

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 21ST DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

C.S.No. 112 of 2020

and

A.No. 508 of 2021

C.S.No. 112 of 2020 :-

* Mr. N. Narayanan,
Elected State President Representing
Tamilnadu Brahmin Association (THAMBRAAS),
Having office at Flat No.6, 1st Floor,
Vishwakamal, New No.62,
R.K. Mutt Road, Mylapore,
Chennai – 600 004.

... Plaintiff

***(Amended as per order dated 01/02/2022 in
Application No. 3363/2021)**

-Vs-

1. Mr. N. Hariharamuthu,
S/o. Mr. Narayana Iyer,
5/1, 3rd Cross Street,
Anna Nagar, Palani,
Pin Code : 624 601.
2. INDIAN BANK,
Abiramapuram Branch,
Represented by its Branch Manager,
No.63, C.P. Ramasamy Road,
Abiramapuram,
Chennai – 600 018.

... Defendants

Civil Suit praying that this Hon'ble Court be pleased to

a) Declaration that the letter dated 03/09/2019 issued by the 2nd Defendant at the instance of the 1st Defendant is not binding on the Plaintiffs.

b) Directing the 1st and 2nd Defendants jointly and severally to pay Damages of Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs only) for the loss of reputation and defamation.

c) Mandatory injunction directing the 2nd Defendant Bank to permit the Plaintiffs to have their accounts with the 2nd Defendant transferred to some other Bank.

d) Cost of the suit.

A.No. 508 of 2021 :-

Mr. N. Hariharamuthu,
S/o. Mr. Narayana Iyer,
5/1, 3rd Cross Street,
Anna Nagar, Palani,
Pin Code : 624 601.

Applicant/1st Defendant

-Vs-

1. Thamizhnadu Brahmin Association (THAMBRAAS),
Represented by its State President Mr.N.Narayanan,
Having Office at Flat No.6, 1st Floor,
Vishwakamal, New No.62,
R.K. Mutt Road,
Mylapore,
Chennai – 600 004.

... 1st Respondent/Plaintiff

2. INDIAN BANK,
Abiramapuram Branch,
Represented by its Branch Manager,
No.63, C.P. Ramasamy Road,
Abiramapuram, Chennai – 600 018.

... 2nd Respondent/2nd Defendant

Application praying that this Hon'ble Court be pleased to reject the
plaint and consequently dismiss the suit.

This Civil Suit along with the application coming on this day before
this Court for hearing in the presence of Mr. G. Nanmaran, Advocate for the
plaintiff in C.S.No. 112 of 2020 and for the 1st respondent in A.No. 508 of
2021 and Mr. Muthucharan Sundresh, Advocate for the 1st defendant in
C.S.No.112 of 2020 and for the applicant in A.No. 508 of 2021 and
Mr.R.Ramesh, advocate for the 2nd defendant in C.S.No. 112 of 2020 and
for the 2nd respondent in A.No. 508 of 2021 and upon reading the plaint
filed in C.S.No.112 of 2020 and the Judges Summons and the affidavit of
N.Hariharamuthu, filed in A.No. 508 of 2021 and this Court having
observed that the Suit is not maintainable on the original side jurisdiction of
this Court for the simple reason that the damages appears to have been
claimed for a sum of Rs.1,10,00,000/- and deliberately designed the cause
of action so as to bring the same within the jurisdiction of this Court, further
this Court finds that there is no shred of averments in support of the
damages but it is a clear ploy to bring this case within original side

jurisdiction of this Court, clever drafting of plaint will not give any right to the plaintiff, further, the association is an unregistered body and therefore the, first respondent/plaintiff cannot file this Suit as it is violative of Section 4 of the Tamil Nadu Societies Registration Act, 1975, further, as per By-Law Article 271 of the association, the association should have been registered, but for the dereliction of statutory duty by the first respondent/Plaintiff, elected State President, the said association continues to remain an unregistered body, and this Court is of the view that the Suit is barred by law and hence, the Suit is not maintainable, and

it is ordered as follows :-

That the Suit in C.S.No. 112 of 2020 be and is hereby rejected.

