O.A.Nos.228, 229, 230, 231 of 2023
and O.A.No.439 of 2024
and
A.Nos.1681 of 2023 & 3230 of 2024
in
C.S.No.59 of 2023

C.V.KARTHIKEYAN, J.

All these applications have been filed by the plaintiff in the suit.

O.A.Nos.228, 229, 230, 231 of 2023:

2.O.A.No.228 of 2023 has been filed seeking an order of ad-interim injunction restraining the 2nd to 9th defendants from discharging their duties and exercising their powers as board members of the 11th defendant.

3.O.A.No.229 of 2023 has been filed seeking an order ad-interim injunction restraining the 1st to 11th defendants from convening and/or holding an EGM pursuant to the notice dated 23.02.2023 on 18.03.2023.

4.O.A.No.230 of 2023 has been filed seeking an order of ad-interim injunction restraining the 1st and 2nd defendants from discharging their duties and exercising their powers in the affairs of the 11th defendant.

5.O.A.No.231 of 2023 has been filed seeking an order of ad-interim injunction restraining the 1st to 11th defendants from calling, convening or holding any meetings of the members of the 11th defendants pending inspection and report of the 12th defendant.

6.Primarily, the plaintiff who had been appointed as an Honorary Member in the year 2010 of a Society, which is a Society registered under the Tamil Nadu Societies Registration Act and called the Medical Research Foundation (MRF) has sought multiple reliefs in the plaint, primarily seeking a declaration that the results of the elections to the board conducted on 15.09.2022 in the Annual General Meeting and the consequential resolutions are illegal and invalid and therefore, to permanently injunct the 2nd to 9th defendants from functioning as members of the board of the said society, the 11th defendant and for a declaration that the 1st and 2nd defendants are unfit to hold the office as President, Secretary / Treasurer and office bearers of MRF and for a permanent injunction restraining the 1st and 2nd defendants and the 11th defendant from giving effect to any of the results relating to the elections passed at the Annual General Meeting of the 11th defendant held on 15.09.2022 and for permanent injunction restraining the 1st to 9th defendants from transacting any business and also since the post of Managing Director which the plaintiff was holding had been abolished by letter dated 17.04.2021, to declare that such letter dated 17.04.2021 as null and void and for a consequential direction to permit the plaintiff to continue to hold the post as a member of the board and as Managing Director.

7.In the midst of all these reliefs an application seeking mandatory injunction directing the 12th defendant to inspect and enquire into the register of members of the 11th defendant and to take corrective measures had also been filed.

8.While arguing the said application, particularly the relief relating to the 12th defendant to carry out an inspection and enquiry, the learned counsel for the plaintiff stated that it would also be appropriate for the Court to consider appointing a former judge of this Court or anybody else to oversee the said inspection / enquiry of the 12th defendant to ensure that the said inspection / enquiry is done in a proper manner.

9.In effect, the suit has been laid by a person who was the Managing Director and unfortunately found the post of Managing Director itself had been abolished and therefore found himself neither here nor there, and is hence seeking reliefs that those who are now in the control of the affairs of the society / MRF have no legal basis to so continue as members of the board and to restrain them from taking any policy decision pursuant to their election as members of the board.

10.The grievance of the plaintiff also appears to be specifically focused against the 1st and 2nd defendants. It is claimed that the 1st defendant who is the President is not even a primary member of the society and the 2nd defendant who is the Secretary / Treasurer is in a position were his membership has not yet been ratified by the board and is still in the process of being accepted by the board.

11.While canvassing these aspects, the plaintiff has also ventured into point out that various donor members, who no longer continue to be donor members consequent to either the firm which they represent being dissolved or not being in existence as on date, and since every donor member has a right to nominate members, those who have been so nominated also have no right to continue.

