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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**[RESERVED ON : 06.02.2023]**

**[PRONOUNCED ON : ]**

**CORAM:**

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

**C.M.A.No.263 of 2023**

The Madras Race Club,  
represented by its Secretary,  
Race Course Road,  
Guindy, Chennai - 600 032

... Appellant

.. Vs ..

N.Ravichandran  
S/o Mr.Narayanan

... Respondent

**PRAYER:** Appeal is filed under Order 43 Rule (1)(t) of Civil Procedure Code, pleaded to allow the above Civil Miscellaneous Appeal and set aside the order dated 05.03.2022 passed by Hon'ble XIX Additional City Civil Court, Chennai in I.A.No.2 of 2019 in A.S.No.70 of 2018 in O.S.No.5029 of 2016.

**For Appellant : Mr.T.Balaji**



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For Respondent : Mr.I.Lakshmana Shankar

**JUDGMENT**

The defendant is the appellant herein challenging the order dated 05.03.2022 made in I.A.No.2 of 2019 in A.S.No.70 of 2018 in O.S.No.5029 of 2016 on the file of the XIX Additional City Civil Court, Chennai.

2. The respondent plaintiff filed a suit in O.S.No.5029 of 2016 before the XVII Assistant City Civil Court, Chennai, to declare the termination of the plaintiff's membership in the defendant's Club under membership code No.SMR 1029, as null and void and for a permanent injunction restraining the defendant from obstructing the plaintiff from participating in the activities and enjoying liberties of a member of the defendant club.

3. Written statement was filed by the club.

4. During the trial, the plaintiff was examined as P.W.1 and



Ex.A1 to Ex.A9 were marked. After filing written statement, the defendant club has not participated in the subsequent proceedings and hence, the trial Court had decided the issue based on the available records and evidence. As per Article 5 and Article 22 of the Articles of Association, the defendant club has initiated action and terminated the plaintiff's membership. Accordingly, the suit was dismissed. Hence, the plaintiff has preferred the appeal in A.S.No.70 of 2018 before the Principal Judge, City Civil Court, Chennai. The lower Appellate Court on consideration of the evidence, set aside the decree and judgment passed in O.S.No.5029 of 2016 and suit is decreed in respect of relief of declaration. In respect of the relief of permanent injunction, the lower Appellate Court has ordered that the plaintiff shall be entitled to the privileges of the club, on payment of subscription. Thereafter, it appears that the defendant has filed I.A.No.2 of 2019 under Order 41 Rule 21 of C.P.C. on the file of XIX Additional City Civil Court, Chennai, for rehearing the appeal and the same was dismissed on 05.03.2022 and hence the Civil Miscellaneous Appeal.



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5. The Civil Miscellaneous Appeal was initially filed with delay and subsequently on condonation of the delay the Civil Miscellaneous Appeal was taken up for admission.

6. Mr.Lakshmana Shankar, learned counsel for caveator takes notice for a respondent.

7. By consent of the parties, the main Civil Miscellaneous Appeal is taken up for final disposal. After going through the records, this Court find that the defendant has not let any oral or documentary evidence and the trial Court has dismissed the claim based on the documents filed by the plaintiff. However, the lower Appellate Court appears to have allowed the same without hearing the defendant and hence, I find that an opportunity of being heard should be given to the defendant on the above peculiar circumstances of the case.



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8. Accordingly, the Civil Miscellaneous Appeal is allowed. Order of the lower Appellate Court in I.A.No.2 of 2019 is hereby set aside and the matter is remitted back to the XIX th Additional City Civil Court, Chennai for rehearing the appeal in A.S.No.70 of 2018 on merits and two months time is granted from the date of receipt of a copy of this order, for disposing the same, on merits and in accordance with law. Both the parties are directed to comply with the time limit prescribed above.

9. In result, the Civil Miscellaneous Appeal is allowed to the limited extent as indicated above.

**.02.2023**

Index : Yes / No

Internet : Yes

Nti

To



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1. The XIX Additional City Civil Court, Chennai.
2. The Section Officer,  
V.R. Section, High Court,  
Madras.

**RMT.TEEKAA RAMAN, J.**

Nti

**Pre-Delivery**

**Judgment**

**in C.M.A.No.263 of 2023**



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