



CRP (MD) No.1782 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 25.07.2023

**Pronounced on:
21.12.2023**

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.1782 of 2023

and

C.M.P(MD)No.8882 of 2023

1.A.K.Khaja Nazeemudeen
2.A.M.Abdul Salam
3.A.M.Mohammed Ashik
4.G.S.Habibullah
5.H.Mohammed Magdoom Harrish
6.S.Mohammed Danish

... Petitioners/Defendants 20,22 to 26

Versus

1.A.B.Abdul Hafeez
2.A.H.Abdul Haseeb
3.A.Syed Ibrahim Shah
4.A.Niaz Ahamed
5.K.Abdullah
6.S.Syed Saleem

For themselves and on behalf of the
newly inducted members dated
12.03.2010 of Majlis-Ulama, a
Registered Society Khaja Nagar,
Tiruchirappalli-620 020



CRP (MD) No.1782 of 2023

... Respondents 1 to 6/Plaintiffs

7. Majlis-UI-Ulama

A.K.Khaja Kanakydeen (Died)
M.S.A.Kabeer (Died)
A.S.Ansar (Died)

8. B.A.Bahavudeen
9. V.S.M.Varis Maideen
10. Dr. Thameezudeen
11. A.B.Kaiser

A.Sirajudeen (Died)

12. M.A.Sirajudeen
13. A.S.Khajamian Akther
14. V.S.Sheik Mohammed Suhail
15. G.S.Gulam Mohideen

M.S.A.Abdul Kadar (Died)

16. M.S.Mohammed Naimudeen
17. M.S.Mohammed Saifudeen
18. A.S.Mohammed Ameen
19. M.Kaleeur Rahman
20. A.Niaz Ahamed

-- Respondents 7 to 20/Defendants
1 to 19

21. A.Sheik Mohammed Suhaib

-- 21st Respondent/2nd petitioner/2nd
petitioner/21st defendant

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 23.06.2023



CRP (MD) No.1782 of 2023

made in I.A. No.24 of 2023 in I.A.20 of 2023 in O.S. No.661 of 2012 on the file of the II Additional Subordinate Judge, Trichirappalli and allow the civil revision petition.

For Revision Petitioners : Mr. P.Athimoolapandian.
For R3 to R6 : M/s.S.Mahalakshmi
for Mr.M.Mohamed Sherbudeen
For R7 : Mr.P.Arun Jayatram

ORDER

This Civil Revision Petition is preferred as against the order made in I.A. No.24 of 2023 in I.A.20 of 2023 in O.S. No.661 of 2012 on the file of the learned II Additional Subordinate Judge, Trichirappalli dated 23.06.2023.

2. According to the revision petitioner, the petitioner herein is the President of the Respondents/Society. The respondents 1 to 6 are the plaintiffs who filed the suit in O.S.No.661 of 2012 before the II Additional Sub Court, Tiruchirapalli, for the relief of declaration, declaring that Resolution No.2 passed in the Executive Committee Meeting of the 1st



CRP (MD) No.1782 of 2023

defendant/Society in respect of induction of 70 new members is valid and for consequential relief of permanent injunction, restraining the defendants from convening any General Body Meeting in the absence of 70 new members inducted on 12.03.2010. It is further submitted that the 2nd defendant, namely A.K.Kaja Kamaludeen, being the General Secretary at one point of time faced the non-confidence on him, thereby without following the by-laws of the Society with regard to induction of new members he himself, along with his sons and his brothers, received 70 applications by passing the Resolution of the Executive Committee Meeting on 25.02.2010. Thereafter, the 2nd defendant in the suit filed Form-7 before the District Registrar of the Society, Tiruchirapalli and the said request was declined. Aggrieved by the same, he filed a writ petition in W.P(MD).No.2362 of 2011 before this Court and the same was also dismissed. Aggrieved by the same, he preferred writ appeal in W.A.(MD).No.212 of 2012 before the Division Bench of this Court and the same was also dismissed against which he preferred S.L.P (C).No.23974 of 2012 before the Hon'ble Supreme Court and the same was also dismissed on 29.12.2012. While so, the petitioner passed a Resolution on 24.12.2012 withdrawing the Resolution passed on 12.03.2010. In pursuant to the said