12.The plaint is long and winding. It is unfortunate that the plaintiff appears to be a person with so much grief in mind. It would only be appropriate that as a person harbouring so much grief, it would be to his own interest that he stays away and permits the society which had been impleaded as the 11th defendant to continue to function to further the objects for which it had been started in the first place. The objects had been stated in the

Memorandum of Association and the Bye Laws. The object is not to make money but to render service to those who suffer from diseases affecting their eye and eyesight. Fundamentally, the object surround establishment of a Medical Research Centre with specific emphasis in research in ophthalmology and all its allied aspects. It also includes establishment of a Dharmasala for poor patients and also to conduct and train students particularly, in eye diseases and in hospital administration. Among other objects the society also aims to award scholarships and fellowships and provide assistance or encouragement for advancement in research in the medical field. The objects run wide. The objects run deep. The objects are noble. There is no quarrel that the objects are not being performed as on date. The quarrel is with respect to the persons who are now in control of the board.

13.Among other grievances of the plaintiff, one is that the donor members who had initially donated money on the basis of which the society started to function and today has its foundation, have become non-existent and therefore, it is contended that retaining those donor members in the registers as members is not proper. It is complained that there are several members who have died and that they have not yet been removed from the list of members.

14.Even without going any further, I am not able to understand the rationale behind the same particularly about the removal of dead persons. A dead person cannot come physically to vote. A complaint can emanate if a person votes in the name of a dead person. Before marking a person as dead in the registers, proof by way of atleast a death certificate is required, as even in Court sometimes, living persons are categorized as dead owing to representations made. Therefore, caution is to be exercised before declaring a person as dead. Only then can his name be struck off from the list of members. If a person who is said to be dead comes over physically to vote, then the plaintiff would have a cause to state that there has been impersonation done or that fraud has been committed to ensure that a particular person wins the election or to ensure that a particular person looses the election.

15.The other aspect on which I would readily place my view is with respect to the initial donor members. There had been various complaints on this particular aspect and let me address them before going into other aspects.

16.The plaintiff had circulated a pamphlet or a note put up by him, and according to him, the note contains correct details. He termed it as “Saving Shankara Nethralaya”. It is dated 29.06.2021. The object of the plaintiff is certainly laudable provided it is bonafide. Among other reasons, which he states that this institution requires to be saved is that some of the donor members have become defunct but not so noted in the Registers of the Society. The first example given to me is about Vidyasagar Educational Trust (VET) which was started by Sri Iravatham Mahadevan and which had dissolved into Ramakrishna Mission Trust consequent to a Will executed by Sri Iravatham Mahadevan who passed away on 26.11.2018. It is therefore contended that since VET no longer exists and has actually merged with Ramakrishna Mission Trust retaining VET as a donor member itself is not correct and more importantly retaining the person who was nominated by the said trust, G.Ramachandran is also not correct. It is contended that this difficulty was overcome by the defendants taking the assistance of another donor, who stepped in as a donor member who had also given donation for constitution of the society and took up G.Ramachandran as their nominee. It is contended that Saraswathy Stores also has defunct as on date, since Saraswathy Stores had been started in the year 1932, and has slowly disappeared from existence.

17.On these two aspects, it must be immediately pointed out that whenever any society is formed, on that particular date, being impressed with the objects and with the persons who were involved in forming the society, institutions come forward to donate money as a corpus. It is only appropriate, whether such institutions continue to exist or not, the names of the institutions are retained in the Registers of the Society not only as a sign of gratitude but as a source of archaic history about how the society came into existenc and with whose help and assistance.

18.The Vidyasagar Educational Trust has contributed substantial amounts at the initial stage. Saraswathy Stores has also contributed substantial amounts. They may exist, they may not exist but that does not mean that they should be wiped away from the records and memories. The fact that they did donate amounts is a fact which should be remembered forever with a sense of gratitude. If at all their nominee is to be changed, then in this case, G.Ramachandran has been nominated by Saraswathy Stores. I find no reason to hold that merely because he continues, the plaintiff had been put to singular hardship and had lost the election only because of his continuance as a member of the board or as a nominee of one of the donors who contributed amounts at the inception of the society. I find every reason to hold that the 11^{th} defendant should continue to keep the names of both Vidyasagar Educational Trust and Saraswathy Stores in their registers at least for remembrance sake.

