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A.No.2514 of 2022
in C.S.No.74 of 2022

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RESERVED ON : 02.08.2022
PRONOUNCED ON : 16 .09.2022

KRISHNAN RAMASAMY.J.,

This Application has been filed by the applicant/4th defendant seeking to reject the plaint on the following grounds:

(i) The suit is not maintainable since the respondents 1 to 3/plaintiffs have instituted the suit in a representative capacity without sanction of this Court in terms of Order I Rule 8(1)(a) CPC.

(ii) Without exhausting the alternate remedy available under Chapter XI (36) of the CSI Constitution, the respondents 1 to 3/plaintiffs approached this Court and therefore, there is a statutory bar under Section 5 r/w Section 16 of the Arbitration and Conciliation Act 1996 to entertain the suit.



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2.Mr.P.Wilson, learned Senior Counsel appearing for the applicant/4th defendant submitted that the respondents 1 to 3/plaintiffs had instituted the Suit in their capacity as Secretary, Treasurer and Vice – President of CSI Kanyakumari Diocese respectively, and the cause of action and reliefs claimed in the plaint discloses that the relief is claimed for the 6th respondent/CSI Diocese of Kanyakumari, against the 5th respondent/Church of South India, Synod. The material facts are not pleaded in the plaint disclosing the complete cause of action for the respondents 1 to 3/plaintiffs to institute the suit seeking relief for the 6th respondent/3rd defendant. Further, he would submit that the statement in the plaint at paragraph No.2 discloses that the respondents 1 to 3/plaintiffs were elected to the office of the 6th respondent/3rd defendant. The statement in paragraph No.21 of the plaint shows that the respondents 1 to 3/plaintiffs seeking relief for 180 members of the 6th respondent/3rd defendant. Therefore, the learned Senior Counsel would submit that the respondents 1 to 3/plaintiffs instituted the suit without sanction of this Court as required under Order I Rule 8(1)(a) CPC. Hence, the present suit is not maintainable and the plaint is liable to be



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rejected.

3.In support of his contention, he referred to the following judgments:

(i) ***Kathapillai and Ors vs. Kanaka Sundaram Pillai and Ors***
reported in ***AIR 1919 Mad 1143(1)***

(ii) ***Kodia Goundar and Ors. vs. Velandi Goundar and Ors.***
reported in ***AIR 1955 Mad 281.***

(iii) ***TNHB vs. T.N.Ganapathy*** , reported in ***AIR 1990 SC 642***

4.The learned Senior Counsel has also submitted that the suit is barred in the light of the Arbitration clause exists in the CSI constitution, under Section 5 r/w 16 of the Arbitration and Conciliation Act 1996. The authorities are bound by CSI Constitution and as such, the respondents 1 to 3/plaintiffs have alternate remedy as per Chapter XI(36) of CSI constitution, which provides for conciliation and arbitration.



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5. Challenge by the respondents 1 to 3/ plaintiffs is with regard to the decision of the Executive Committee dated 27.02.2020 and the impugned order passed by the respondents 4 & 5/defendants 1 & 2 on 07.04.2022.

6. According to the applicant/4th defendant, the dispute is at the Synod level and the respondents 1 to 3/plaintiffs are barred to institute the suit in view of the remedy available under the Arbitration clause that exists in the CSI Constitution. In this regard, the learned Senior Counsel appearing for the applicant/4th defendant referred to the judgment rendered by the Hon'ble Supreme Court in the case of “***Sundaram Finance Limited and Ors vs. T.Thangam*** reported in ***AIR 2015 SC 1303*** and he would submit that the present suit is not maintainable and same is liable to be rejected.

7. On the other hand, Mr.V.Raghavachari, learned counsel appearing for the respondent 1 to 3/plaintiffs would submit that Order 1 Rule 8 CPC envisages that where there are number of persons having common interest in one suit, one or more of such persons may with the



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permission of the Court, sue or to be sued or may defend such suit, for the benefit of all the persons interested. An application seeking leave of the Court under Order 1 Rule 8 CPC can be moved even in the appellate stage also and that the requirement of sanction for instituting a suit by members of the society, is not mandatory.