2. That the connected applications do stand closed.

3. That there shall be no order as to costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 21ST DAY OF APRIL 2022.

Sd/-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ED
28.04.2022

C.S.No. 112 of 2020
and
A.No. 508 of 2021

ORDER

DATED : 21.04.2022

THE HON'BLE MR. JUSTICE
P. VELMURUGAN

FOR APPROVAL:29.04.2022

APPROVED ON: 05.05.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 21ST DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

C.S.No. 112 of 2020

and

A.No. 508 of 2021

C.S.No. 112 of 2020 :-

* Mr. N. Narayanan,
Elected State President Representing
Tamilnadu Brahmin Association (THAMBRAAS),
Having office at Flat No.6, 1st Floor,
Vishwakamal, New No.62,
R.K. Mutt Road, Mylapore,
Chennai – 600 004.

... Plaintiff

***(Amended as per order dated 01/02/2022 in
Application No. 3363/2021)**

-Vs-

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S/o. Mr. Narayana Iyer,
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Pin Code : 624 601.
2. INDIAN BANK,
Abiramapuram Branch,
Represented by its Branch Manager,
No.63, C.P. Ramasamy Road,
Abiramapuram,
Chennai – 600 018.

... Defendants

Civil Suit praying that this Hon'ble Court be pleased to

a) Declaration that the letter dated 03/09/2019 issued by the 2nd Defendant at the instance of the 1st Defendant is not binding on the Plaintiffs.

b) Directing the 1st and 2nd Defendants jointly and severally to pay Damages of Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs only) for the loss of reputation and defamation.

c) Mandatory injunction directing the 2nd Defendant Bank to permit the Plaintiffs to have their accounts with the 2nd Defendant transferred to some other Bank.

d) Cost of the suit.

A.No. 508 of 2021 :-

Mr. N. Hariharamuthu,
S/o. Mr. Narayana Iyer,
5/1, 3rd Cross Street,
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Pin Code : 624 601.

Applicant/1st Defendant

-Vs-

1. Thamizhnadu Brahmin Association (THAMBRAAS),
Represented by its State President Mr.N.Narayanan,
Having Office at Flat No.6, 1st Floor,
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R.K. Mutt Road,
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... 1st Respondent/Plaintiff

2. INDIAN BANK,
Abiramapuram Branch,
Represented by its Branch Manager,
No.63, C.P. Ramasamy Road,
Abiramapuram,
Chennai – 600 018.

... 2nd Respondent/2nd Defendant

Application praying that this Hon'ble Court be pleased to reject the
plaint and consequently dismiss the suit.

This Civil Suit along with this Application coming on this day before
this court for hearing, **The Court made the following order:-**

Civil Suit No.112 of 2020 is filed by the plaintiff against the
defendants to declare that a letter dated 03.09.2019 issued by the second
defendant at the instance of the first defendant is not binding on the plaintiff
and for damages to the tune of Rs.1,10,00,000/- towards loss of reputation
and defamation and also for mandatory injunction directing the second
defendant to permit the plaintiff to have their accounts with the second
defendant transferred to some other Bank.

2. The applicant is the first defendant. The first respondent is the
plaintiff and second respondent is the second defendant in the Suit.

3. A brief facts of the case is that the unregistered association called as Thamizhnadu Brahmin Association (THAMBRAAS) established on 16.11.1980 is governed by their bylaws and the Association was formed for uniting Brahmins in the State of Tamilnadu irrespective of their subsects. The first respondent/plaintiff is the elected State President of the Association and applicant/first defendant is the member of the association. Initially the dispute arose when the applicant/first defendant, one Mr.S.Ramesh Kumar of Dindugul District Body of the Association, followed by one Mr.M.V.Vaidhyathan were removed by the State President. Against the said action, the aforesaid persons have issued a legal notice to the second respondent/second defendant, Karur Vysya Bank, Mylapore Branch stating that a suit had been filed by the applicant/first defendant before the District Munsif Court, Palani in O.S.No.150 of 2018, against the first respondent/plaintiff for grant of stay of his removal on disciplinary grounds. A reply notice was issued and when the Karur Vysya Bank had restrained the first respondent/plaintiff from operating the accounts, the association had filed C.S.No.218 of 2019 before this Court and by order dated 08.04.2019, this Court was pleased to permit the first respondent/plaintiff to operate their accounts with M/s.Karur Vysya Bank.

4. A similar notice of the like date had been issued to the second respondent/second defendant, Karur Vysya Bank, Mylapore Branch, which in turn, had addressed a letter dated 28.01.2019 to the first respondent/plaintiff asking them to settle the matter among themselves to avoid any complications. Even thereafter, the first respondent/plaintiff was continuing to operate the accounts of the association with the second respondent/second defendant.

