



CMA Nos.2520 and 2521 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2023

PRONOUNCED ON : 10.04.2023

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA Nos.2520 and 2521 of 2022

and

CMP Nos.19601, 19602, 19604 &19605 of 2022

1. The Chairman,
The Committee of Management,
Madras Race Club,
Guindy, Chennai – 600 010.

2. The Secretary,
Madras Race Club,
Guindy, Chennai – 600 032.

.. Appellants/Defendants
in both cases.

Vs.

K.Kaliyaperumal

.. Respondent/Plaintiff
in both cases

PRAYER in CMA No.2520 of 2022: This Civil Miscellaneous Appeal is filed under Order XLIII Rule (v) of Code of Civil Procedure, against the fair and decreetal order passed on 26.10.2022 in I.A.No.2 of 2022 in O.S.No.5031 of 2022, pending on the file of the learned Principal Judge, City Civil Court, Chennai.



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PRAYER in CMA No.2521 of 2022: This Civil Miscellaneous Appeal is filed under Order XLIII Rule (v) of Code of Civil Procedure, against the fair and decreetal order passed on 26.10.2022 in I.A.No.3 of 2022 in O.S.No.5031 of 2022, pending on the file of the learned Principal Judge, City Civil Court, Chennai.

For Appellants : Mr. P.H.Aravind Pandian, Sr. Counsel
in both CMAs for Mr.T.Balaji

For Respondent : Mr.G.Murugendran
in both CMAs

COMMON JUDGMENT

Defendants in the suit are the appellants herein, in both the Civil Miscellaneous Appeals.

2. By consent of both parties, these Civil Miscellaneous Appeals are taken up together, heard and disposed of by this common judgment.

3. The brief facts that are required for determination of these Civil Miscellaneous Appeals, at this juncture, are as under:-

(i) The respondent herein had filed a suit in O.S.No.5031 of 2022



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before the learned Principal Judge, City Civil Court, Chennai, for declaration

and injunction as under:

(a) for a declaration, declaring that the Annual General Meeting (AGM) of the members of the Madras Race Club, to be held on 11.08.2022 at 04.30 p.m at Registered Office of the Club, situated at Guindy, Chennai-600 032 and also through Video Conferencing ('VC') facility or Other Audio Visual Means (OAVM) or any other subsequent date, as illegal and void;

(b) for a permanent injunction restraining the defendants 1 and 2, their men, Agencies, Servants, Staffs, Subordinate, Legal representative assigns or anybody claiming through them, any manner, from conducting remote e-voting to enable the members to cast their vote online from 08.08.2022 till 10.08.2022 or any other subsequent date for the post of four Committee Members of Madras Race Club (in short 'MRC'); and

(c) for a permanent injunction restraining the defendants 1 and 2, their men, Agencies, Servants, Staffs, Subordinate, Legal representative assigns or anybody claiming through them, any manner, conducting the Annual General Meeting (AGM) of the members of the Madras Race Club on 11.08.2022 at the Club premises, and also through Video Conferencing ('VC') facility or Other Audio Visual Means (OAVM) or any other subsequent date, as illegal and void.

(ii). In the said suit, the respondent/plaintiff has also filed respective Interlocutory Applications seeking interim injunction restraining the defendants from in any manner, conducting remote E-voting to enable the members to cast their vote online on 08.08.2022 or any subsequent date for



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the post of 4 committee members and also permanent injunction in conducting AGM through Video Conferencing or OAVM.

(iii) Records reveal that the respondent/plaintiff filed the above suit in the month of July 2022 and an ad-interim injunction appears to have been passed by the learned trial Judge, against which, the present appellants have filed CRP.(PD).No.2485 of 2022 under Article 227 of the Constitution of India, to struck off the plaint.

(iv) It appears that the learned single Judge of this Court, by an order dated 04.08.2022 has passed an order to approach the trial Court by way of vacate stay petition under Order 7 Rule 11 of C.P.C., for rejection of the plaint.