19.The grievance of the plaintiff continued further. He also stated that a back dated letter was given by G.Ramachandran to the President and members of the board. He also stated various other aspects about creation of letters and e-mails. These are all aspects which can be examined only during the course of trial. As on date, G.Ramachandran has been nominated by both the two aforementioned donors and therefore, I do not see any reason to uphold for that particular grievance of the plaintiff. The contention of the plaintiff in this regard is rejected.

20.Coming back to the averments in the plaint, it is the further grievance expressed by the learned counsel for the plaintiff that there were categories of ineligible persons who were not eligible to vote but who were categorized as associate members in the Annual General Meeting held in 2020 and were allowed to vote and there were also members who had not been inducted properly but permitted to vote. There were donor members who have become defunct but their representatives continued and more importantly, the plaintiff himself was removed as Managing Director and therefore, it is stated that the Court should put its mind and endeavour to correct the list of members of the 11^{th} defendant society and ensure that the list is regularized at least before the next Annual General Meeting.

21.I am informed that the present board members had been elected in the meeting held in the year 2022. Their term expires in 2025.

22.It is further contended on behalf of the plaintiff that the Registrar of Societies on whom the legislation has thrust responsibility to ensure that the list of members are in proper form, would not be able to perform his or her duties to the satisfaction of the plaintiff and therefore, it had again been reiterated that there must be some other person nominated by the Court to supervise the working of the Registrar of Societies. It is not clear as to how the Registrar of Societies would take that particular suggestion. But, at any rate, this is the representation made by the learned counsel for the plaintiff.

23.It is also pointed out that there was an audit report and it is stated that the list of members prepared in that particular audit report did not match with the list of members as projected by the 11th defendant. It is therefore stated that the plaintiff who had contested the election had lost owing to ineligible members exercising a right to vote. It is also contended that the post of Managing Director was also pulled away under the feet of the plaintiff and he was stranded, being neither here nor there and is a person without any status as on date.

24.There is one application which had been filed pending the suit, namely that is O.A.No.439 of 2024, in which the plaintiff seeks an order of restraint against the defendants from passing any resolutions with respect to sale of assets of the 11th defendant. It is contended that the properties which are to be brought on sale are valuable and quite vast in nature. It had been contended that there are two separate properties in West Mambalam measuring about one cent each and a substantial property at Kancheepuram District, measuring nearly about 60 to 70 acres. It is contended that the defendants had taken a decision to bring the properties to auction. It is also contended that there no upset price was determined, that there was no resolution of the board to sell the properties, that there was no valuation report obtained to determine the value of the properties and it is stated that though bids were invited since nobody had come forward to bid, the date of bids had been extended. It is contended that the sale should be only to further the objects of the society.

25.The learned Senior Counsel on behalf of the 1st to 11 defendants however very seriously denied and disputed every contention put forward. The learned Senior Counsel pointed out that the credentials of the 1st and 2nd defendants cannot be questioned and that they are persons of repute who had come forward to dedicate their life and service for the society.

26. It was pointed out that the 1st defendant was inducted by the founder of the society, and at that time, the plaintiff was the Managing Director and the plaintiff had not raised any objections but now has turned around and raised allegations against the 1st defendant. The learned Senior Counsel also stated that the 1st defendant had recognized the 2nd defendant as a member of the society. He also stated that the plaintiff, as Managing Director was very much aware about the 1st and 2nd defendants and their role and the manner in which they came to be involved in the society. He further stated that the 1st defendant is a doctor by profession and receives remuneration or professional fees only for the professional work discharged by him and not in any other capacity in the society. He also contended that the 2nd and 10th defendants who hold various posts in the board of the society do not receive any remuneration at all for the services rendered by them.