8. In support of his submissions, he referred to the following judgments:

(i) *The Victoria Edward Hall vs. M.Samraj* reported in **2001 3 MLJ 39**

(ii) *Mookka Pillai vs. Valavanda Pillai* reported in **AIR 1974 Mad 205**.

(iii) *N.Anandan vs. Ayyanna Gounder* reported in **1993 2 MLJ 493**.

9. He would further submit that ex-Office bearers have colluded with the 4th respondent / 1st defendant and indulged in illegal methods to usurp control of the 6th respondent / 3rd defendant Diocese. Sensing that they are going to have to let go off the throne, these ex-office bearers had illegal made publication stating that the elections had been cancelled. A notice was sent without the permission of the Bishop, who



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is the head of administration and in-charge of the internal affairs of Kanyakumari Diocese. This power is conferred upon him by virtue of a harmonious reading of Rule 9 of Chapter V of the constitution of CSI and Rule 63.1 of Chapter XXVIII of the Constitution of the Kanyakumari Diocese.

10. He would also contend that even assuming that there existed a dispute in the election process, the aggrieved persons have not followed the procedure established under the Constitution of CSI and the Constitution of Kanyakumari Diocese. Chapter XXV of the Constitution of Kanyakumari Diocese and Rule 31 of Chapter XI of CSI Constitution clearly mandates the formation of a settlement commission for resolving all election disputes. Instead, they have approached the 3rd respondent/1st defendant and obtained an order to establish an administrative committee to look into the administrative affairs of the 6th respondent / 3rd defendant till fresh election is held. Further, the 3rd respondent/1st defendant is devoid of any such powers and has acted against the Constitution of the CSI. Further as per Rule 15 of Chapter IX of CSI



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Constitution, the Synod can only deal with common interest matters relating to the whole Church of South India and it shall leave the Diocesan Council to deal with the internal affairs of each of the Diocese. As per Rule 6 of Chapter VIII of the CSI constitution, the Diocesan Council shall be the final authority of the Church in its devices and in all matters concerning its internal administration. Rule 13 and 14 Chapter IX and Rule 12(D) of Chapter VIII of the Constitution of the Church of South India are not applicable for the present case and the defendants/Church of South India are estopped from taking such defence.

11. Mr.V.Prakash, learned Senior Counsel appearing for the respondents 4 & 5/defendants 1 & 2 would submit that the respondents 1 to 3/plaintiffs who filed the suit on behalf of all the other members, are supposed to have obtained leave under Order I Rule 8 CPC. Further he would submit that the present dispute is relating to an election dispute and therefore the respondents 1 to 3/plaintiffs ought to have invoked the alternate dispute mechanism as provide in Chapter 11 of CSI



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Constitution under Section 5 r/w 16 of the Arbitration and Conciliation Act 1996. Even the dispute is not an election dispute, it is liable to be referred to the Conciliation and Arbitration as provided in Chapter 11 under Rules 34 to 37. However, no attempt has been made to refer the matter to the alternative dispute mechanism as provided in the Chapter 11 and therefore, he prayed to reject the plaint.

12. Heard Mr.P.Wilson, learned Senior Counsel appearing for the applicant/4th defendant; Mr.V.Raghavachari, learned counsel appearing for the respondents 1 to 3/plaintiffs; Mr.V.Prakash, learned Senior Counsel appearing for the respondents 4 & 5/defendants 1&2 and Mr.V.Selvaraj, learned Counsel appearing for the 6th respondent/3rd defendant and perused the materials placed on record.

13. This Court has given its anxious consideration for the submissions made by the respective Senior Counsel appearing for the parties and the learned counsel appearing for the respondents 1 to 3/plaintiffs and 6th respondent/3rd defendant.



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14. The applicant/4th defendant has filed by the present application to reject the plaint on two grounds. First one is, the respondents 1 to 3/plaintiffs have not obtained leave to sue before this Court as required under Order I Rule 8(1)(a) CPC.