(v) As against the said order dated 04.08.2022, the appellants have filed S.L.P(C) No. 145636 of 2022 before the Hon'ble Supreme Court and by an order dated 29.08.2022, the S.L.P was disposed off with a direction to this Court to convert C.R.P as an appeal under Order 43 of C.P.C and to hear and dispose of the same. Accordingly, the C.R.P. was converted into C.M.A and



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this Court by order dated 19.09.2022 in CMA Nos.2040 and 2081 of 2022, set aside the order passed in I.A.Nos.2 and 3 of 2022 in O.S.No.5031 of 2022 dated 26.07.2022 and remanded back the matter to the trial Court for fresh consideration.

(vi) Pursuant to the said order of remand, the learned trial Judge after hearing the arguments has allowed the interlocutory applications and granted the order of interim injunction on 26.10.2022. Aggrieved against the said order, the defendants in the suit have preferred the instant Civil Miscellaneous Appeals.

(vii) Records reveal that, by an order dated 16.11.2022, this Court has passed a detailed order. The operative portion of the order reads as under:

7. The appellants had produced the finalized list of the voters and copy of the same in the I.A. As regards the issue of conducting the e-voting, the said procedures have now been recognized and has come to stay as it was helpful for the aged and the infirm who are unable to physically attend the meeting.

8. The learned Judge had proceeded to reject the applications for on the ground that Article 11 of the Articles of Association of the Club stipulates that the election should be held by a ballot. A perusal of Article 11 would indicate that it does not



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relate to the election of the Committee of Management but to the election of new members of the Club. Therefore, the reference to the same appears to be misplaced. Article 22 provides the constitution of the Committee of Management and provides for the retirement of the members of the Committee of Management by rotation. This Article stipulates that 1/3rd of the members should retire once a year if their number is not three or a multiple of three then the number nearest 1/3rd should retire from office.

10. A perusal of the above would show that the meeting can be convened at a shorter notice and "in any manner they think". Therefore, the very Article conceptualizes a meeting being held in any form which the Committee deems fit. Therefore, prima facie the holding of a meeting by e-voting and permitting e-voting does not appear to be in violation of the Articles of Associations. The allegation regarding the Voter list appears misplaced in the light of the list produced before the trial Court as well as this Court. That apart, the plaintiff has not deemed it fit to implead the company which is a defense that has been raised by the appellant herein as also the maintainability of a suit. Both of which has not been considered by the learned Principal District Judge, City Civil Court, Chennai. Therefore, the respondent has not made out a prima facie case for grant of an injunction. Therefore, there shall be an order of interim suspension to the interim orders granted in I.A.No.2 of 2022 in O.S.No.5031 of 2022 and I.A.No.3 of 2022 in O.S.No.5031 of 2022 passed by the learned Principal Judge, City Civil Court, Chennai till 16.12.2022.



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(viii) Aggrieved against the said order, the plaintiff has preferred an S.L.P (C) Nos. 22442-22443 of 2022 which was dismissed as withdrawn on 12.12.2022.

4. As stated supra, the present Civil Miscellaneous Appeals are filed against the common order passed in IA Nos.2 and 3 of 2022 in OS No.5031 of 2022 dated 26.10.2022 by the learned Principal Judge, City Civil Court, Chennai. IA No.2 of 2022 is for interim injunction from conducting remote e-voting or to cast their vote through email and I.A.No.3 of 2022 is for injunction from conducting AGM, in the office of the club or also through video conferencing facility or other OAVM.

5. Further, the main suit in O.S.No.5031 of 2022 filed by the respondent herein is for a declaration to declare that the AGM of the members of MRC scheduled on 11.08.2022 and also through the video conferencing facility or OAVM means, or any other subsequent date is illegal, void and for permanent injunction to that effect. So also on similar lines, an interim order is sought for.



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6. Pursuant to the order passed by this Court in CMA Nos.2040 and 2081 of 2022, I.A.Nos.2 & 3 of 2022 was heard by the learned trial judge and passed final order on 26.10.2022, whereby an ad-interim injunction was granted and hence, aggrieved by the same, the defendant has preferred the appeal as stated supra.