27.The learned Senior Counsel argued that however, the plaintiff had actually received substantial salary from the society and a rough figure was given that the plaintiff had received about Rs.217/- Lakhs from the board and that his grievance was that he should have actually received a sum of Rs.306/- Lakhs. It was contended by the learned Senior Counsel that out of 48 board meetings, the plaintiff had attended only 26 meetings and out of 11 Annual

General Meetings, he had attended only two meetings. It was also stated that from January 2019 till September 2020 for reasons best known to him, the plaintiff abstained from participating in any of the affairs of the society. He had actually sent an e-mail on 19.05.2018 offering to step aside.

28.The learned Senior Counsel stated that on 17.04.2021, taking a considered decision, the 11th defendant had abolished the post of Managing Director. At that time, the plaintiff had not whispered or raised any complaint over such abolition of the post. Thereafter, on 29.06.2021, he had written that particular article which had been referred supra in this order, titled, quite offensively, “Saving Shankara Nethralaya”.

29.It is the contention of the learned Senior Counsel that Bye Law No.10(i) which deals with membership gives the sole discretion to the board to co-opt any person as member. He also been stated that the defendants had actually ventured into an exercise to put their house in order, rather to correct the registers and had forwarded the corrected list of members after a complete vetting of the list under Form – VI in accordance with Rule 16 of the Tamil Nadu Societies Registration Act, 1978 to the Registrar of Societies. It was thus contended that all the grievances of the plaintiff have actually been addressed by the defendants. It was therefore contended that the cause for institution of the suit no longer survives. The learned Senior Counsel wondered as to how there could be any authority who could supervise the work of the Registrar of Societies when the legislature had thought it fit that examining the list of members of any society could be done only by the Registrar of Societies and had not thought that such discharge of duty should be once again supervised by yet another individual either appointed by the Court or otherwise.

30.With respect to the sale of properties, it had been contended by the learned Senior Counsel that a decision had been taken to sell the properties which do not yield income and to convert them to cash, so that the monies could be used for treatment of needy patients. He stated that the sale was only with that particular object and certainly not to fill the purse of any of the defendants or any other member of the board or any other member of the society. He asserted that it goes without saying that if ever there was a sale of any property, accounts would be submitted in the Annual General Meeting seeking ratification.

31.With respect to the elections which had been conducted, which according to the plaintiff had a the participation of ineligible members, it had been contended by the learned Senior Counsel that a further Annual General Meeting had been called and the same members had been once again re-elected and the elections result had been ratified. It had been further contended that there are no allegations of financial irregularities and no allegation of moral turpitude and it was insisted that the relief sought by the plaintiff should be rejected.

32.The learned Additional Government Pleader (Civil Suits) who appeared for the 12th defendant, the Registrar of Societies, stated that the Registrar would be glad to abide by any direction of the Court.

33.I have given my anxious consideration to the arguments advanced and to the extent possible, examined the records available.

34.The suit had been instituted by a person who has grievances and grievances. Unfortunately for him it is not for the Court to give him solace.

35.The first aspect to be examined is the right of the plaintiff to institute the suit seeking the reliefs which he has sought. It is contended that the plaintiff is an honorary member but who has no right to vote but has a right to contest the election. It is contended that he contested the elections which were held in the Annual General Meeting in September 2022 but was not elected to any post or as a member of the board. He was earlier the Managing Director and that post was also abolished and therefore, as on date, the plaintiff finds himself in a vacuum.