CRP (MD) No.1782 of 2023

Resolution of the 7th respondent/Society, the petitioners filed I.A.No.20 of 2023 under Section 151 of CPC in O.S.No.661 of 2012 on the file of the II Additional Subordinate Court, Trichirappalli, who had dismissed the suit as having become infructuous. In the said application, the 5th respondent herein filed counter making defamatory averments, which are not necessary to the said proceedings, thereby, he filed I.A.No.24 of 2023 in I.A.No.20 of 2022 in O.S.No.661 of 2012 to strike off the defamatory averments made in the counter affidavit filed by the respondents 1 to 6 in I.A.No.20 of 2023. The said application was dismissed by the learned II Additional Sub Judge, Trichirappalli, by order dated 23.06.2023 in I.A.No.24 of 2023. Aggrieved by this, the petitioners preferred the present civil revision petition for setting aside the order passed in I.A.No.24 of 2023.

3.The learned counsel appearing for the petitioners submitted that the trial Court failed to consider that in the counter filed by the 5th plaintiff in I.A.No.20 of 2023, defamatory averments which are not necessary for the proceedings were stated. Hence, the revision petitioners were constrained to file the averments in I.A.No.23 of 2023 seeking permission to file reply



CRP (MD) No.1782 of 2023

counter affidavit.

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4.The trial Court erred in allowing the petition in I.A.No.23 of 2023 by stating that since permission was granted in I.A.No.23 of 2023 for filing the reply counter affidavit, it is not necessary to strike off the defamatory statements made in the counter affidavit in I.A.No.20 of 2023 and the said finding of the trial Court is patently illegal and the same has to be set aside. His further contention is that the 1st petitioner being the Secretary of the Jammal Mohammed College and is running various Educational Institutions, the statement made by the 5th plaintiff in the counter affidavit in I.A.No.20 of 2023 was affecting the reputation of the first petitioner. Moreover, the statement made in the counter affidavit by the 5th plaintiff is unnecessary for the proceedings in I.A.No.20 of 2023 in O.S.No.661 of 2012. However, the same was not considered by the trial Court and the application in I.A.No.24 of 2023 was erroneously dismissed for flimsy reasons. According to him, the trial Court ought to have considered that when the application in I.A.No.24 of 2023 was filed by the petitioner to strike off the defamatory averments mentioned in the counter affidavit, it is the duty of the Court to consider the



CRP (MD) No.1782 of 2023

statement whether it is necessary for the 5th plaintiff to make such averments.

However, the trial Court failed to consider the above facts erroneously dismissed the applications. Hence, the same has to be set aside._The said application ought to have been allowed. Therefore, the prayer to strike off the defendants statement made in the counter affidavit in I.A.No.20 of 2023, is not necessary.

5.This revision is preferred for setting aside the order passed in I.A.No. 24 of 2023 in I.A.No.20 of 2023 in O.S.No.661 of 2012 on the file of the learned II Additional Sub Court, Tiruchirapalli. The respondents herein as plaintiffs filed the suit in O.S.No. 661 of 2012 before the II Additional Sub Court, Tiruchirapalli for the relief of declaration, declaring that the resolution No.2 passed in the Executive Committee Meeting of the 1st defendant/Society in respect of induction of 70 new members, is valid and for a consequential relief of permanent injunction restraining the defendants from convening any General Body meeting in the absence of 70 new members inducted on 12.03.2010. It is further submitted that the 2nd defendant, namely A.K.Kaja Kamaludeen being the General Secretary, at one point of time faced the non-