5. Thereafter, the applicant/first defendant had issued a letter dated 22.07.2019 alleging that in an extraordinary General Body meeting held on 02.06.2019, at Palani, the State President had been removed and also made allegations against him. On receiving this letter, the second respondent/second defendant, Karur Vysya Bank, Mylapore Branch without calling for any explanation has unilaterally issued a letter dated 03.09.2019, blocking the accounts of the first respondent/plaintiff association and calling upon them to obtain necessary orders from the Court. This letter is totally unwarranted and there was no Court order favouring the applicant/first respondent and the Bank had rushed to freeze the accounts without issuing show cause notice to the first respondent/plaintiff. Therefore, the first respondent/plaintiff has filed the Suit in C.S.No.112 of 2020. Along with the Suit, the first

respondent/plaintiff had also taken out an application in O.A.No.157 of 2020 seeking for an ad interim injunction to restrain the applicant/first defendant and second respondent/second defendant from interfering with the first respondent/plaintiff's peaceful operation of the Bank account with the second respondent/second defendant. An alternative prayer was also sought seeking permission for the first respondent/plaintiff to close its accounts with the second respondent Bank and the accounts be transferred to some other Bank. This Court by order dated 08.09.2010, allowed the Application in O.A.No.157 of 2020 and there shall be an injunction restraining the applicant/first defendant and second respondent Bank from interfering with the first respondent/plaintiff's peaceful operation of its account with the second respondent/second defendant Bank till the disposal of the Suit.

6. After filing of the Suit, the applicant/first defendant has taken out an application in A.No.508 of 2021 under Order XIV of OS Rules r/w Order VII Rule 11 CPC seeking to reject the plaint in C.S.No.112 of 2020, filed by the first respondent/plaintiff.

7. The learned counsel appearing for the applicant/first defendant submitted that being an unregistered body or association the first

respondent/plaintiff association cannot file the Suit as it is violative of Section 4 of the Tamil Nadu Societies Registration Act, 1975 (Societies Act). Section 4 of the Societies Act mandates compulsory registration of certain societies and therefore, the learned counsel submitted that as per Section 4(1)(a) and (b) of the Societies Act, the first respondent/plaintiff Association ought to have compulsorily registered the association. Further, the learned counsel submitted that as per resolution dated 04.09.2011 and Bye-law Article 271 of the Association, the first respondent/Plaintiff should have registered the association, but for the dereliction of statutory duty by the first respondent/Plaintiff, who is the then President, the said association continues to remain an unregistered body. In this regard, efforts are being made by the applicant/first defendant to ensure that the association is registered in accordance with law and at the behest of the plaintiff/first respondent, a few other members are not cooperating and providing the books, documents and other materials that belongs to the plaintiff Association. Further, the learned counsel submitted that the first respondent/plaintiff does not have the authority nor the mandate to file the suit and has grossly violated a mandatory procedure for instituting the Suit in representative capacity and they have not followed the procedure under Order 1 Rule 8 CPC and therefore, the Suit is not maintainable and hence, the plaint has to be rejected. In support of his contention, the learned

counsel placed reliance on the decision of the Hon'ble Division Bench of this Court in ***Tamilnadu Technical Education Department Staff Cooperative House Building Society vs. The Secretary to Govt., Housing and Urban Development Dept., and Ors.***, reported in ***[2010 (4) CTC 129]***.

8. The learned counsel appearing for the first respondent/plaintiff denied that the first respondent/plaintiff was removed from the post of President on 02.06.2019 in the meeting of Special and Extraordinary General Body held at Palani and the alleged meeting was not convened as per the by-laws and the same is a sham and the alleged resolution is void ab-initio. Further, the learned counsel submitted that applicant/first defendant and three others by letter dated 06.05.2019 requested the Association to convene an extraordinary General Body meeting for expressing no confidence against the first respondent/plaintiff. It is therefore submitted that as per by-law, the minimum requirement is that all the members should request to convene a meeting, but only four persons have demanded the meeting and such a request is not in conformity with the by-laws of the association and therefore, the alleged resolution and alleged no confidence motion against the first respondent/plaintiff are against the by-laws and the same is void.

