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A.No.2324 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.03.2022	Delivered on 10.08.2022
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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.No.2324 of 2021

in

C.S.No.523 of 2019

Civil Suit No.523 of 2019 has been filed for a declaration to declare the notice dated 17.08.2019 issued by the third respondent, calling for an EGM to be held on 08.09.2019 at 7.00 p.m. at Hotel Radisson Blue, Chennai as illegal, null and void. Pending Suit, Application in O.A.No.2324 of 2021, has been filed for seeking to punish the 3rd and 4th respondents for their willful disobedience and defiance of the order of this Court in O.A.No.816 of 2018, dated 06.09.2019.

2. The facts of the case is as follows:-

The Madras Medical Mission/first respondent is a Society registered under the Societies Registration Act on 12.01.1982. The Governing Board shall have a President, Vice President, Secretary, Treasurer and 17 Board Members. The members of the Governing Board were elected from among the Board at the General



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Body Meeting of the Society. The applicant is a life time member of the first respondent, since 1996 and his membership number is 302. The applicant has also been in the Governing Board from 2001 to 2016 and presently, he is heading the Audit Committee of the first respondent society. The applicant would state that as per the rules and regulations of the first respondent society, the Governing Board of the Society has control over affairs and funds of the Society. One Dr.K.Jacob was elected as Honorary Secretary of the Board on 15.01.2009 and the third respondent was elected as Honorary Treasurer of the Board on 09.10.2010 and they were dealing with financial matters of the Society, but however, some of the Members of the Board have not satisfied with their functioning. Eventually, in an Extraordinary General Body Meeting held on 17.09.2017, a Money Committee was appointed by the General Body to inquire into the financial matters of the Society and one Dr.Suja Issac was appointed as a Convener by the President Bishop, vide letter dated 19.09.2017. It is alleged by the applicant that the report of the Money Committee submitted to the Governing Board, pointing out financial irregularities amounting to Rs.186.63 Crores, was not taken seriously and hence, Extraordinary General Body Meeting was held on 22.06.2019 by the 33 Members of the Society, whereby it is resolved to appoint 5-Member Committee to grant, short-list and select a professional agent to conduct a forensic audit of the financial affairs of the Society. Further, by another resolution, Dr.Jacob and Mr.Chcrian Abraham were suspended



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from all positions held by them with the Society. Resolution was approved by the President of the first respondent-Society and the same was informed to both Dr.K.Jacob and Mr.Churian Abraham by the President, vide letter dated 23.06.2019. Thereafter, Deloitte Touche Tohmatsu India Private Limited was appointed to investigate the financial improprieties and they have already started their investigation.

3. The applicant would state that the third respondent, by a requisition letter dated 18.07.2019, requested the Governing Board for conducting an EGM to discuss on the proceedings of the Extraordinary General Meeting dated 22.06.2019 and to recall of the resolution passed at the Extra-Ordinary General Meeting on that day. Since the Governing Board took a decision on 16.08.2019 not to convene the EGM, the third respondent issued a notice dated 17.08.2019 for an EGM to be convened on 08.09.2019.

4. Challenging the notice dated 17.08.2019, the Plaintiff/applicant has filed the suit on the ground that it is not in consonance with Section 28 of the Societies Registration Act; the third respondent did not challenge the appointment of the Money Committee report in the year 2017; the appointment of Forensic Audit and suspension of the third respondent and Dr.K.Jacob and it is against the By-laws of



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the Society. Therefore, the Plaintiff/applicant has filed the present Suit. Along with the suit the plaintiff/applicant has filed an Application in O.A.NO.816 of 2019 seeking for an interim injunction for conducting the EGM on 08.09.2019.

5. This Court, after hearing the parties, considering the clause 89 of the By-law of the first respondent society, was of the considered view that the applicant has made out a strong *prima facie* case for grant of interim injunction and that application was ordered as prayed for on 06.09.2019. Aggrieved by the said order, the third respondent has filed an appeal in O.S.A.No.238 of 2019. The Division Bench of this Court confirming the order of the learned Single Judge by order dated 14.12.2020 dismissed the appeal. Thereafter, the fourth respondent along with other requisitionists, by letter dated 29.03.2021, intimated about the convening of EGM Meeting to all the members of the society. Accordingly, the EGM meetings convened and conducted by the fourth respondent from 23.04.2021 to 25.04.2021. Therefore, convening of such EGM meeting is in sheer violation, utter disregard and grave disobedience of the injunction order of this Court, dated 06.09.2019. In such circumstances, the plaintiff/applicant has filed the present Application in O.A.No.2324 of 2021, seeking to punish the 3rd and 4th respondents for their willful disobedience and defiance of the order of this Court in O.A.No.816 of 2018, dated 06.09.2019.



