



A.No.2418 of 2021 in C.S.No.216 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2022

PRONOUNCED ON : 08.04.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

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in

C.S.No.216 of 2021

ORDER

This application has been filed by the second defendant in the suit in C.S.No.216 of 2021 to reject the plaint under Order 7 Rule 11 CPC on the ground that the plaint does not disclose the cause of action and the plaint is barred by law.

2. The applicant herein is the second defendant and the respondents 1 & 2 are the plaintiff and first defendant respectively in the said suit. The first respondent/ plaintiff has filed the suit against the applicant and the second respondent herein for the following reliefs:



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a. for declaration to declare the AGM proposed to be held on 23.07.2021 through Video Conferencing (VC) or other Audio Visual Means (OAVM) as illegal and void

b. Permanent injunction restraining the defendants in the suit, from conducting the AGM on 23.07.2021 through VC or OAVM or on any other subsequent date and

c. permanent injunction restraining the defendants in the suit, from conducting election for the post of Member of Committee of Management of the Madras Race Club, through e-voting on 23.07.2021 or any order subsequent date.

3. After service of summons, the applicant and the second respondent entered appearance.

4. The crux of the allegations levelled in the plaint is that the conduct of AGM through Video Conferencing (VC) or other Audio Visual Means (OAVM) is contrary to the bye-laws (Articles of Association) of MRC and voting should take place only through physical manner as per the bye-laws of the club.



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5. The learned Counsel for the applicant/second defendant would submit that the first respondent/ plaintiff has made a vague allegation that announcing elections without finalization of voter's list against bye-laws which shows that the plaintiff is not seeking any common law remedy. Further, the plaintiff is not seeking to assert any common law right and the reliefs prayed for are founded on the allegation that conduct of AGM through Video Conferencing (VC) or other Audio Visual Means (OAVM) is illegal, void and contrary to the Articles of Association of MRC. The Articles of Association of MRC is a constitutional document which is Magna Carta for MRC to conduct its affairs and also the Articles of Association of MRC is construed in accordance with the Companies Act 2013 including conduct of its affairs, holding of AGM etc. According the first respondent/plaintiff the conduct of the election through Video Conferencing (VC) or other Audio Visual Means (OAVM) on 23.07.2021 infringes the right of the first respondent/ plaintiff and it would constitute oppression of his rights as a member of the MRC. Section 241 of the Companies Act, 2013 expressly provides for a remedy to the first respondent/ plaintiff in such circumstances and the remedy lies with the



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National Company Law Tribunal (NCLT). Further, Section 430 of the Companies Act, ousts the jurisdiction of the Civil Courts by way of a suit, with regard to the remedies available under the Companies Act, 2013 by way of appropriate proceedings before the NCLT or the NCLAT (National Company Law Appellate Tribunal). Therefore, the suit is barred by law and the suit is liable to be rejected. In support of his contention, he placed reliance of the Judgment of this Court in ***“Chiranjeevi Ratnam & Others Vs. Ramesh and Another reported in (2017) SCC OnLine Mad 23049”*** and a Judgment of the Division Bench of this Court reported in ***“(2019) 4 CTC 1”***. It is further contended by the applicant/second defendant, the relief prayed for in the suit is expressly barred under Section 108 of the Companies Act and Rule 20 of the Companies (Management and Administration) Rules, 2014. Therefore, the plaint has to be rejected.

6. The learned Counsel for the first respondent/ plaintiff would submit that the first respondent/plaintiff is a member of the Madras Race Club (MRC) which is registered under the Companies Act. The last club election was held on 20.11.2019 and totally 24 members were participated



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and 12 members were elected as committee members including the first respondent/ plaintiff and thereafter, the Chairman was elected amongst the elected members in accordance with Articles 28(a) of the bye-laws. As per Article 27 of the bye-laws, 4 members were retired. Thereafter, on contrary to the minutes of the meeting dated 23.05.2020, even without constituting the executive meeting, a resolution was passed to appoint the members of the Committee of the Management in the place of retired 4 members and new election was announced on the same day i.e. on 20.06.2021 and the Committee was offering e-voting and requested the members to cast their votes through Video Conferencing Mode (VC) or Other Audio Visual Means (OAVM) and after the election is over, the AGM will be taken place on 23.07.2021 at 5 pm. The said decision is arbitrary which abridges the right of the first respondent/plaintiff and the said resolution is against the club bye-laws and indirectly the first respondent/plaintiff was thrown out without completing his tenure, because it is completed only on September 2021. Therefore, the present AGM and the election is the subject matter of the suit.



