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C.M.A.Nos.1894 and 1896 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2023

Pronounced on : 22.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.Nos.1894 and 1896 of 2023 and
C.M.P.Nos. 18452 and 18458 of 2023

1. Madras Race Club
Race Course Road,
Near Railway Station, Guindy,
Chennai – 600 032.
2. The Chairman
The Committee of Management
Madras Race Club
Guindy, Chennai – 600 032.
3. The Secretary,
Madras Race Club
Guindy, Chennai – 600 032. ... Appellants/Respondents/Defendants
in both the appeals.

Vs.

Mr.K.Kaliyaperumal ... Respondent/Petitioner/Plaintiff
in both the appeals.

Common Prayer: This Civil Miscellaneous Appeal have been filed under Order XLIII Rule 1(r) of CPC against the Fair and Decretal Common Order passed on 10.08.2023 in I.A.Nos.2 and 3 of 2023 in O.S.No.4985 of



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2023, pending on the file of the Hon'ble XXII Additional Judge,
City Civil Court, Chennai.

For Appellants :
in both the appeals

For A1 & A3 : Mr.P.H.Aravind Pandiyan, Sr. Advocate
for Mr.T.Balaji.
Mr.Abdul Hameed, Sr. Advocate
for Mr.T.Balaji.

For Respondent : Mr.G.Murugendran
in both the appeals.

COMMON JUDGMENT

The above appeals are filed challenging the interim orders passed in
I.A.Nos.2 and 3 of 2023, in O.S.No.4985 of 2023, on the file of Hon'ble
XXII Additional Judge, City Civil Court, Chennai.

2. The appeals arise under the following circumstances:-

(a) The respondent is an office bearer of the first appellant club.

He had filed a suit in O.S. No.4985 of 2023 for the following reliefs.

(i) to declare the notice dated 07.07.2023 calling for an Annual
General Meeting of the appellant club on 16.08.2023 as null and
void;

(ii) for permanent injunction restraining the appellants from



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conducting remote e-voting for casting votes on 13.08.2023 and 15.08.2023 for the election of four committee members of the first appellant; and

(iii) for a permanent injunction restraining the appellants from conducting the Annual General Meeting on 16.08.2023.

(b) The respondent also filed an application in I.A.No.2 of 2023 in the said suit for an interim injunction restraining the appellants from conducting e-voting on 13.08.2023 and 15.08.2023 for the election of four committee members and filed an I.A.No.3 of 2023 for an interim injunction restraining the appellants from conducting the Annual General Meeting on 16.08.2023.

(c) The appellants opposed the said applications and contended that the respondent had not made out any *prima facie* case or established balance of convenience or irreparable injury for the grant of injunction.

(d) The Trial Court on 10.08.2023, after hearing the learned counsels on either side passed an order allowing the interim applications as prayed for.

(e) Aggrieved by the said order, the appellants have filed the instant



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appeals.

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3.(a) Mr.Aravind Pandiyan, learned senior counsel for the appellants 1 and 3 submitted that the respondent had challenged the election for the previous year in O.S.No.5031 of 2022, on the file of learned Principal Judge, City Civil Court, Chennai, on the very same grounds. In the said suit also, he had sought for similar interim orders. The Trial Court granted interim injunctions in both applications. The appellants challenged the said order before this Court in C.M.A.Nos. 2520 and 2521 of 2022. This Court by an order dated 10.04.2023 held that the procedure of voting through Other Audio Visual Means (OAVM) was in accordance with law. The learned senior counsel submitted that the learned Trial Judge however ignored the said order of this Court and observed that the said order has not become final, which would amount to judicial indiscipline.

(b)The learned Senior Counsel further submitted that the Suit itself is not maintainable as the first appellant is a company and hence, all disputes have to be adjudicated only by the NCLT and relied upon the



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Judgement of this Court in *Viji Joseph and others Vs. P.Chander* reported in *[2020] 223 Comp Cas 594 (Mad)* in support of his submission.

(c)The learned Senior Counsel further submitted that though there is no clarity in the order as to whether the applications were finally allowed or they were pending, the appeals are maintainable since the learned judge had substantially decided the rights of the parties. The learned senior counsel submitted that even in the case of an ex-parte interim order the respondent has a choice to either approach the Trial Court for vacating the order or challenge it by way of an appeal. The learned Senior Counsel relied upon the following Judgments in support of his submission

(i) *Zila Parishad, Budaun and others Vs. Brahma Rishi*

Sharma reported in *1969 SCC Online All 237* ;

(ii) *A.Venkarasubbaih Naidu Vs. S.Chellappan and*

others reported in *(2000) 7 SCC 695* ;

(iii) *Rajendra Prasad Dwivedi Vs.Atul Kumar Dwivedi*

and others reported in *2004 (d) M.P.L.J 126* ;