7. Pending appeal, the defendants/appellants have filed CMP Nos.19601, 19602, 19604 and 19605 of 2022 in these Civil Miscellaneous Appeals, for stay of all further proceedings in O.S.No.5031 of 2022 and for suspension of the operation of the fair order in IA Nos.2 and 3 of 2022 dated 26.10.2022. This Court by an order dated 16.11.2022 has passed a detailed order, as extracted supra and thereafter, the following order was passed on 13.12.2022.

“24. In the above factual background, I am inclined to pass the following interim order:-

(i) The election through E-voting that has commenced from Sunday (11.12.2022) and about to be concluded by today evening (13.12.2022) shall continue and the AGM scheduled for tomorrow (14.12.2022) through Video conferencing and O-AVM can also continue, there will be no stay in this regard.



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(ii) However, the counting of votes, declaration of results, are ordered to be kept in abeyance until further orders by this Court.

(iii) Mr.Balu Sridhar, Practising Company Secretary who is appointed as scrutiniser to scrutinize the voting process and to submit the report to the chairperson is hereby not to count the voting and nor file a report until further orders.

(iv) Clause (ii) of the order shall be intimated to Mr.Balu Sridhar, Practising Company Secretary who is appointed as scrutiniser to convey the process and for reporting and for declaring the results are hereby required to comply with the clause (ii) of the above said order and he shall be informed about the strict compliance of the order in clause (ii).

(v) Both the counsels are hereby required to obtain the status of O.S.A.No.224 of 2022 pending before the Division Bench of this Court touching upon the maintainability of the Civil Suit.

(vi) With regard to the power of the M.R.C in calling for the notification for conducting the election for the 4 members and the E-voting thus far conducted and physical voting to be conducted tomorrow are subject to the outcome of these C.M.As.

(vii) The appellant is directed to file a status report by coming Monday (19.12.2022).”

8. Pursuant to the above said order, the Secretary of the appellants/defendants – MRC, has filed a report dated 19.12.2022 and the following features are noted therein

“(c) It is informed to this Hon'ble Court, in terms of the information provided by the Scrutinizer, that 70 Club Members have participated in the e-voting facility which was provided from 11.12.2022



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(from 10.00 a.m.) till 13.12.2022 (till 5.00 p.m.) by the National Securities Depository Limited (NSDL). The results of e-voting are kept as password protected under the safe custody of Mr.Balu Sridhar. No counting of votes was done. Therefore, no one knows about, which Club Member has voted in favour of whom or against those nominee who stood for each vacant post of Committee of Management.

(d) Thereafter, the Annual General Meeting of the Club as convened was held on 14th December 2022 at 5.15 p.m. at the Registered Office of the Club at Guindy, Chennai - 600 032 and also through Video Conference ("VC") Facility/Other AudioVisual Means ("OAVM") as stated in the AGM notice dated 16.11.2022.

(e) Sixty Two (62) Club Members attended the Annual General Meeting of the Club including Four (4) Members through Zoom Network. The requisite quorum being present, the Chairman commenced the proceedings of the meeting. As notified by the Chairman, the physical voting for the Club Members by way of Poll commenced at 5.45 p.m and was kept open till 8.00 p.m. for those members who did not cast their vote through remote e-voting.

(f) In view of the Order of the Hon'ble High Court of Judicature of Madras passed in C.M.P. Nos.19601, 19602, 19604 and 19605 of 2022 in C.M.A Nos.2520 and 2521 of 2022, the counting of votes (both physical and e-votes) and declaration of results are kept in abeyance until further orders by the Hon'ble Court."

9. Learned senior counsel for the Appellants also relied upon a General Circular issued by the Ministry of Corporate Affairs, dated 05.05.2020,



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wherein clarification has been issued about holding of the Annual General Meeting (AGM) through Video Conference (VC) or Other Audio Visual Means (OAVM) and further contended that as per Section 430 of the Companies Act, 2013, the occasion now being challenged under is duly covered and hence the civil Suit is not maintainable.