15.A perusal of the plaint would show that the respondents 1 to 3/plaintiffs have filed the present suit in the capacity of the representatives of the CSI Diocese of Kanyakumari. The suit was filed against the respondents 4 to 6/defendants 1 to 3, who are all the un-registered associations. Leave was obtained to file the suit against the 6th respondent/3rd defendant alone, however, no leave was obtained to file the suit by themselves in representative capacity on behalf of the other members.

16. As submitted by Mr. P.Wilson, learned Senior Counsel appearing for the applicant /4th defendant, it is mandatory to obtain leave under Order I Rule 8 CPC and when admittedly, no such leave was



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obtained, the suit filed by the respondents 1 to 3/defendants 1 to 3 is not maintainable. However, arguments were put forth by the learned counsel appearing for the respondents 1 to 3/plaintiffs that the plaintiffs though it is required to obtain leave of this Court to file the suit in the representative capacity against the 6th respondent/3rd defendant but, he would submit that this leave can be obtained at any point of time and even it is permissible to obtain such leave even at the appellate stage also.

17. The law laid down by the Hon'ble Apex Court and this Court mandates the respondents 1 to 3/plaintiffs to obtained leave under Order I Rule 8 CPC to file suit in the representative capacity. However, the judgment relied upon by the respondents 1 to 3/plaintiffs states that leave can be obtained even at the appellate stage. When such being the position, based on this ground alone the plaint cannot be rejected and an opportunity must be given as stated above to file appropriate application to get the leave of the Court.



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18.Considering the above submissions, this Court is of the view that since it is required to obtain leave of this Court under Order 1 Rule 8(1) of CPC to file the suit by the respondents 1 to 3/plaintiffs as members of the 6th respondent/CSI Diocese of Kanyakumari, which can be obtained at any stage during pendency of the suit or even at the appellate stage itself, the respondents 1 to 3/plaintiffs have to necessarily take steps to seek leave of this Court within three months in the event, the plaint is not going to be rejected on the second ground.

19. The second ground on which, the plaint is sought to be rejected on behalf of the applicants herein is that the respondents 1 to 3/plaintiffs can very well exhaust alternate remedy available under Chapter XI (36) of the CSI Constitution, which provides for conciliation and arbitration and as such, without availing the same, the respondents 1 to 3/plaintiffs have filed the present suit and therefore, the plaint is liable to be rejected.



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20. With regard to the availability of the conciliation, i.e the alternative dispute mechanism available under Chapter XI (36) CPC, this Court would like to examine the plaint to find out the whether the dispute is an election dispute or otherwise.

21. In paragraph No.21 of the plaint, it is stated as follows:

“The plaintiffs state that the 1st and 2nd defendants oblivious to their own constitution and against the provisions of the 3rd defendant constitution have unjustly interfered with the process of the election and the declaration of the results therefrom. After the plaintiffs have succeeded in the election along with 186 members, they have also assumed the office for the last 8 months. The plaintiffs and the elected members are discharging their duty enjoined upon them under the constitution. To constitute a committee and interfere with the management of the 3rd defendant is wholly improper and impermissible.”

22. A perusal of the above pleadings would show that the present dispute is relating to an election dispute.



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23. Further, in paragraph No.22 of the plaint states as follows:

“The 1st and 2nd defendants ought to have known that the election of members and office bearers to the 3rd defendant is a matter of internal management and none had challenged it as envisaged under the Constitution of the 3rd defendant. In the absence of such challenge, the 1st and 2nd defendants cannot claim to have any supervening powers and interdict the elected members from doing their duties. In fine, the 1st and 2nd defendants by passing the impugned order have contradicted the results of the election which was the outcome of a fair procedure adopted by the 3rd defendant and in line with the constitution. It is also to be noted that even if the unpolled votes are cast in favour of the losing party, the results of the election would not have been different as the difference in votes between the successful and the losing contestants is by a huge margin.”