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6. Mr.Thomas Jacob, the learned counsel for M/s.Stella Manokaran the learned counsel appearing for the plaintiff/applicant would submit that this Court had categorically directed that the inquiry of the Money committee should reach a logical conclusion and granted an injunction against calling for an EGM to recall the resolutions dated 22.06.2019. By requisition dated 11.01.2021 issued by the fourth respondent in which the third respondent was also a party and subsequent letter dated 29.03.2021 and EGM conducted on 23.04.2021 are all in grave contravention to the order of this Court and it would amount to willful disobedience as contemplated under Order 39 Rule 2A, CPC, as it is contravention to the injunction order passed under Order 39 Rule 1 and 2 of the CPC. The learned counsel would further submit that as the Governing Board of the first respondent society had refused to call for the Extra Ordinary General Body Meeting, the fourth respondent himself called for the EGM on behalf of himself and purportedly the other requisitionists. The attempt of the respondents to call for another EGM on the same subject, which was enjoined by this Court, is illegal, void and a willful disobedience of the order of this Court. Further the learned counsel would submit that during the arguments before this Court, nor in their counter statement, they have offered any apology whatsoever condoning and regretting their willful disobedience of the order of this Court. Therefore, the learned counsel would submit that the respondents 3 and 4 are liable to be punished for willful disobedience or breach of injunction order passed by this



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Court and hence, the application is liable to be allowed.

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7. Mr.Vijay Narayanan, learned Senior counsel for M/s.Hari Radhakrishnan learned counsel appearing for the respondents 3 and 4 by filing a counter affidavit submitted that the Resolution passed in the EGM on 22.06.2019 is illegal resolution and the decision was taken by a small majority of members and therefore, resolution has to be recalled. Further the learned Senior counsel submitted that the validity and legality of the EGM held on 23.04.2021 was questioned by the Plaintiff/applicant by filing C.S.No.159 of 2021 and this Court had initially injuncted the said EGM and consequently the results of the said EGM has been stayed by order dated 01.10.2021 in O.A.No.251 of 2021 for implementing the results of the EGM. Aggrieved by the same, OSA No.316 of 2021 has been filed, in which the Division Bench had stayed the order of the learned Single Judge and therefore, the results of the EGM were revived. Therefore, the learned Senior counsel submitted that the fact whether the EGM called on 23.04.2021 is valid or not is a matter for consideration and the same was pending before the Hon'ble Division Bench in O.S.A.No.316 of 2021 and hence, the present application is not maintainable and the same has to be dismissed.

8. The learned Senior counsel further submitted that the compelling circumstances, in the present case to convene the EGM on 23.04.2021 is that there



was no logical conclusion, anywhere insight, as far as the forensic audit is concerned and the Forensic Auditor was appointed on 10.08.2019 and till date no report has been prepared or submitted before the Governing Board. In the meantime, the Governing Board has kept the office bearers suspended from the society and therefore, causing grave injustice to them. In this regard, the learned Senior counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Rama Narang vs. Ramesh Narang & Ors., in Civil No.92 of 2008 in Civil Appeal No.366 of 1998, dated 19.01.2021***, in which the Hon'ble Supreme Court referred that if, from the circumstances of a particular case, the Court is satisfied that there has been an disobedience, but such disobedience is the result of some compelling circumstances, the Court may not punish the alleged contemnor. Therefore, the learned Senior counsel submitted that there being a substantial change in circumstances, the decision taken to convene the EGM on 23.04.2021 cannot be considered to be an act of “willful disobedience”.

9. The learned Senior counsel further submitted that the very fact 60 members of the society requisitioned for an EGM to deliberate and vote on the earlier decision taken by the society on 22.06.2019 and the very fact that 70 members out of 157 members of the society had voted against the decision taken on 22.06.2019, would demonstrate the will of the majority and therefore there is no willful disobedience of



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the order of this Court.

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

11. Order 39 Rule 2A CPC as follows:-

Order XXXIX CPC deals with the grant of temporary injunctions. Rule 1 deals with the cases in which temporary injunctions can be granted and Rule 2 is about granting an injunction to restrain repetition or continuance of breach. Rule 2A of the order the consequence of disobedience or breach of injunction as follows:

1. In the case where there is disobedience shown in any injunction granted or other order ordered under Rule 1 or 2 or breach of any of the terms on which the injunction was granted or order made, the court can order that property of such a person can be attached and he can be sent to civil prison for a period not exceeding three months unless in the meantime the Court directs his release.