CRP (MD) No.1782 of 2023

confidence on him, thereby without following the by-laws of the Society with regard to induction of new members, he himself along with his sons and his brothers, received 70 applications by passing the Resolution of the Executive Committee Meeting on 25.02.2010, without following the by-laws of the Society. Thereafter, the 2nd defendant in the suit filed Form-7 before the District Registrar of the Society, Tiruchirapalli, and the said request was declined. Aggrieved by the same, he filed a writ petition in W.P(MD).No. 2362 of 2011 before this Court and the same was also dismissed. Aggrieved by the same, he preferred writ appeal in W.A.(MD).No.212 of 2012 before the Hon'ble Division Bench of this Court and the same was also dismissed against which he preferred S.L.P (C).No.23974 of 2012 before the Hon'ble Supreme Court and the same was also dismissed on 29.12.2012. While so, the petitioner passed a Resolution on 24.12.2012 withdrawing the Resolution passed on 12.03.2010. In pursuant to the said Resolution of the 7th respondent/Society, the petitioners filed I.A.No.20 of 2023 under Section 151 CPC in O.S.No.661 of 2012 on the file of the II Additional Subordinate Court, Trichirappalli, and the suit was dismissed as infructuous. In the said application, the 5th respondent herein filed the counter, making defamatory



CRP (MD) No.1782 of 2023

averments which are not necessary to the said proceedings, thereby, he filed

I.A.No.24 of 2023 in I.A.No.20 of 2022 in O.S.No.661 of 2012 to strike off the defamatory averments made in the counter affidavit filed by the respondents 1 to 6 in I.A.No.20 of 2023. The said application was dismissed by the learned II Additional Sub Judge, Trichirappalli, by order dated 23.06.2023 in I.A.No.24 of 2023. Aggrieved by this, the petitioners preferred the present civil revision petition for setting aside the order passed in I.A.No. 24 of 2023.

6.During the pendency of the suit, the petitioners herein filed I.A.No. 20 of 2023 to dismiss the above suit as having become infructuous. In the said application, the 5th respondent has filed the counter affidavit and according to the petitioners herein, the 5th respondent as 5th plaintiff, made defamatory averments in the counter affidavit, due to which, the reputation gained by the first petitioner is affected. Hence, he filed an application in I.A.No.24 of 2023 for striking off the defamatory averments in the counter affidavit against him. The trial Court however dismissed the said application by stating that, since the petitioners have already filed an application in I.A.No.23 of 2023 seeking permission to file reply counter affidavit and since



CRP (MD) No.1782 of 2023

the same is allowed, it is not necessary to strike off the defamatory statements made in the counter affidavit in I.A.No.20 of 2023. Aggrieved by this, the present revision petition is preferred.

7.On a perusal of the records, it is found that certain allegations are made against the petitioners herein. The petitioners have also filed an application in I.A.No.23 of 2023 to file a reply statement for the above counter and the same was allowed by the trial Court. Therefore, as rightly held by the trial Court, since permission was granted for filing reply statement for the counter filed by the 5th plaintiff, it is not necessary to strike off the averments made in the counter affidavit filed by the 5th plaintiff in I.A.No.20 of 2023. Moreover, the petitioners can very well raise their objections in their reply statements in respect of the allegations made against them. Moreover, the averments made in the counter affidavit filed by the 5th plaintiff, can very well be dealt with at the time of the trial. Hence, no infirmity is found in the impugned order passed by the trial Court.

8.In the result, this Civil Revision Petition stands dismissed. No costs.



CRP (MD) No.1782 of 2023

Consequently connected miscellaneous petition is closed.

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21.12.2023

vsn

Index: Yes/No

Speaking Order : Yes/No

To

The II Additional Subordinate Judge, Trichirappalli



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CRP (MD) No.1782 of 2023

K.GOVINDARAJAN THILAKAVADI,J.

vsn

ORDER MADE IN
C.R.P.(MD) No.1782 of 2023
and
C.M.P(MD)No.8882 of 2023

21 .12.2023

12/12