24. A perusal of the above paragraph shows that the election of members and office bearer to the 6th respondent/3rd defendant is a matter of internal management and no one has challenged it as envisaged under the Constitution of the 6th respondent/3rd defendant. In the absence of



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any such challenge, respondents 4 & 5/defendants 1 and 2 cannot claim to have any supervisory power and interdict the elected members doing their duties. Therefore, it appears that the respondents 4 & 5/ defendants 1 and 2 have interfered with the internal affairs of the 6th respondent/3rd defendant when they have no Supervisory power. Therefore, the present dispute is not at the level of diocesan but at the level Synod.

25. At this juncture, it would be appropriate to extract Chapter No.XI (3) and (5) of the CSI constitution, which reads as follows:

“(3). All members of the Church hereby agree that they shall first exhaust all provisions available in this Constitution for the enforcement of their rights under this Constitution and for redressal of their grievances, before they seek legal remedy in a Court of law. Members who violate this rule shall ipso facto lose their right to participate in the Government of the Church at all levels.”

“(4).

“(5) All matters relating to Church discipline shall be dealt with by the local Court, the Diocesan Court and the Synod Court. All election disputes shall be dealt with by the Diocesan Election



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Commission at the Diocesan level and by the Synod Election Commission at the Synod level. All other disputes between members and the Church or its institutions shall be settled by Conciliation and Arbitration.”

26. A perusal of the Chapter XI(3) of the CSI Constitution, would show that before approaching the Court for any legal remedy, all the members of the Church have to exhaust the remedy available in the CSI Constitution to redress their grievances. In the present case, the grievance of the plaintiffs is that the election of members and office bearers to the 3rd respondent as a matter of internal management and no one has challenged the election of the 3rd respondent under its constitution. In the absence of such challenge, the defendants 1 and 2 cannot claim to have any statutory power to interdict the elected members from doing their duties. Therefore, according to the respondents 1 to 3/plaintiffs, the respondents 4 & 5/defendants 1 and 2 by passing an impugned order, have contradicted the results of the election which was the outcome of the election and in line with the CSI Constitution. According to them, the election was not challenged, but the



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respondents 4 & 5 / defendants 1 and 2 without any authority have interfered with regard to the conduct of the election. Therefore, the dispute is at the Synod level.

27. In the present case, according to the respondents 1 to 3/plaintiffs, the complainant instead of approaching the election commission as constituted by the Diocesan, has wrongly took up the election issue beyond the procedure to the 3rd respondent/1st defendant. The respondents 4 & 5/ defendants 1 and 2 also without any authority set aside the election. Therefore, according to the respondents applicant/4th defendant, the present dispute is an election dispute, whereas, according to the respondents 1 to 3/ plaintiffs, it is not an election dispute but it is under the pretext of election dispute, without any authority, the respondents 4 and 5/defendants 1 and 2 passed the order dated 07.04.2022 setting aside the election of the 6th respondent/3rd defendant. Therefore, this would come under the category of 'other dispute' between the members of the parties which can be settled by the parties resorting to conciliation and arbitration.



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28. For better appreciation, Chapter XI(II) of the CSI constitution is extracted hereunder:

“II. Conciliation and Arbitration

All other disputes between the members of the Church and the Church and its institutions shall be dealt with in the following manner:

34.At the Pastorate level

(a)The Pastor shall endeavour to settle all disputes at the pastorate level by himself by personal enquiry, counselling and advice.

(b)If a settlement of the dispute cannot be arrived at in this maner within a month of receiving the complaint, the pastor shall refer it to a Board of Conciliation appointed by the Pastorate General Body at the time of election of the Pastorate Committee, who shall try to settle the dispute by conciliation.

(c)If this Board of Conciliation also fails to bring about a settlement within a month, the parties to the dispute shall have the right to submit their case to the bishop of the diocese



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who may deal with the matter himself or refer it to an Arbitration Board.

35.At the Diocesan Level

(a) A member or employee of the Church, for enforcing his/her rights under the Constitution of the diocese or has a dispute with the diocese or its institutions shall submit his/her case in writing to the bishop of the diocese concerned.

(b) The bishop shall try to settle the matter in a pastoral way by personal enquiry, counselling and advice within a month of the receipt of the complaint.