9. Further, it is submitted that the Annual State General Body meeting of the Association was properly convened by the State General Secretary of its Association as per clause 118 of the by-laws by giving 21 days prior notice and in the said event, 1300 members were present. It is further submitted that almost there are three Suits filed against the first respondent/plaintiff and the association and applicant/first defendant and few members filed O.S.No.6 of 2019, before the District Munsif Court Palani to protect financial integrity of the Association, in which the applicant/first defendant has not mentioned about any orders in the Suit to protect financial integrity. Further, the learned counsel submitted that the first respondent/plaintiff had filed a Suit in C.S.No.218 of 2019 along with interim application in O.A.No.323 of 2019. After contest, the Bank filed an affidavit permitting the first respondent/plaintiff to operate the accounts and based on the same, the application was closed. The learned counsel submitted that since the applicant/first defendant was not successful to stall day today activities of the association, he has now resorted to this method. Therefore, the learned counsel submitted that the Suit is not barred under law and the first respondent/plaintiff is the elected President and he has got every authority to file the Suit on behalf of the Association and the same is maintainable. Further it is submitted that at the time of deciding the application, the Court has to see the averments in the plaint and not defence

taken by the defendants and therefore, the Application filed is liable to be dismissed and the Suit is to be proceeded further.

10. Heard the learned counsel appearing for the parties and perused the materials placed on record.

11. The point which arose for consideration is as to whether the plaint in C.S.No.112 of 2020 is liable to be rejected at the threshold on the ground that an unregistered society cannot file a suit? and whether as per by-law under Article 271, association ought to have been registered?

12. Order VII Rule 11 CPC deals with rejection of plaint and the plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate; and
- (f) where the plaintiff fails to comply with the provisions of Rule IX Order 7 CPC.

13. The legal principle which can be culled out from the various decisions of the Hon'ble Supreme Court and this Court as to the scope of application of Order VII Rule 11 are to the effect that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 CPC. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. The power to reject a plaint under Order VII Rule 11 CPC ought not to be exercised except any clear cut case and, if there is any serious question to be decided, then the suit has to proceed further.

14. The power under Order VII Rule 11 CPC can be exercised only if the plaint is read as a whole, it does not disclose material facts giving rise to a cause of action, which can be entertained by a Civil Court. The Court can look into only plaint allegations and the documents submitted by the plaintiff himself, but cannot look into the defendant's defence. In other words, actual or probable defence cannot be looked into at the stage when an application under Order VII Rule 11 CPC is considered. To put it differently, the Court while considering an application under Order VII Rule 11 CPC for rejection of a plaint, the Court has to look into the pleadings averred in the plaint to get *prima facie* satisfied whether, the suit is fit for trial or it is barred by any law.

15. In the present case, admittedly, it is not disputed that the plaintiff's association is an unregistered body. The first respondent/plaintiff is the elected State President of the Association and applicant/first defendant is the member of the association. The first respondent/plaintiff has removed the applicant/first defendant and three others from the association. Against the action of the first respondent/plaintiff, the applicant/first defendant and other persons have issued a legal notice to the second respondent/second defendant Bank stating that a Suit had been filed in O.S.No.150 of 2018 against the State President for grant of stay of his removal on disciplinary grounds. On receipt of this letter, the second respondent Bank had addressed a letter to the first respondent/plaintiff association asking them to settle the matter to avoid the complications. Thereafter, the applicant/first defendant had addressed a letter dated 22.07.2019, alleging that in an extraordinary General Body meeting held on 02.06.2019 at Palani, the State President had been removed and also made allegations against him. After receiving the letter, the second respondent/second defendant has issued a letter dated 03.09.2019, blocking the accounts of the Association and calling upon them to obtain necessary orders from the Court. Therefore, the Plaintiff Association has filed the present Suit.

16. It is a settled principle of law that no legal proceedings can be initiated by an unregistered body as it is not a juristic person. Section 4 of the Societies Act, mandates that the registration is necessary for such organisation within the prescribed threshold. Any organisation/association attains the status of legal entity in the eyes of law only after it is incorporated or registered in accordance with law. Only such legal entities can be represented either by itself or through such permitted authority before the Court else the same cannot either prefer or defend a Suit. The Division Bench of this Court in the case of ***Tamilnadu Technical Education Department Staff Cooperative House Building Society*** (referred supra), after relying on the decision of the Hon'ble Supreme Court held as follows:-