(iv) *Magotteaux industries Pvt Ltd. And others vs. AIA*

Engineering Ltd., reported in *2008 SCC Online Del 1232* ;

(v) *Shah Babulal Khimji Vs. Jayaben D.Kania and*

others reported in *1981 4 SCC; and*

(vi) *SBI Home Finance Ltd. Vs. Prabir Chatterjee*



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reported in **2000 SCC online Cal 447.**

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(d) The learned senior counsel also submitted that since the Civil Suit has been filed before this Court by another member in C.S.No.216 of 2021 this Court by virtue of its power under Section 24 of C.P.C., may withdraw the suit in O.S.No.4985 of 2023 pending before the XXII Additional Judge, City Civil Court, and direct it to be tried along with C.S.No.216 of 2021 before this Court.

(e) The learned Senior Counsel therefore, submitted that the respondent had not made out any *prima facie* case, warranting an order of interim injunction and prayed for allowing of the appeals.

4. (a) Mr.Abdul Hammed, learned Senior Advocate for the second appellant submitted that the Suit has been valued at Rs.10,00,000/- only to bring it before the City Civil Court, Chennai. In an earlier Suit filed before this Court by another member a different valuation was given.

(b) The learned Senior counsel further submitted that the allegations against the Chairman are vague and the Chairman was not even named in



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the plaint averments. Merely because the Chairman had contested again, it cannot be said that he would influence the elections, in the absence of any specific instance shown by the respondent alleging influence of the Chairman in the conduct of elections.

(c) The learned senior counsel further submitted that the suit is also bad for non-joinder of parties, as none of the contestants to the post of Committee Members have been made a party in the suit.

(d) The learned Senior Counsel also submitted that the prayers in the Suit and the interim application are one and the same, and by the impugned orders, the learned Judge has in effect allowed the suit without a trial.

5. Mr.Murugendran, the learned counsel for the respondent per contra submitted that the appeals are not maintainable since they challenged the interim orders in the interim applications which have not been finally disposed of.

(a) The learned counsel relied upon the judgments of this Court in



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Abdul Shukoor Sahib Vs. Umachander and others reported in **1976 SCC**

Online Mad 57 and ***Ramalinga Naicker Vs. Chennakrishna Konar and others*** reported in **1982 SCC Online Mad 196**.

(b) The learned counsel further submitted that the challenge to the elections for the previous year cannot be compared with the challenge to the present year's election as in the present year, the Chairman had contested the election and he is likely to influence the conduct of the election and its results; and that therefore, the order of this Court in C.M.A. Nos.2520 and 2521 of 2022 would not be applicable in the instant case.

(c) The learned counsel further submitted that voting has been permitted to be done through OAVM means, which would give scope for manipulation; that the User-ID and password were sent through email; that the voter's list does not contain the e-mail IDs of the members and therefore, it is not clear as to how this User IDs and passwords were shared to voters; and that there is every possibility of manipulating the results of the election. The learned counsel therefore submitted that the order passed by the trial Court was justified and prayed for the dismissal



of the appeal.

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6. From the submissions of the learned counsels on either side and on perusal of the records in the instant case, it is seen that the first appellant had called for the election of four Committee members. They had also called for an Annual General Meeting. The respondent's primary objection is that the appeals are not maintainable since the Trial Court had only passed interim orders which are valid. In ***Abdul Shukoor Sahib's case (cited supra)*** relied upon by the learned counsel for the respondent, this Court had held that where an order is without any reason and passed ex-parte, it cannot be challenged in an appeal. The relevant portion is extracted hereunder for better understanding:-

"13.Examining the precedents touching on this subject as well as those decisions which are analogous to the discussion in which we are in, we find a bare groundless, reasonless order which is on the top of it an ex parte one, cannot be the subject matter of an appeal.

7. In Ramalinga Naicker's Case (cited supra), this Court had held that where an order of ex-parte *ad interim* injunction is passed, the



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respondent should resort to remedy available under Order 39 Rule 4 of C.P.C., for vacating the interim order. However, in none of the above two cases, it is held that an appeal against an interim order would not be maintainable under any circumstances.

8. Further in the instant case, it is seen that the learned XXII Additional Judge, City Civil Court, Allikulam, Chennai – 03, (hereinafter referred to as "learned Judge" for the sake of convenience) heard both the parties and had passed an order. Further, as observed by this Court, at the time of the admission of these appeals, there is no clarity in the order as to whether the interim applications were finally decided. In at least three places, the learned Judge had indicated that the orders were passed finally. In the first page of the order, the learned Judge had observed that the case had come up for "final hearing". While referring to the point for consideration, the learned Judge has observed as follows:

*"4. The point for consideration is whether
the petitions are to be allowed or not?"*

In the operative portion of the order, the learned Judge had observed as follows:

"In the result, this I.A.No.2/2023, I.A.3/2023



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petitions are hereby allowed. No Cost. Interim stay granted till 24.08.2023."