(c) If the matter cannot be settled in this manner he shall appoint three competent persons as a Conciliation Board to settle the issue by conciliation within three months of constituting the Board.

(d) If this attempt also fails, the bishop shall refer the matter in dispute to an Arbitration Board which shall consist of three members – one arbitrator chosen by each party from a panel appointed by the Diocesan



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Council and a third person, chosen from the panel by the bishop, as Chairperson of the Arbitration Board.

(e) The rules for arbitration at the Synod level shall mutatis mutandis be followed in the arbitration proceedings at the diocesan level.

(f) The decision of the Arbitration Board shall be binding on the parties concerned.

36. At the Synod level

(a) All disputes of any nature whatsoever concerning the affairs of the Synod and / or any of its institutions shall be resolved in the following manner:

(b) The complaint shall be submitted in writing to the General Secretary and the moderator.

(c) The Moderator, at his discretion, may decide to settle the dispute himself in a pastoral way, or he may appoint a Conciliation Board to settle the dispute by Conciliation.

(d) If the matter cannot be settled in the above manner within three months of receiving the complaint, the General Secretary shall take steps to constitute an Arbitration Board. He



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shall call upon both parties to select from out of a panel of Arbitrators appointed by the Synod one person each as arbitrator. The Moderator shall appoint a Chairperson for the Arbitration Board from the panel of Arbitrators.

(e) At each ordinary meeting of the Synod, a panel of Arbitrators consisting of five bishops, ten presbyters and fifteen lay persons shall be constituted, and their names and addresses shall be communicated to the dioceses as early as possible after the Synod. However, those Arbitrators who are already dealing with any matter for arbitration shall continue in office until that matter is disposed of.

(f) In the proceedings before the Arbitrators, the procedure prescribed by the Arbitration and Conciliation Act of 1996 may be followed (1999)

(g) Where the dispute raised involves the faith and doctrine of the Church, the Moderator shall nominate one of the bishops on the panel to participate in the proceedings of the Arbitrators. His advice on such questions shall



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be binding on the Arbitrators, and in case of dispute, the same shall be dealt with in accordance with Rule 22 and 23 of Chapter IX of the Constitution.

37(a).The Award of the Arbitrators shall be binding on all the parties to the dispute.

(b)In the Award of the Arbitrators is not accepted by any party to the dispute, such party shall be deemed to have rendered himself / herself / themselves ineligible to participate in the Government of the Church at all levels.

(c)The Executive Committee of the Synod shall lay down suitable rules, regulations and bye-laws for the operation of the provisions in the Chapter.

(d)Every diocese shall incorporate provisions in their respective Constitutions for settlement of disputes in accordance with this chapter.”

29.A perusal of the above would show that all disputes of any nature whatsoever concerning the affairs of the Synod and / or any of the institution shall be resolved in the manner as stated under Clause 36 of the Chapter XI of the CSI Constitution. But in the present case, the



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respondents 1 to 3/plaintiffs without resolving the dispute in the manner stated in Chapter XI (36) of the Constitution of CSI, i.e The Discipline of the Church and Settlement of Disputes, the respondents 1 to 3 / plaintiffs have directly approached this Court. The complainant namely S.Byju Nizeth Paaul raised an election dispute with regard to the conduct of the 6th respondent / 3rd respondent's election without referring the same to the Election Commission, which was constituted as early as on 27.02.2020, despite having knowledge about the Commission. It may be true that the respondent 1 to 3 / plaintiffs' case is a genuine one, however, the respondents 1 to 3/plaintiffs have wrongly approached the respondents 4 & 5 / defendants 1 and 2, and they have also passed the order with regard to the affairs of the internal management of the 6th respondent / 3rd defendant, for which remedy has been provided under Chapter XI (36) of the Constitution of CSI. Therefore, there is a bar under Chapter XI (36) of the CSI Constitution and under Section 5 r/w 8 of the Arbitration and Conciliation Act, 1996, to entertain the present suit.

