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A.No.5990 of 2022

O.A.No.782 of 2022, A.No.5990 of 2022 and A.No.177 of 2023

in

C.S.No.262 of 2022

SENTHILKUMAR RAMAMOORTHY J.,

The suit was filed challenging the constitution of an ad-hoc committee of the plaintiff, the Sri Purushadaniya Parasvanatha Jain Swethambar Moorthipujak Sangh (the Trust), at the Extraordinary General Meeting (EGM) of the Trust held on 16.10.2022 and for consequential permanent injunctive relief to restrain the defendants from interfering with the conduct of activities by the Trust. An interim injunction was also prayed for to restrain the respondents from interfering with the peaceful conduct of the activities of the Trust and for directions ancillary thereto. An order of ad interim injunction was issued, as prayed for, in O.A.782 of 2022, on 14.12.2022. While the defendants applied to discharge the said order (A.No.177 of 2023), the plaintiff applied to punish the respondents for wilful disobedience. Throughout this order, the parties are referred to as per their rank or status in the suit.

2. Learned counsel for the plaintiff submitted that the Trust was formed in the year 1989. He further submits that the Trust properties have been let out to tenants and that the 8th defendant has a vested interest in the said tenants continuing in possession of such tenanted premises without an enhancement of rent. According to learned counsel, the desire of the defendants to protect the tenancies is the



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underlying reason for the impugned EGM and the alleged decisions therein.

Consequently, these events are the genesis of the present proceedings.

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3. With regard to the provisions governing the conduct of an EGM, learned counsel invited my attention to the Trust Deed, particularly Clause 17(d) thereof. He submitted that a requisition for the conduct of an EGM of the Trust should be addressed to the Secretary. In this case, he submitted that such requisition was made to the Vice President and not the Secretary. By inviting my attention to the requisition dated 26.09.2022, he raised two contentions. His first contention is that there are about 200 members in the Trust, whereas the requisition was made only by 75 members and, therefore, does not satisfy the requirement that 50% of the members should submit or endorse such requisition. His second contention is that the agenda specified therein does not include the removal of trustees. Therefore, he concluded his submissions by contending that the EGM held on 16.10.2022 is not valid and that the decisions at such EGM cannot be acted upon since such decisions were not taken in accordance with Clause 17(d) of the Trust Deed.

4. In response to these submissions, learned counsel for the defendants submitted that the order of ad-interim injunction is liable to be discharged solely on the ground of misrepresentation and suppression of facts. By drawing reference to the requisition, he pointed out that the said requisition was endorsed by 75 life members of the Trust. According to him, the plaintiff wilfully suppressed the list of persons who endorsed the requisition. As evidence of suppression, he referred to a



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referred to the suit filed before the City Civil Court by the brother of one of the office bearers of the Trust. Therefore, he submits that the present suit constitutes an abuse of process.

7. Upon considering the rival contentions, at the outset, it is necessary to consider the contention of learned counsel for the defendants that the plaintiff was guilty of suppression of material facts. As discussed earlier, learned counsel pointed out that the list of 75 requisitionists was enclosed with the requisition dated 26.09.2022 and that this is clear from the communication dated 07.10.2022. At the hearing on 14.12.2022 when ad interim relief was granted, the fact that the requisition was accompanied by the endorsement of 75 requisitionists was undoubtedly not placed before the Court. A party seeking *ex parte* relief is under an obligation to place all material facts before the Court. The conduct of the plaintiff in not doing so calls for censure and deprecation. However, the parties have placed all relevant documents before this Court and, on consideration thereof, I am not inclined to discharge the order on that ground. Therefore, I proceed to examine the matter on merits.

