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CMA No. 2908 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2908 of 2022
and
C.M.P. No. 22484 of 2022

1.The Hosur Small and Tiny Industries
Association (Hostia),
Represented by its Secretary S. Sridhar,
Office at CP-6, Sipcot Phase II,
Hosur – 635 109,
Krishnagiri District.

2.Mr. K. Velmurugan,
The President (Hostia).

3.Mr. S. Moorthy,
The Deputy President

(2 & 3 petitioners having office at CP-6,
Sipcot Phase II, Hosur – 635 109,
Krishnagiri District)

... Appellants

Versus

1.M/s.Sri Lavanya Springs Pvt.Ltd.,
Represented by its
Managing Director, M. Padmanaban,
Having Office at No. 509/2, Chinna Elasagiri,
Via., Titan Watches Limited, Sipcot Post,
Hosur – 635 126, Krishnagiri District.

2.Mr. R. Vadivelu, The Treasurer



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- 3.Mr. R. Kumar, Vice President, Region I
- 4.Mr. K. Mohammed Ismail, Vice President, Region II
- 5.Mr. R. Sudhakar, Vice President, Region III
- 6.Mr. T. Bairappa, Vice President, Region IV
- 7.Mr. K. Karunakaran, Vice President, Region V
- 8.Mr. S. Varadaraja Perumal, Joint Secretary, Region I
- 9.Mr. K. Sivakumar, Joint Secretary, Region II
- 10.Mr. G. Sasikumar, Joint Secretary, Region III
- 11.Mr. N. Ravi, Joint Secretary, Region IV
- 12.Mr. A. Maharajan, Joint Secretary, Region V
- 13.Mr. Jawahar Kumaran S.N., Executive Member
- 14.Mr. K. Muraleedharan, Executive Member
- 15.Mr. Mahesh Kayarat Rajan, Executive Member
- 16.Mr. Durairaj, Executive Member
- 17.Mr. Dillibabu.M, Executive Member
- 18.Mr. V. Radhakrishnan, Executive Member
- 19.Mr. M.R. Kumar, Executive Member
- 20.Mr. S. Saravanan, Executive Member
- 21.Mr. S. Dennis Angel, Executive Member
- 22.Mr. B. Elanchelian, Executive Member



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- 23.Mr. R. Sampath Kumar, Executive Member
- 24.Mr. N.K. Premarajan, Executive Member
- 25.Mr. M. Thimmarayasamy, Executive Member
- 26.Mr. P. Ganesan, Executive Member
- 27.Mr. D. Prakash, Executive Member
- 28.Mr. R. Ravichandran, Executive Member
- 29.Mr. H. Anil Deth, Executive Member
- 30.Mr. T. Manikandan, Executive Member
- 31.Mr. S. Rajkumar, Executive Member
- 32.Mr. A. Ramaiah, Executive Member
- 33.Mr. Rameshwaran, Executive Member
- 34.Mr. K. Moorthy, Executive Member
- 35.Mr. K. Chandramohan, Executive Member
- 36.Mr. L. Vijaykumar, Executive Member
- 37.Mr. T. Gnanavel, Executive Member
- 38.Mr. K. Karuppiah, Executive Member
- 39.Mr. M. Murugesan, Executive Member
- 40.Mr. N. Alagesan, Executive Member
- 41.Mr. B. Mahesh, Executive Member



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42.Mr. P. Muniyappan, Executive Member