30. The Hon'ble Supreme Court in the case of “*Sundaram*



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Finance Limited and ors vs. T.Thankam” reported in ***AIR 2015 SC***

1303, has stated as follows:

“10.Once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the Section 8 of the Arbitration Act, moves the Court for referring the parties to arbitration before the first statement on the substance of the dispute filed, in view of the peremptory language of Section 8 of the Arbitration Act, it is obligatory for the Court to refer the parties to arbitration in terms of the agreement, as held by this Court in ***P.Anand Gajapathi Raju and Ors. v. P.V.G.Raju.***”

31.Therefore, either in the case of the dispute relating to the election or any other disputes between the members of the Church and the Church and its institutions at the level of Diocesan level, shall be referred to the Arbitration Board which shall consist of three members, of whom, one arbitrator chosen by each party from a panel appointed by the Diocesan Council and a third person, chosen from the panel by the Bishop under Chapter XI(II) (35) of the CSI Constitution. While under



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Chapter XI(II)(36) at the level of Synod level, the disputes will be referred to the Moderator, at his discretion, will decide to settle the dispute himself in a pastoral way, or he may appoint a Conciliation Board to settle the dispute by conciliation. Being members of the 6th respondent/CSI Kanyakumari Diocese, which is under control and governed by the CSI Constitution, the respondents 1 to 3/plaintiff shall abide by the terms and conditions incorporated in the CSI Constitution, in the interest of all the members of the CSI Kanyakumari Diocese, any dispute arose, the respondents 1 to 3/plaintiffs ought to have primarily exhausted the remedy available under the CSI Constitution and in fact, in order to maintain discipline among the members of the Church and for the purpose of convenience of the parties, to resolve all the disputes and differences among themselves by virtue of referring the same to the conciliation and arbitration, appropriate provisions have been incorporated in the CSI Constitution by indicating clearly as to how to resolve and settle the disputes among by the parties themselves by referring to the arbitration and conciliation. When such being the situation, the respondents 1 to 3/plaintiffs have directly approached this



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Court without exhausting the remedy available under CSI Constitution, which approach of the respondents 1 to 3/plaintiffs seeking this Court to sit over the dispute and act as an arbitrator and settle the same, in the opinion of this Court, cannot be entertained as it amounts to frustrating the very arbitral mechanism incorporated in the CSI Constitution.

32. In this regard, it is worthwhile to extract an observation made by the Delhi High Court in the case of **"The Handicrafts and Handlooms Exports Corporation of India Ltd. Versus Ashok Metal Corporation & another"** in RFA 2109/2009 dated 26.2.2010, which reads as under:

"Civil Courts would, therefore, be well advised to steer clear of the arbitral process, leaving only their door ajar to the aggrieved party for the purpose of interim orders, appeals, etc. Any other view, in my opinion, would through open the flood gates of pre-arbitral litigation, and in each and every case the party interested in delaying the arbitration proceedings would effectively resort to a civil suit as an adjudicatory mechanism for adjudging the existence



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and validity of the arbitration agreement and the jurisdiction of the Arbitral Tribunal. Needless to say, appeals and counter-appeals there from would effectively ensure that the entire alternate dispute resolution system of arbitration is rendered ineffacious, cumbersome, expensive and dilatory."

33. In fact, requirement to exhaust the alternative remedy should be considered to be fair and just since CSI Constitution itself has created the avenue for settlement of the all the disputes between the members and the Church. This makes access to justice available locally for all the members aggrieved, prevents the Civil Courts from being over-burdened with cases, and is based upon the precept that the arbitrators and mediators appointed for the purpose of settlement of disputes, have more expertise on the subject.

34. In the light of the above discussion and in view of the specific bar under Chapter XI (36) of the CSI Constitution, this Court is not inclined to entertain the present suit filed by the respondents 1 to 3/plaintiffs without exhausting the remedy available for them.

35. Accordingly, the present application is allowed and the plaint



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in C.S.No.74 of 2022 is hereby rejected. The respondents 1 to 3/plaintiffs are directed to workout their remedy available in Chapter XI (36) of CSI Constitution since the dispute is at Synod level. No costs.

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