10. Further, the learned senior counsel for the Appellant also relied upon the judgment rendered by the Division Bench of this Court in the case of *1.Viji Joseph & 2.Presidency Club Vs. P.Chander and Others*, reported in **(2020) 223 Comp Cas 594 (Mad)**, wherein the Division Bench of this Court has held that Civil Suit is not maintainable and in respect of election disputes of a company, involving voting through electronic means to the Board of Directors, the National Company Law Tribunal has jurisdiction and civil Court has no jurisdiction and also placed on record the judgments of the Hon'ble Supreme Court in the case of *Kamla Devi Vs. Takhatmal and another*, reported in **AIR 1964 Supreme Court 859**, *Indira Nehru Gandhi Vs. Raj Narain and another*, reported in **AIR 1975 Supreme Court 1590** and *K.Yella Reddy Vs. The Registrar, Andra Pradesh Administrative Tribunal*, reported in **1996 SCC OnLine AP 403**, as to the effect that



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suspension of the order passed by the lower Court and contended that the procedures and steps taken hitherto by the Appellants herein are in accordance with law and Civil Suit filed before the City Civil Court is not maintainable and the reasoning assigned by the learned Principal Judge for grant of injunction, are not arising out of the facts and circumstances of the case and hence, prayed for allowing of the Appeals and to vacate the injunction order granted by the trial Court.

11. Learned counsel for the respondent/plaintiff, could contend that the civil Court has jurisdiction to entertain the dispute and the suit before the Civil Court is maintainable and relied upon the following judgments.

1. *N.Ramji Vs. Ashwath Narayan Ramji and Another*, reported in 2017 SCC OnLine Mad 37591.
2. *Crystal Dwellings Private Limited, Vs. Surat Singh Malhotra*, in CMA Nos.274 & 281 of 2022 dated 04.08.2022 [Telangana High Court]
3. *Jai Mahal Hotels Private Limited Vs. Devraj Singh and Others*, reported in (2016) 1 Supreme Court Cases 423.

12. After hearing the rival submissions and also taking note of the status report filed by the Secretary of the MRC dated 19.12.2022, which is



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also extracted supra and taking note of the various decisions, this Court finds that the grievance of the respondent/plaintiff is that AGM originally scheduled to be held on 11.08.2022 either through physically or through video conferencing or OAVM means, is illegal and he sought for the injunction on the above lines.

13. One of the main contention of the appellants/defendants, is that the suit is not maintainable in respect of this nature of the case and they relied upon the decision of this Court in respect of **1.Viji Joseph & 2.Presidency Club Vs. P.Chander and Others**, reported in **(2020) 223 Comp Cas 594 (Mad) : 2019 SCC OnLine Mad 10424** and while the respondent/plaintiff, could contend that the civil suit is maintainable and relied upon the decision of this Court in **Jai Mahal Hotels Private Limited Vs. Devraj Singh and Others**, reported in **(2016) 1 Supreme Court Cases 423**.

14. The core issue in the suit, is whether the election is to be conducted either by video conference or physical mode. The respondent/plaintiff relied upon the bye-laws of the Club in Article 11, in which it has been stated that election shall be conducted by ballot and in



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Article 19, it has been stated that the business of the club shall be managed by the Committee of management, who may exercise all such powers of the Club as are not by the Companies Act, 2013.

15. In this connection, on the original side of this Court in C.S.No.216 of 2021 in Application No.2418 of 2021, it is held that the Civil suit is maintainable in respect of the very same club. However, whether the subject matter falls under Section 241 of the Companies Act, is the subject matter of OSA No.224 of 2022, which is pending before the Division Bench of this Court.