43.Mr. K. Sivakumar, Executive Member

44.Mr. K.R. Dhurai, Executive Member

45.Mr. G. Senthilkumar, Executive Member

46.Mr. R. Rathanakumar, Executive Member

47.Mr. V. Mohan, Executive Member

48.Mr. C. Murugesh, Executive Member

49.Mr. E. Mageshwaran, Executive Member

50.Mr. M. Narayana, Executive Member

51.Mr. M. Madhaiyan, Executive Member

52.Mr. William James, Executive Member

53.Mr. Kiran Kumar, Executive Member

54.Mr. E. Prakash, Executive Member

55.Mr. S. Prakash, Executive Member

56.Mr. P. Shankar, Executive Member

57.Mr. K. Prabhakaran, Executive Member

58.Mr. C. Shivakumar, Executive Member

59.Mr. K. Thirupathi, Executive Member

60.Mr. Anas Rahman Khan.J, Executive Member

... Respondents



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PRAYER : Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) of the Civil Procedure Code seeking to allow the Civil Miscellaneous Appeal setting aside the fair and decreetal order of the learned Additional District Judge, Hosur dated 12.08.2022 in I.A. No. 1 of 2021 in O.S. No. 80 of 2021 and to dismiss the said interim application.

For Appellants : Mr. T.M. Hariharan.

For Respondents : Mr. S. Parthasarathy, Senior Counsel for
Mr. P. Dinesh Kumar for R1.

R2 to R60 – given up.

J U D G M E N T

The appeal has been filed challenging the order passed in I.A. No. 1 of 2021 in O.S. No. 80 of 2021 on the file of the Additional District Court, Hosur dated 12.08.2022.

2.The brief facts leading to the filing of the above appeal are as follows;

(a)The first appellant is an Association registered in the year 1980 under the Tamil Nadu Societies Registration Act. The Association has 1200 members. The Association has its bye-laws. The bye-laws were amended in the year 2017. The election to the post of President,



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Secretary and other Office Bearers of the Association was held in the year 2018.

(b) On 26.09.2019, the Annual General Body Meeting was held to amend the bye-laws of the Association and the bye-laws were amended. As per the amended bye-laws, a post of Vice President was created who would be elected by the members. He would hold office for the first two years. Thereafter, he would automatically hold the post of President for next two years.

(c) Some of the members of the Association including the Managing Director of the first respondent herein filed a Suit in O.S. No. 111 of 2020 on the file of the District Munsif Court, Hosur for a prayer to declare the resolution passed on 26.09.2019 by the Association as illegal; that the election notification dated 05.12.2020 for the conduct of election on 28.12.2020 on the basis of the amended bye-laws is illegal and for other consequential reliefs.

(d) The plaintiffs in the said Suit also filed an interim application in I.A. No. 2 of 2020 praying for an injunction restraining the respondents



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therein from conducting the election on 28.12.2020. The learned District Munsif, Hosur dismissed the said application stating that there is no illegality in the resolution passed by the Association; that the notice was communicated to the members of the Association as per the bye-laws; that the bye-laws were not registered due to a technical issue faced by the District Registrar and not because the Registrar found any illegality in the amendment. Admittedly, the said order has not been challenged by the parties and election was conducted on 28.12.2020 and the appellants were elected along with the other Office Bearers who are the respondents 2 to 60 herein.

(e) The first respondent herein thereafter filed a Suit before the learned Additional District Court, Hosur in O.S. No. 80 of 2021 praying for the following reliefs;

(i) for a declaration that the election held on 28.12.2020 is null and void.

(ii) for a permanent injunction restraining the Office Bearers from acting in the capacity as Office Bearers of the Hosur Small and Tiny Industries Association (Hostia).

(iii) to appoint a retired District Judge to conduct election as per



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the old bye-laws of the year 2017.

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(f)The first respondent also filed I.A. No. 1 of 2021 praying for an interim injunction restraining the appellants and the respondents 2 to 60 herein from acting as Office Bearers of the Association. The appellants resisted the said application. The learned Judge found that the first respondent herein had not established balance of convenience in its favour and that irreparable injury would be caused if the injunction was not granted. However, the learned Judge found that since the amended bye-laws were not registered by the District Registrar, hence cannot be acted upon and passed an order restraining the appellants and the respondents 2 to 60 from conducting the elections as per the amended bye-law.

(g)Aggrieved, by the said order, the appellants have preferred the above appeal.

3.(a) Mr. T.M. Hariharan, learned counsel for the appellants submitted that the amended bye-laws was not registered due to a technical issue faced by the District Registrar and not because there was



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any illegality in the amended bye-laws. The learned counsel stated that the order of the learned District Munsif in I.A. No. 2 of 2020 in O.S. No. 111 of 2020 and the letter of the District Registrar confirms the said fact.