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6 (a). The learned Counsel for the first respondent/ plaintiff would submit that the resolution dated 20.06.2021 is contrary to the bye- laws of Article 15 that the list of members whose subscriptions are in arrears, may be fixed in the Madras Race Club's Office or as such, other place as the Committee of Management may direct on 1st of August of every year and the notice of the arrears due shall be sent by post to the last known address of each member's name therein. If the arrears due is not paid by the first date of September, the name of the member in default shall be removed from the Register of the club forthwith. In contrary to the said clause, the election is announced to be held in the month of July which is against bye-laws and also one of the clauses prescribed that notice dated 20.06.2021 if any arrears, member shall not be entitled to vote or take part of the AGM of the club. In view of the said condition, most of the members lost their votes. He would submit that there is no urgency in conducting the election in the month of July 2021 and it will not affect the quorum of the committee, if it is conducted in the month of September 2021. Further the election should be conducted only through physical mode as prescribed by the bye-laws. Therefore, the first respondent has filed the suit for the aforesaid reliefs.



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7. Heard both sides.

8. Admittedly, the first respondent/plaintiff is the member of Madras Race Club. The applicant /second defendant is the Secretary of the said Club and the second respondent / first defendant is the Chairman of the Committee of Management.

9. Admittedly the tenure of the committee members ends on 29.09.2020. The main contention of the counsel for the first respondent/plaintiff is that as per the bye-law, subscriptions have to be called for from all the members fixing a last date in the month of September and all the members have to pay subscriptions before the date or otherwise, their names would be removed in default and they would lose their right to cast their votes. Another contention is that the bye-laws prescribes only physical mode of conducting election/casting votes, but they have announced that the election would be conducted through Video Conferencing (VC) or other Audio Visual Means (OAVM) which is against bye-laws and therefore, he has filed the suit.



10. The applicant/second defendant raised two grounds for rejection of plaint by filing this application that the plaint does not disclose the cause of action and the suit is barred by law specifically under Section 430 of Companies Act that in case of any grievance or dispute, the same has to be raised before the Company Law Tribunal and not before the Civil Court as the Civil Court has bars its jurisdiction. Further, the subject matter is covered under Section 241 of the Companies Act and therefore, it is barred under Section 430 of the Companies Act.

11. A careful reading of the plaint, application and the written submission submitted by both the counsel reveal that admittedly there is a dispute regarding mode of election and also finalization of the voter's list. Now the question which has to be decided is whether the suit is barred by law. Though the Madras Race Club (MRC) is registered under Companies Act and has its own bye-laws, it is an unprofitable company. As contended by the 1st respondent/plaintiff, 4 members have to be appointed by the Government in the place of retiring 4 members and the mode of election is against bye-laws. Whether the subject matter falls under Section 241 of the Companies Act, can be decided only after examining the evidence.



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12. The matter to be decided in this application is whether the plaint discloses the cause of action to file the present suit or not. A reading of the plaint averment shows that it discloses the cause of action. Whether the Company Law Tribunal alone has got jurisdiction or this Court itself got jurisdiction is debatable and it is a mixed question of law and fact. Therefore, the plaint cannot be rejected at the threshold. Whatever the defence taken by the defendants can be decided only after trial and not at this stage. It is a settled proposition of law that at the time of deciding the application under Order 7 Rule 11, the Court has to see only the averments in the plaint and the documents annexed therein and not the defense taken by the defendants. The decisions referred to by the learned Counsel for the applicant are not applicable to the present case on hands. The present case is on different footing and the grounds taken by the applicant can be decided only after trial and not at this stage.

13. Therefore, on a careful perusal of the plaint, this Court finds that the plaint discloses the cause of action and the suit is not barred by any law. Therefore, the application is liable to be dismissed.



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14. Accordingly, this application is dismissed.

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P.VELMURUGAN,J.

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Pre-Delivery Order in
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