16. The *lis* is with regard to mode of election and finalization of voters' list. After the said order, the list of eligible candidates had been finalised as could be seen from Ex.R2, marked before the trial Court. It remains to be stated that in the above said application viz., A.No.2418 of 2021 in C.S.No.216 of 2021, wherein, in the election 4 members who are to be appointed by the Government in the place of retiring four members, this Court, on the original side has held that whether the National Company Law Tribunal alone has got jurisdiction or the civil Court itself has got jurisdiction



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is a mixed question of law and facts and hence, refused to allow the application filed under Order 7 Rule 11 of CPC, for rejection of the plaint.

Aggrieved by the same, OSA No.224 of 2022, regarding maintainability of civil suit is filed and the same is pending for consideration by the Division Bench.

17. Hence, following the judicial discipline, I am not expressing any opinion as to the point whether the Civil Suit is maintainable or not, since the same is to be decided by the Division Bench, in view of the divergent views on that point.

18. From the arguments advanced by both the parties, I find that the appellants/defendants invoked Section 108 of the Companies Act, 2013 and Rule 20 of the Companies (Management & Administration) Rules, 2014. However, it is the specific case of the respondent/plaintiff that the same is not applicable and consequently, Section 413 of the Companies Act, is not applicable.



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19. It remains to be stated that after perusing the bye laws, first and foremost, I find that the Article 11 of the Article of Association ('AoA') of MRC, only relates to admission of new members and the same is inapplicable for conduct of AGM. In any case, Articles of Association of Company (MRC) cannot override the provisions of the Companies Act and the Rules that are made thereunder.

20. At the risk of repetition, however, for the sake of clarity and continuity, this Court finds that by an order in CMP No.19605, 19602, 19604 and 19601 of 2022 dated 16.11.2022, this Court has observed as follows:

“10....Therefore, prima facie the holding of a meeting by e-voting and permitting e-voting does not appear to be in violation of the Articles of Associations. The allegation regarding the Voter list appears misplaced in the light of the list produced before the Trial Court as well as this Court...

...Therefore, the respondent has not made out a prima facie case for grant of an injunction. Therefore, there shall be an order of interim suspension to the interim orders granted in I.A.No.2 of 2022 in O.S.No.5031 of 2022 & I.A.No.3 of 2022 in O.S.No.5031 of 2022 passed by the learned Principal Judge, City Civil Court, Chennai till 16.12.2022.”

21. It remains to be stated that Rule 20 of the Companies (Management and Administration) Rules, 2014, mandates that companies that



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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.

22. Therefore, taking note of the above said preposition and also the circulars issued by the Ministry of Corporate Affairs, this court has permitted the conducting of the AGM called for by the appellant Club pursuant to the order of suspension of injunction granted by the trial Court, was permitted by



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this Court, to complete the process, however the declaration of result, was alone kept in abeyance and after perusing the circulars, I am of the considered view that the results may be declared, since there is no violation of the circular.

23. At this juncture, it is also relevant to note that in terms of Rule 20 of the Companies M&A Rules, 2014, the Ministry of Corporate Affairs, Government of India issued General Circular No.20/2020 dated 05.05.2020 permitting all companies to conduct the AGM through VC or OAVM. Thereafter, by General Circular No.2/2022 dated 05.05.2022, the right to conduct of AGM by companies through VC or OAVM was extended till 31.12.2022 [The said period is further extended by the Ministry of Corporate Affairs, considering the present Covid-19 impact around the world, upto 30th September, 2023.

24. Therefore, any company, including MRC, can conduct AGM through OAVM till 31.12.2022 as extended upto 30.09.2023 vide the General Circular No.11/2022 dated 28.12.2022. Hence the AGM (previously convened on 11.08.2022 though become infructuous) now freshly conducted



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on 14.12.2022, before 31.12.2022 by MRC, would be in compliance with the Circular dated 05.05.2022 and Circular No.11/2022 dated 28.12.2022.

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 veracity of the NSDL, cannot be challenged.