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Therefore, from the above extracts of the order, one cannot make out as to what is the nature of the order. However, the learned counsel for the respondent pointed out that the applications are still pending and the learned Judge had posted the matter for counter.

9. Be that as it may. Even if it is an interim order which has not finally decided the interim applications, an appeal remedy cannot be ruled out as can be seen from the decisions relied upon by the learned Senior counsels for the appellants.

(a) The Allahabad High Court while dealing with the question as to whether an appeal would lie against an ex-parte order of interim injunction in ***Zila Parishad case (cited supra)*** had observed as follows:

"14. The language and the object of Rule 1(r) of Order 43 and the scheme of Rules 1 to 4 Order 39 show that an appeal also lies against the ex parte order of injunction. As soon as an interim injunction is issued and the party affected thereby is apprised of it, he has two remedies: (1) he can either get the ex parte



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injunction order discharged or varied or set aside under Rule 4 of Order 39 and if unsuccessful avail the right of appeal as provided for under Order 43, Rule 1(r) or (2) straightaway file an appeal under Order 43, Rule 1(r) against the injunction order passed under Rules 1 and 2 of Order 39, C.P.C. It is not unusual to provide for alternative remedies. For instance, when an ex parte decree is passed against a person, he has two remedies: either he may go up in appeal against the ex parte decree or he may seek to get the ex parte decree set aside by the same court."

(b) The Hon'ble Supreme Court in **A.Venkarasubbiah Naidu's case (cited supra)** while dealing with a similar question had observed as follows:

"13. It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said Rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable



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as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte order for any relief."

(c) The Madhya Pradesh High Court in ***Rajendra Prasad Dwivedi's case (cited supra)*** on a similar issue had observed as follows:

"14. True, the grant of temporary injunction is a discretionary power and the discretion vest in the Court before whom an application is submitted, but it is also equally true that if principles of granting temporary injunction are overlooked the appellate Court can definitely interfere in the discretionary order. The powers are vested in the appellate Court under Order 43, Rule 1 of the Civil Procedure Code to correct the order of the Court below if the discretion has got been exercised judiciously or has been exercised on wrong principles of law In this context reliance is placed on Watson vs. Rodwell, (1876) 3 Ch. D. 380. Later on the Division Bench of this Court in the case of Laxmi Chand vs. Brij Bhushandas, 1969 MPLJ 256



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= 1969 J LJ 467 also placed reliance on the said decision and has held that when the Judge did not apply correct principles of law while dealing the matter within its discretion his order may be set aside by the appellate Court. In the instant case, the trial Court has adopted an erroneous approach and against the principles of temporary injunction has passed the impugned order and therefore, this Court is bound to interfere by exercising powers conferred under Order 43, Rule 1, Civil Procedure Code."

(d) The Calcutta High Court in ***SBI Home Finance Ltd., Vs. Prabir Chatterjee*** reported in ***2000 SCC Online Cal 447***, while disagreeing with the two Judgments of this Court relied upon by the learned counsel for the respondent had observed as follows:

"20. We are in total disagreement with the aforesaid two judgments as we find that Order 43 Rule 1(r) has never restricted the question of maintainability of an appeal in respect of an ad interim order of Injunction. We feel that Order 39 Rule 4 has given right to a respondent to pray for vacating of the ad interim order of injunction but that has not taken away the right



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of a respondent to prefer any appeal from the order passed under Order 39 Rules 1 & 2 without availing the mode prescribed under Rule 4. Hence, the two Division Bench decisions of the Hon'ble Madras High Court and the Hon'ble Karnataka High Court cannot be the abstract proposition of law in this regard In absence of any ouster of jurisdiction prescribed by Order 43."

10. Therefore, from the law laid down in the aforesaid Judgments and also from the Judgment of this Court relied upon by the learned counsel for the respondent it is seen that an appeal against interim orders, passed after hearing the parties, even though the applications have not been finally decided, are maintainable. In fact, the Hon'ble Supreme Court had held that even in respect of an ex parte order, an appeal remedy would be available. Hence, this Court is of the view that the appeals filed against the impugned order are maintainable. The appellants had the option to seek a modification of the order before the trial Court or maintain an appeal under Order 43 Rule 1, C.P.C. Their choice to file an appeal in the facts and circumstances of this case, cannot be faulted.