8. The grievance of the plaintiff turns largely on Clause 17(d) of the Trust Deed. The said Clause is set out below:-

“d) Extra-ordinary General Body Meeting:

In the case of urgency the extraordinary Annual General Body Meeting can be called giving 3 days notice to the nominee of the Trust. The Extra-ordinary General Body Meeting of the Trust



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*shall be convened by the Secretary on the written requisition of not less than half the members who shall state the object for which such meeting is required to be convened. **If the required meeting is not convened within 2 weeks from the receipt of such requisition in the Registered office of the Trust, the requisitionists may themselves convene the meeting and the business transacted in such meeting shall be valid as transacted at any other General Body Meeting of the Trust convened by the Secretary, provided not less than $\frac{3}{4}$ members of the General Body are present at such meeting, and the majority votes for the same. If neither the President nor the Vice-Presidents are present within 15 minutes of the time fixed for the meeting, the members present may choose one among themselves to be the chairman of the meeting.***"(emphasis added)

On examining Clause 17(d), it appears that the members of the Trust are entitled to call upon the Trust to convene an EGM. Such EGM is required to be convened by the Secretary of the Trust within 2 weeks from the date of receipt of a valid requisition. While learned counsel for the plaintiff contended that the requisition should be made to the Secretary and not to the Vice President, learned counsel for the defendants contended that the requisition would be valid as long as it is deposited in the registered office of



finding on the two interpretations placed before me because both interpretations carry reasonable merit. Clause 17(d) also provides that such requisition should be made by not less than half of the members of the Trust. Learned counsel for the defendants placed for consideration the list of life members of the Trust. The said list consists of 131 life members. He also placed for consideration the list of requisitionists, which totals 75. Although the plaintiff contended that there are 200 members, the said contention was not backed by evidence. Therefore, *prima facie*, the requisition was made by more than 50 % of the total membership of the Trust.

9. The agenda of the requisition warrants consideration and the said agenda is as under:-

“1. To discuss and Decide about the Termination of Tenancy notice (Termination of Tenancy notice dated 19.09.2022) sent to M/s.Suresh Jewellers and other tenants.

2. To discuss and decide o inappropriate behaviour of Sri.Vimalchandji Choudhary during discourse of Param Puja Acharya Dev Sri Chandrayash Susishwarji M.S

3. To discuss and decide on the act of forwarding of messages by Sri.Vimalchand Choudhary, Sri.Dilmohanji Daftari and Sri.Lalitikumarji Vaid on social media pertaining kkkto personal conversationto insult particular



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person.

You are requested to call for an EGM of Sangh at the earliest within 15 days else don't compel us to convene the EGM"

On examining the agenda, the subject of removal of trustees is conspicuous by its absence. The Trust Deed also does not contain provisions with regard to the removal of trustees. At the EGM, the members discussed the 3 agenda items. Eventually, they proceeded to remove all members of the Trust Board and formed the ad hoc committee. Thus, on a matter of paramount importance to the Trust, even without specifying the subject in the Agenda for the meeting and providing a reasonable opportunity to the trustees, the trustees were removed at such meeting. Hence, *prima facie*, the removal of the trustees is not valid for reasons set out in this paragraph. Consequently, I conclude *prima facie* that the dissolution of the Trust Board at the meeting held on 16.10.2022 and the formation of the ad-hoc committee is not valid.

10. Clause 17(d) also provides that the business transacted at a requisitioned EGM would be valid if not less than $\frac{3}{4}$ members of the General Body are present at such meeting, and this stipulation is significant in the factual context. The case put forward by the defendants is that 43 members attended the EGM. Given the defendants' stand that there are 131 life



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meeting. On this issue, learned counsel for the defendants contended that Clause 17(d) provides for a positive vote by 3/4th of the members present at the meeting and not that 3/4th of the total membership should attend the meeting. The language of Clause 17(d) indicates otherwise, as is apparent from the stipulation “....provided not less than 3/4th members of the General Body are present at such meeting and the majority votes for the same”. The only reasonable interpretation that the above language lends itself to is that 3/4th or 75% of the total membership should be present at the meeting and a majority of those present should vote in favour of the decisions. Therefore, *prima facie*, none of the decisions taken at the EGM were valid as per Clause 17(d).

11. Hence, the defendants are restrained from acting pursuant to the decisions taken at the EGM held on 16.10.2022, including by interfering with the activities of the Trust on that basis. This order will not, however, stand in the way of the members of the Trust convening an AGM or EGM and taking decisions in accordance with prescriptions in the Trust Deed. O.A.No.782 of 2022 and A.No.177 of 2023 are disposed of on the above terms.

12. In view of the above order, the plaintiff agrees that it is not necessary to adjudicate A.No.5990 of 2022. Consequently, the said



application is closed.

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