26. Further, I find that one of the findings based upon which the trial Court has granted interim injunction is that voter's list was not ready, but I find that it is basically an error committed by the trial Court. What was noticed in the said letter produced before the trial Court is that, those who have not paid the subscription fee , i.e., the defaulting members, were asked to pay the fees on or before 13.08.2022 and therefore, it is not to be construed as a voters list, rather, it is the defaulters list for non payment of subscription fee. Hence, the finding of the trial Court that the voters' list is not ready, is factually incorrect.



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27. It is necessary to note that as per the Articles of Association of MRC and the Rules of the Company Law, all the members are entitled to vote, provided that they pay the subscription fee on or before the due date fixed before the AGM. It remains to be stated that the final list of club members eligible to vote as on the date of issuance of AGM notice, was enclosed along with the AGM notice. It appears that the trial Court has failed to take note of the same. Ex.R2 at page No.210 of the typed set of papers, is the list of eligible candidates.

28. At this juncture, the interim order dated 13.12.2022 was passed by me, primarily based upon Rule 20 of the Companies M&A Rules, 2014, and the Ministry of Corporate Affairs, Government of India issued General Circular No.20/2020 dated 05.05.2020, permitting all companies to conduct the AGM through VC or OAVM. Thereafter, by General Circular No.2/2022 dated 05.05.2022, the right to conduct of AGM by companies through VC or OAVM was extended till 31.12.2022. Further, considering the present Covid-19 impact around the world, the said period is further extended by the Ministry of Corporate Affairs, upto 30th September 2023, vide General Circular No.10 of 2022 dated 28.12.2022.



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29. Therefore, this Court is of the view that any company including MRC-appellants/defendants can conduct AGM through OAVM till 31.12.2022 as extended upto 30.09.2023. Hence the AGM (Convened on 11.08.2022 though become infructuous) and now freshly conducted on 14.12.2022, before 31.12.2022 by MRC, would be in compliance with the Circular dated 05.05.2022 and also to the subsequent circular No.11/2022 dated 28.12.2022.

30. The learned Senior counsel Mr.P.H.Aravind Pandian, appearing for the appellants/defendants also brought to the notice of this Court, the finding of the trial Court that a member can vote both through e-voting and physical mode, appears to be erroneous on the face of the record. As per the notification, a member can opt for only one of the mode and not in both, and therefore the question of manipulation does not arise. This vital part appears not to have been noticed by the trial Court which resulted in passing of the interim order. Hence, this Court having taken note of the fact that out of 713 members, only 2 members does not have email IDs, and other 711 members have their own email IDs and the access to the email IDs of each of the



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members and creation of passwords are entirely handled by NSDL, a Central Securities Depository, is of the view that the question of manipulation does not arise.

31. Therefore, on the strength of circulars issued by the Ministry of Corporate Affairs, this Court has permitted MRC-appellants/defendants to conduct the election in its order dated 13.12.2022, which is extracted supra and as per the report of the Secretary, the election was conducted and results are kept in abeyance.

32. In view of the findings in the preceding paragraphs, I find that conducting of elections through physical or electronic mode or any other OAVM has been considered by this Court, in the interim order dated 13.12.2022 and election has also been conducted.

33. Hence, in the interest of justice and administration of the Club, it is ordered as follows:

(i) the election held by the committee, pursuant to the order passed by this Court on 13.12.2022, **is valid.** It is hereby made clear that the results



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of the election conducted on the strength of the order of this Court in CMP Nos.19601, 19602, 19604 and 19605 of 2022, dated 13.12.2022, is to be declared and accordingly, the Secretary, MRC, 2nd appellant/defendant, is directed to declare the results;

(ii) It is clarified that, with regard to the main question of whether the suit is maintainable, the same is the subject matter of OSA No.224 of 2022 pending before this Court.

(iii) Further, as the pleadings are ready, it is open to the trial Court to hear the suit and dispose it of on merits at the earliest possible.

34. In the result, the Civil Miscellaneous Appeals, are ***partly allowed***, as indicated above. The orders of the learned trial judge is modified, to the limited extent. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
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Pre-delivery common Judgment in
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