(b)The learned counsel further submitted that the Suit filed by the first respondent itself is not maintainable since it was not filed in a representative capacity. Though there are 1200 members, the first respondent has instituted the Suit with a malafide motive and is putting the entire association in trouble. Further, the order passed by the learned Judge restraining the appellants from conducting the elections on the basis of the amended bye-laws is beyond the scope of the prayer made in the application and in any case, the order in effect amounts to allowing the third prayer in the Suit.

(c)The learned counsel relied upon the Judgment of the Honourable Supreme Court in ***Supreme Court Bar Association and Others Vs. B.D. Kaushik*** reported in ***(2011) 13 Supreme Court Cases 774*** and the Judgment of this Court in ***The Tamil Nadu Evangelical Lutheran Church, represented by its present Secretary Vs. Daniel Shanmugam and Ors.*** reported in ***2010 (5) CTC 481.***



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4. (a) Mr. S. Parthasarathy, learned Senior Counsel for the first respondent submitted that admittedly the amended bye-laws have not been registered by the District Registrar. As long as it is unregistered, the election cannot be conducted on the basis of the amended bye-law and hence, the order passed by the learned Judge moulding the relief is valid.

(b) The learned Senior Counsel further submitted that the resolution passed by the Association amending the bye-laws on 26.09.2019 is illegal as the said bye-law has been passed without following the procedure prescribed under the Act. The first respondent had made its objections for the registration of the amended bye-law. Therefore, it cannot be said that the amended bye-law was not registered solely because there was a technical issue in the office of the District Registrar.

(c) The learned counsel relied upon the Judgment of this Court in ***Tirunelveli Dakshina Mara Nadar Sangam rep.by its Secretary Vs. State of Tamil Nadu and Ors.*** reported in **2023 (4) CTC 279**; Judgment of this Court in ***Ankur Grand Owners Association rep.by its Secretary***



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Vs. District Registrar (Admin) and Ors reported in 2023 (3) CTC 841;

and the Judgment of this Court in The Music Academy rep. by its Executive Trustee Vs. Inspector General of Registration and Ors. reported in 2005 4 L.W. 67.

5.The above appeal is taken up for final hearing with the consent of the learned counsel for the appellants and the learned counsel for the first respondent. The respondents 2 to 60 are formal parties in the instant appeal.

6.This Court is of the view that the issue as to whether the Suit filed by the first respondent in O.S. No. 80 of 2021 is maintainable is a matter which has to be adjudicated only before the trial Court while hearing the main Suit. In the peculiar facts of the case, where admittedly the District Registrar had stated that the bye-laws cannot be registered because of a technical issue and also that he had received certain objections, this Court is of the view that this issue as to whether the amended bye-laws should be implemented for conducting next election also has to be decided in the Suit. This Court finds that the order of the learned District Munsif in I.A. No. 2 of 2020 in O.S. No. 111 of 2020 is



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that if the amended bye-laws is not registered because of a technical issue, the same can be acted upon. Admittedly this has not been challenged. The learned Additional District Judge on the other hand in the impugned order has stated that since the amended bye-law is not registered, the amended bye-law cannot be acted upon. In view of these two orders which are contrary to each other, this Court is of the view that it is desirable that this issue has to be ultimately decided in the pending Suits.

7. This Court finds that the impugned order passed by the learned Additional District Judge restraining the appellants from conducting the elections on the basis of amended bye-laws is beyond the scope of the interim application. The learned Judge had also found that the respondent is not entitled to any relief as prayed for. The learned Additional District Judge having found that the first respondent had not made out *prima facie* case or established the balance of convenience in its favour ought to have dismissed the application. The direction not to conduct election on the basis of the amended bye-laws is inappropriate. An election has been conducted on the basis of the amended bye-laws and the present office bearers have been elected on the said basis.



