."

12. In **Canara Bank V. V K Awasthy (2005 6 SCC 321)** the Hon'ble Supreme Court observed as under:-

"Principles of natural justice are those rules which have been laid down by courts as being the



minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, Quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

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13. Therefore, it is clear that even in the absence of any provision for issuance of show cause notice in any tailor-made Bye Laws, it is implied that a duty is cast upon the Authority to issue a show cause notice before taking any punitive and damaging action and that the minimum protection of rights of the victimised against the arbitrary procedure of any Authority is guaranteed by the law to prevent such Authority from doing injustice.

14. The arbitrariness sought to be played by the Appellant-Association cannot be permitted to be duped in the form of Bye Laws. Except in a few extraordinary circumstances that compel the Authority to execute his power by infraction of principles of natural justice, in all other cases, certainly, it would have an overriding effect and prevail upon any Bye Laws since the principles of natural justice of fundamental rules of procedure are the preliminary basis of a good administrative set up.

15. Therefore, this court does not find any error or infirmity in the judgments rendered by the courts below. In the opinion of this court, the Appellant has not made any substantial question of law to admit this Second Appeal. The Hon'ble Apex Court in **Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)** has categorically held as under:-

"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some



questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

16. In view of the above, the Second Appeal fails and is, accordingly, dismissed without being admitted. However, it is made clear that the permanent injunction granted by the Trial Court and confirmed by the first Appellate Court and this court is confined to the present proceedings initiated against the plaintiff and it does not in any way preclude the Appellant herein from taking any action against the plaintiff/first respondent herein in respect of any other cause of action, after following due process of law in accordance with the principles of natural justice. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. Principal Sub Judge, Karur.
2. Additional District Munsif, Karur.
3. Registrar of Societies, Karur,
Registrar Office,
District Collector Office Building,
Thanthonimalai, Karur-7.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-30280[F] dated 27/09/2021)

S.A.(MD) No.527 of 2021 and
C.M.P.No.7012 of 2021
27.9.2021.

RD(27.10.2021) 7P 5C