2. Also, no attachment made under this rule shall remain in force beyond 1 year and if the breach continues, the court can allow that The attached property may be sold, and the court may award such compensation as it sees suitable to the injured party out of the revenues, and the rest, if any, shall be paid to the person entitled thereto.

12. The power exercised by a court under order 39, Rule 2A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to



clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under order 39 Rule 2A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the 'order', on surmises suspicions and inferences. The power under Rule 2A should be exercised with great caution and responsibility.

13. Admittedly, the third respondent was elected as Honorary Treasurer of the Governing Board and the fourth respondent is the Interim Secretary of the first respondent society. It is the case of the applicant that the third respondent and one Dr.K.Jacob, as Honorary Secretary have committed grave misappropriation of funds of Rs.186 crores of the society and they were suspended to hold any position in the society. It is pertinent to note that the Money Committee was formed in the year 2017 and they found huge irregularities in the functioning of the first respondent-Society amounting to Rs.186.63 Crores. Considering the magnitude of the amount involved in this case, this Court is of the considered opinion that it should be allowed to come to a logical conclusion. Thereafter, EGM was conducted on 22.06.2019, in which, the report of the Money Committee was placed before the General Body. Subsequently, resolutions were passed on 22.06.2019 to conduct a Forensic Audit of



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the financial affairs of the Society and the third respondent and Dr.K.Jacob were suspended to hold any position in the first respondent-Society. It is not in dispute that in the Extraordinary General Body Meeting held on 22.06.2019, a 5-Member Committee was appointed to conduct a Forensic Audit of the financial affairs of the Society. It is to be noted that the third respondent has also not challenged the said resolution passed in the EGM. However, aggrieved against the resolution, the third respondent has issued a notice dated 17.08.2019 to call for an EGM on 08.09.2019 to recall the resolution passed on 22.06.2019. Therefore, the plaintiff/applicant has filed the Civil Suit. Along with the Suit the Plaintiff/applicant has filed an application in O.A.No.816 of 2019 seeking for an interim injunction for conducting the EGM on 08.09.2019. This Court, after hearing both the parties, by order dated 06.09.2019, granted interim injunction and ordered the application as prayed for.

14. Challenging the said order, the third respondent has filed an appeal in O.S.A.No.238 of 2019. The Division Bench of this Court dismissed the appeal by confirming the order of the learned Single Judge by order dated 14.12.2020. Thereafter, the fourth respondent along with other requisitionists, convened the EGM meetings from 23.04.2021 to 25.04.2021. An application under Order 39, Rule 2A of the Code is maintainable only when there is disobedience of any 'injunction' granted or other order made under Rule 1 or Rule 2 of Order 39 or breach of any of the terms on which the injunction was granted or the order was made. As rightly



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pointed out by the learned counsel of the applicant that the application in O.A.No.816 of 2018, filed under Rule 1 and Rule 2 of Order 39 CPC, by the applicant was allowed by this Court granting interim injunction on 06.09.2019, however, despite the injunction granted by this Court, the respondents 3 and 4 have conducted the meeting, therefore, the applicant has filed the present application under Rule 2A of Order 39 seeking to punish the 3rd and 4th respondents for their willful disobedience of the said order passed by this Court. Thus, the contention of the learned Senior counsel for the respondents that the application is not maintainable, does not merit acceptance.



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15. I am of the considered view that the action of the 3rd and 4th respondents is a sheer violation, utter disregard and grave disobedience, willful disobedience or breach of the interim injunction passed by this Court, dated 06.09.2019 and therefore, the 3rd and 4th respondents have committed willful disobedience/breach of the interim injunction order passed by this Court dated 06.09.2019. The learned Senior counsel appearing for the respondents placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Rama Narang vs. Ramesh Narang & Ors.***, referred to supra, does not support to the case of the respondents. Hence, this Court finds that they have committed willful disobedience of the order and accordingly, the application is liable to be allowed.

16. In that view of the matter, the Application in A.No.2324 of 2021 is allowed as prayed for. The respondents 3 and 4 are ordered to be detained in the civil prison for a period of one month and the plaintiff/applicant is directed to pay Batta and other incidental charges as per the rules like, monthly allowance payable for the subsistence of the respondents 3 and 4, within a week from today. On such payment of Batta and other incidental charges, the the respondents 3 and 4 shall be detained in the civil prison for a period of one month.

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P.VELMURUGAN, J

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Pre-Delivery Order in
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in
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10.08.2022