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Therefore, in the absence of any adjudication as to whether the amended bye-laws have to be implemented or not in the Suit, the direction issued by the learned Additional District Judge not to act upon the amended bye-laws cannot be sustained. Though it is true that the Courts can mould the prayer and grant relief, in the instant case, this Court finds that the said direction amounts to allowing the prayer in the Suit without trial. Since the applicability of the new bye-laws is the issue in the Suit, such an order cannot be passed in an interim application and therefore, the same is liable to be set aside.

8. It is submitted by the appellants and the first respondent that the period of the Office Bearers who were elected in 2020 came to an end in December 2022. In view of the pending Suits and the impugned order passed, no elections were conducted thereafter. This Court is of the view that since the very issue as to whether the amended bye-laws have to be adopted or the old bye-laws have to be followed for conducting the election is pending trial, it is not desirable to conduct an election pending adjudication of the said issue. The Association cannot function without



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office bearers till then. Hence, it is necessary that the elected Office Bearers be permitted to hold office till the next elections are conducted after the decision is taken in the Civil Suits.

9.It is seen that the issue in the Suit filed in O.S. No. 111 of 2020 on the file of the District Munsif Court, Hosur and the Suit filed in O.S. No. 80 of 2021 on the file of the Additional District Court, Hosur are substantially the same. Therefore, this Court is of the view that in the interest of justice both the Suits have to be tried by the same learned Judge. Hence, it is necessary to transfer the Suit in O.S. No. 111 of 2020 on the file of the District Munsif Court, Hosur to Additional District Court, Hosur.

10.It is also reported by the learned Senior Counsel for the first respondent that they had filed a Writ Petition before this Court praying for a direction to the District Registrar to consider their objections and pass orders on the registration of the bye-laws expeditiously. Though an order has been passed by this Court, it appears that the District Registrar is yet to pass orders. This Court sees no reason as to why the District Registrar has not taken any action so far. Since the District Registrar is a



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63rd defendant in the Suit in O.S. No. 80 of 2021, it is open to the trial Court to issue such directions to the 63rd defendant to take appropriate action at the earliest.

11.It is reported by the learned counsels on either side that the second appellant has resigned from the post of President of the first appellant Association and the third appellant is acting as a President and the same is recorded.

12.To sum up,

(a) For the above reasons, the order passed by the learned Additional District Judge, Hosur in I.A. No. 1 of 2021 in O.S. No. 80 of 2021 which restrains the parties to conduct elections on the basis of the amended bye-laws is set aside.

(b)The Suit in O.S. No. 111 of 2020, on the file of the District Munsif Court, Hosur is transferred to the file of the learned Additional District Judge, Hosur to be tried along with O.S. No. 80 of 2021. The learned District Munsif, Hosur shall transmit the records in O.S. No. 111 of 2020 to the Additional District Court, Hosur forthwith. The learned



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Counsels on either side submitted that the pleadings are complete in both the Suits. The learned Additional District Judge, Hosur on receipt of the records from the learned District Munsif, Hosur shall conduct trial in both the Suits simultaneously and conclude it within a period of three months from the date of receipt of the record. It is needless to say that the Suits shall be decided without being influenced by any of the observations made either by this Court or by any other Court.

(c) Since the issue as to whether the new bye-laws or the old bye-laws have to be applied for conducting elections has to be adjudicated in the Suits, the learned Additional District Judge, Hosur is directed to complete the trial within the time stipulated in para (b) above.

(d) The elected Office Bearers shall continue to hold Office till the next election is conducted after the decision in the Civil Suits. The learned Senior Counsel for the first respondent submitted that since the Office Bearers are allowed to continue in office beyond the term, there should be a direction to them to act in a transparent manner. This Court is of the view that such a direction may not be necessary as the Office Bearers are expected to always act in a transparent manner. However, if



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the Office Bearers act in a manner that warrants any action, it is open to the first respondent to take action in accordance with law.

13. Accordingly, this Civil Miscellaneous Appeal is disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The District Munsif Court,
Hosur.

2. The Additional District Court,
Hosur.



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SUNDER MOHAN, J

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