36.The learned counsel for the plaintiff pointed out the qualities of the plaintiff. He is related to the founder member of the society, Dr.S.S.Badrinath. He was a medical professional in the United States of America and on special calling of the founder had come over to assist the founder in the running of the society. It is stated that he is highly qualified as a medical professional and has no personal agenda. He would not gain financially by rendering service to the society. It is stated that his aim is to clean the cupboards of the society so far as the membership list is concerned. It must be stated to the credit of the plaintiff that he had not raised any allegations of financial irregularity on the part of the defendants except for the allegations that properties are to be sold without proper procedure being followed. It is for that reason, pending the suit, O.A.No.439 of 2024 had been filed seeking regularization of such sale, if at all such sale is to move forward.

37.The relief sought in the suit is wide and long. The first cause to institute the suit by the plaintiff had arisen when the post of Managing Director had been abolished. That was by a letter dated 17.04.2021. That is an independent cause of action. The plaintiff had not raised any grievance over the removal of the post of Managing Director. A separate cause of action had arisen when the election result had been declared on 15.09.2022. There is no direct chain which connects the first and second cause of action and both are independent causes of action. Even if the plaintiff is not the Managing Director, still, he could have contested the elections which were held on 15.09.2022. The suit has thus been laid on two separate cause of actions. Several causes of action could always be joined, but an application in that regard is required and leave has to be granted. But let me not lay much stress on that particular aspect.

38.So far as the abolishment of the post of Managing Director is concerned, it was a post created to accommodate the plaintiff. It was not a post which was in existence right from the time when the society was formed. It was not a post which continued with various other individuals functioning as Managing Directors and with vengeance against the plaintiff when he assumed charge as Managing Director, the post was abolished. As a matter of fact, the post was created for the benefit of the plaintiff and owing to a policy decision taken, the post was abolished. When the plaintiff found that creation of the post of Managing Director was to his convenience, he should not complain about abolishment of the said post. Both creation and abolishment of the said post of Managing Director go hand in hand. They are policy decisions of the board. This Court can never substitute itself for the wisdom of the board and instruct the board as to what posts are required for the effective functioning of the society and which posts should be abolished. The Court can never state that the post of Managing Director is absolutely essential for the 11th defendant to function. The Court cannot also state that the said post is not at all required. The Court, if so permitted to express such opinions, can also extend its power and state that the post of not only Managing Director but any post like Executive Chairman, Financial Chairman or whatever are required / no required and call upon the 11th defendant to comply with the wishes of the Court. It must be stated very clearly that creation or abolition of posts are the exclusive realm of the 11th defendant and the wisdom of the board. If they want to create a post they can create. If they want to abolish a post they can abolish. If the plaintiff has any grievance about such decision, it is a separate cause of action and cannot be mingled with the elections which subsequently took place on 15.09.2022, nearly one and half year later.

39.When the election were conducted in the Annual General Meeting held on 15.09.2022, the plaintiff also contested seeking to be a member of the board. Unfortunately, he lost the elections. He then went witch hunting to find out the reasons why he lost. He then found that a donor member namely, Vidyasagar Educational Trust had been merged with Ramakrishna Mission

Trust and therefore, is non-existent. He also found that another donor member, Saraswathy Stores had been started nearly about nine decades ago and had slowly vanished. He then found that the person who had been nominated by those two donors still continued as a member and therefore concluded that the entire list of members of the society is wrong and therefore, it contained ineligible members and since ineligible members voted, he lost the election.

40.In my opinion this is too far fetched a chain to be linked and even, if it is to be so, it cannot be done, while examining an affidavit on record. It could be possibly examined on analysis of the evidence in this regard but as opined by me earlier even if a donor member is not in existence retaining their name is expression of gratitude by the society. There could be incidences were donors would have died owing to passage of time. It does not mean that they should be removed away from the list. Their names should be retained.

41.An argument was put forth on behalf of the plaintiff focussing on G.Ramachandran for whatever mistake or sin he committed, I find that the allegations raised were purely personal in nature and not in the interest of the society. It was a personal grievance issue which the plaintiff has against G.Ramachandran. This grievance cannot be mingled up with the grievance he has on the society as a whole.