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11. This Court finds that on merits, the plaint filed in O.S.No.5031 of 2022, on the file of the Principal District Judge, Chennai, and in the instant Suit in O.S.No.4985 of 2023, is almost the same. To a specific query as to what was the difference in the Suit challenging the previous year's election and this year's election, the learned counsel for the respondent submitted that the only difference is that in the present year, the Chairman himself was a contestant. It is seen from the plaint averments and the affidavit in support of the interim applications that nothing has been stated as to how the contest of the Chairman would affect the result, except for vaguely stating that the results have to be informed to the Chairman.

12. Further, this Court in the order dated 10.04.2023 passed in C.M.A.Nos.2520 of 2521 of 2022 in respect of the previous year's election of the appellant's club, had made the following observations:

"21. It remains to be stated that Rule 20 of the Companies (Management and Administration) Rules, 2014, mandates that companies that are listed and the companies that are with more than 1000 members shall conduct General Body Meeting,



through e~voting. However, there is no bar for other companies to conduct its AGM through e~voting. It is to be stated that during the Covid period, the Ministry of Corporate affairs had issued in General Circular No.20 of 2020 dated 05.05.2020 permitting all the companies to conduct AGM through video conferencing or OAVM and thereafter, by a General Circular 02/2022 dated 05.05.2022, the conduct of the AGM of the companies through Video conferencing or OAVM, was extended till 31.12.2022. Therefore, any company including MRC~appellants/defendants can conduct AGM through OAVM till 31.12.2022. As per the AGM notice as could be seen from the typed set of papers, the members can either vote through OAVM or personally visit the MRC campus, on the date notified and there is no compulsion or mandatory, that the members of the MRC to vote only through OAVM.

...

25. From the typed set of papers, this Court finds that out of 713 Club members, except two members, the others i.e. 711 members have email Ids. On mere smearing allegation of manipulation without adding National Securities Depository Limited (NSDL) as a party to the proceedings, the



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veracity of the NSDL, cannot be challenged."

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13. From the above observations, it is clear that there is nothing wrong with the conduct of the election through OAVM. It is an admitted fact that the elections are conducted through a third party agency called the NSDL (The National Securities Depository Limited.). The said agency has not been made a party in the Suit. Hence, any challenge or attack made to to the mode of election without making them a party, cannot be sustained. The reason for the challenge to the previous year's elections and this year's elections are substantially the same, except for the fact that the Chairman is contesting in the present year's election which would hardly make a difference as observed earlier. Further, the order of this Court dated 10.04.2023 referred to above was challenged before the Hon'ble Supreme Court in S.L.P.Dairy No.22540 of 2023 and the same was dismissed on 14.08.2023. The Trial Court however surprisingly had ignored the order of this Court by observing in a flippant manner, that the order passed by this Court is not a final order. Further, the learned Trial Judge had not observed how the participation of the Chairman in the present year's election made a difference and had affected the fair conduct of elections. If the argument of the respondent and the reasons given by



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the learned Judge were to be accepted, no person who holds any office as a head of an elected body can contest for the second time. That apart, it is seen that though the elections were notified on 07.07.2023, the suit has been filed almost at the last hour for the reasons best known to the respondents.

14. The other contentions raised by the parties with regard to the maintainability of the Suit have to be decided only in the trial and therefore, this Court is not expressing any opinion on the merits of the rival contentions on those issues.

15. The request of the learned Senior counsel for the appellant to withdraw the Suit and try it along with C.S.No.216 of 2021, before this Court also cannot be considered, since the plaintiff in the Suit filed before this Court is a different person and it not known on what grounds, the said Suit has been filed.

16. Thus, for the aforesaid reasons, this Court is of the view that the respondent had not made out any case much a less *prima facie* case warranting an order of interim injunction. The order passed by the learned trial Judge is liable to be set aside. Hence, the fair and decretal order dated 10.08.2023 passed by the learned XXII Additional Judge, City Civil



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Court, Chennai, in I.A.Nos.2 & 3 of 2023 in O.S.No.4985 of 2023 is set aside. This Court by an interim order had permitted the conduct of the election and restrained the appellant from declaring the results. In view of the above order, the first appellant is permitted to declare the results of the election.

17. It is needless to say that the learned trial Judge would consider all the contentions of the parties including the appellants' specific stand that the Suit itself is not maintainable and pass a Judgment in accordance with law.

18. Accordingly, these Civil Miscellaneous Appeals are allowed. Consequently, the connected Civil Miscellaneous Petitions are closed.

22.09.2023

dk/ars

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.



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SUNDER MOHAN,J.

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Copy To

1. The XXII Additional Judge,
City Civil Court, Chennai.
2. The Section Officer
VR Section
High Court of Madras.

Pre Delivery Judgment in
C.M.A.Nos.1894 and 1896 of 2023 and
C.M.P.Nos. 18452 and 18458 of 2023

Dated : 22.09.2023