12. *The appellant society is styled as Tamil Nadu Technical Education Department Staff Co-operative House-Building Society, which would indicate that it is a co-operative society formed for the purpose of accommodating its members, who are government servants. As seen from the affidavit filed in support of the writ petition, more than 200 government servants joined together and formed the society. The society had purchased more than 14 acres of lands and registered the property in the name of the society. It is very clearly admitted that the society is not a registered society. The society is not registered under the [Co-operative Societies Act](#). When the society is an unregistered society and it is only an association of persons, then it is not a juristic person. In fact, even if a*

*society is registered, the society, by itself, cannot file a writ petition and it has to be represented by an elected body like Secretary, President or any one authorised by the bye-law of such society. In this case, the appellant society, having admitted that it is not a registered society, it is not known under what authority the person claiming to be the Secretary of the Society has filed the writ petition. From the records, we are unable to see the names of members of the society and their address furnished along with the writ petition. It is well known that there exist certain salient differences between a society registered under the [Societies Registration Act](#), on the one hand, and a company corporate, on the other, principle amongst which is that a company is a juristic person by virtue of being a body corporate, whereas, the society, even when it is registered, is not possessed of these characteristics. Moreover, a society, whether registered or unregistered, may not be prosecuted in a criminal court nor is it capable of ownership of any property or of suing or being sued in its own name, as has been held by the Honourable Supreme Court in the decision reported in *(Illachi Devi (dead) by LRs and others vs. Jain Society, Protection of Orphans India and others)* (2003) 8 SCC 413 Therefore, the society cannot sue or be sued in its name only. It must sue or be sued through a person nominated in that behalf, which is like a corporation, which cannot be sued by itself. In this case, there is no whisper in the affidavit filed in support of the writ petition to sustain the maintainability of the writ petition or how and when the Secretary was authorised to file the writ petition. It is not known how the appellant society, which is a mere association of persons, could file the writ petition under the name and style of society, particularly*

without disclosing the names of the members of the society. Therefore, the writ petition cannot be entertained. Even otherwise, the words used in the name of the society is 'Housing Building Society'. Under Section 159 of the Tamil Nadu Co-operative Societies Act (Act 30 of 1983), there is a specific bar for the use of the word 'cooperative' or any equivalent.....

17. In view of the above, it is evident that the Society cannot sue or be sued in its name only and it must sue or be sued through a person nominated in that behalf, which is like a corporation, which cannot be sued by itself. In the present case, admittedly, it is no doubt that the association is not a registered body. Though originally the Suit has been filed by the Association, subsequently, they filed an application in A.No.3363 of 2021 seeking to permit the first respondent/plaintiff to amend the plaint so as to read the plaintiff as Mr.N.Narayanan, elected State President, representing Thamizhnadu Brahmin Association (THAMBRAAS) instead of Thamizhnadu Brahmin Association (THAMBRAAS) established on 16.11.1980 represented by Mr.N.Narayanan, State President. This Court by order dated 01.02.2022 allowed the application and Plaintiff was directed to carry out the amendment and serve the copy of the amended plaint on the respective counsels appearing for the respective defendant.

18. Further, the Suit is not maintainable on the original side jurisdiction of this Court for the simple reason that the damages appears to have been claimed for a sum of Rs.1,10,00,000/- and deliberately designed the cause of action so as to bring the same within the jurisdiction of this Court. Further this Court finds that there is no shred of averments in support of the damages but it is a clear ploy to bring this case within original side jurisdiction of this Court. Clever drafting of plaint will not give any right to the plaintiff. Further, the association is an unregistered body and therefore the, first respondent/plaintiff cannot file this Suit as it is violative of Section 4 of the Tamil Nadu Societies Registration Act, 1975. Further, as per By-Law Article 271 of the association, the association should have been registered, but for the dereliction of statutory duty by the first respondent/Plaintiff, elected State President, the said association continues to remain an unregistered body. Therefore, the Suit is liable to be rejected.

19. After having perused the materials available on record and the relevant provisions of the Act, by-laws of the association, and the decisions of the Hon'ble Apex Court and the Madras High Court, I am of the view that the Suit is barred by law and hence, the Suit is not maintainable. Therefore,

the Application No.508 of 2021 in C.S.No.112 of 2020 is ordered and the
plaint in C.S.No.112 of 2020 stands rejected. Consequently, connected
Applications are closed. There shall be no order as to costs.

Sd./- P.V.J.,
21.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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