42.There is yet another issue which the learned counsel for the plaintiff pointed out and that was about a lottery agency. It is claimed that since the lottery agency is no longer functioning, the individual behind the said agency also should be deemed to be non-existent. It is not known whether the individual or the agency available at present or not. But the fact is that they had actually donated money. It is also on the basis of that donation did, the plaintiff, during the period when he functioned as Managing Director was able to earn Rs.2.17/- Crores. Donors had come forward when the concept of forming society was put up by the founder. They voluntarily donated money to form the society with a noble object. There should be a sense of gratitude by the plaintiff.

43.All these applications are an exercise to vent his personal vengeance against the individual members of the Society who have been categorized as defendants.

44.The applications which are now under consideration which seek orders of injunctions against the 2nd to 9th defendants from functioning as members of the board, does not withstand the scrutiny of this Court.

45.The learned counsel for the plaintiff concluded his arguments by stating that the plaintiff has made out a *prima facie* case. Unfortunately, I hold that he has not. The suit is the expression of individual grievances against individuals and not against the society as a whole. However, the 2nd to 9th defendants had been sued not in their individual capacity but in their capacity as members of the board of the 11th defendant. If the plaintiff has any specific grievance against them, he could institute an independent suit against each one of them separately but when he sues them as members of the board of the 11th defendant, then the allegations should relate to the discharge of their official duty. But, unfortunately, there are no pleadings on that line and no arguments had been advanced raising that particular ground. I am not inclined to grant any injunction restraining anyone of the defendants from functioning. Accordingly, O.A.Nos.228, 229, 230 and 231 of 2023 are dismissed.

<u>O.A.No.439 of 2024:-</u>

46.This Original Application has been filed seeking an interim injunction restraining the 1st to 11th defendant from taking any steps for sale of the assets of the 11th defendant or from passing any resolutions except those required to manage the day to day affairs of the 11th defendant.

47.It can only be stated that the Court cannot step into the shoes of the board to decide whether properties should be purchased or whether properties should be sold. They are purely the discretion and wisdom of the board. But the Court can only state that accounts should be produced whenever such sale is effected, the consideration received and the purpose for which they were expended by the society. Placing that particular caveat, I would not restrict the society from proceeding further. It also goes without saying that the sale should be done in manner known to law and in accordance with the procedure established and in accordance with the Bye Laws. The sale of properties have not yet taken place and therefore, it is only an apprehension raised by the plaintiff. Accordingly, this application stands dismissed.

<u>A.No.1681 of 2023:</u>

48.This application has been filed seeking a direction against the 12th defendant / the Registrar of Societies to conduct an inspection and enquiry of the Register of Members of the 11th defendant.

49.During the course of hearing, the learned Senior Counsel had produced a corrected list of members which had also been forwarded to the Registrar of Societies in Form – VI under Rule 16 of the Tamil Nadu Societies Registration Rules, 1978. I am confident that the Registrar of Societies would apply their mind to the said list and if any compliances are required, they would be intimating the same directly to the 11th defendant society. Since, the relief sought has now become infructuous, this Application stands disposed of.

A.No.3230 of 2024:

50.This application has been filed by the plaintiff seeking to admit additional documents.

51.The documents including the Secretarial Audit Report which had actually been filed by the defendants and the status of ORWO Films Eastern Unit and the list of attendees. The copies of these documents have been produced. It would only be appropriate that the originals are produced at the time of trial. Subject to relevancy, proof and admissibility, these documents can be taken on record. Accordingly, this Application stands allowed.

52.In the result:-

i).O.A.Nos.228, 229, 230 and 231 of 2023 stand dismissed;

ii).O.A.No.439 of 2024 stands dismissed;

iii).A.No.1681 of 2023 stands disposed of; and

iv).A.No.3230 of 2024 stands allowed.

v).There shall be no order as to costs.

18.07.2024

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C.V.KARTHIKEYAN,J.

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