



WEB COPY



C.R.P.(PD).No.3172 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.3172 of 2023
and C.M.P.No.19590 of 2023

Diamond Das

... Petitioner

vs

1.Cosmo City Residents Welfare Association CCRWA,
Represented by the authorised person,
No.1/53, Dr.Abdul Kalam Road, Pudupakkam,
Chennai – 603103

2.Sreenivasarao Kattaa

3.Mohanraj Murugesan

4.Vijay Krishna

5.The District Registrar of Societies,
Chengalpattu

6.The State Bank of India,
Represented by its Bank Manager,
Padur Branch, Chengalpattu.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Decretal Order dated 08.02.2023 passed in I.A.No.2 of 2022 in O.S.No.148 of 2022 on the file of Principal District Judge, Chengalpattu.



C.R.P.(PD).No.3172 of 2023

For Petitioner : Mr.S.T.Bharath Gowtham
For R1 to R4 : Mr.A.R.Sakthivel
For R5 : Dr.S.Suriya
Additional Government Pleader

ORDER

This Civil Revision Petition arises against the fair and decretal order passed by the learned Principal District Judge, Kancheepuram District at Chengalpattu in I.A.No.2 of 2022 in O.S.No.148 of 2022, dated 08.02.2023.

2. O.S.No.148 of 2022 is a suit filed by the civil revision petitioner/plaintiff seeking for a declaration that the Minutes of General Body Meeting dated 12.12.2021 and all the resolutions passed therein are null and void and incapable of giving effect to and for mandatory injunction to refund the amounts collected from the Members of CCRWA and for other consequential reliefs.

3. The case of the plaintiff is that an apartment complex under the name and style of Cosmo City was created at Pudupakkam in Chennai. There are totally 2174 flats in the said apartment. In terms of bye-law of the association, the owners of the individual flats are Members of the 1st



C.R.P.(PD).No.3172 of 2023

defendant-association. The plaintiff *inter alia*, will plead that during the height of Covid-19, a physical meeting was called for on 12.12.2021 in utter violation of the orders passed by the Government with respect to lock downs prohibiting physical meetings. After having called for a meeting, the 1st defendant passed a resolution that all 2174 members from all the 4 blocks would have to bear a cost of Rs.6,50,00,000/- being the amounts for carrying out minor civil works. The allegation is that the 1st defendant-association itself had become defunct and defendants 2 to 4 are not making available to the members the relevant documents in their possession for verification.

4. The plaint further proceeds that the 1st defendant had threatened that in case the amounts are not paid, they will impose an arbitrary penal charge of 18% per annum on the delayed payments of additional estimates approved in the general meeting held on 12.12.2021. The plaint proceeds that though an individual is representing the members of the 1st defendant-association, being a suit filed under Order 1 Rule 8 of the Code of Civil Procedure, notice has to be issued in terms of Order 1 Rule 8(2) of the Code of Civil Procedure. Therefore, an application was taken out under Order 1 Rule 8(2) to issue



C.R.P.(PD).No.3172 of 2023

notice in terms of the said provision. After receipt of the objections, the learned Principal District Judge, Kancheepuram District at Chengalpattu, has proceeded to dismiss the petition, against which the present civil revision petition.

5. The grounds on which the petition has been dismissed is as follows:-

“Now on perusal of the petition as well as counter it appears the petitioner/plaintiff is not representing the flat owners but he has filed the suit in the individual capacity. There is no proof or authorization to the plaintiff to represented on behalf of other owners. The petitioner/plaintiff cannot file the suit in a representative capacity. Therefore, the plaintiff cannot maintain the suit in a representative capacity. The petition under Order 1 Rule 8 CPC has to be dismissed”.

Being aggrieved by this laconic order, the present civil revision petition has been presented.

6. Heard Mr.S.T.Bharath Gowtham, learned counsel appearing for the petitioner, Mr.A.R.Sakthivel, learned counsel appearing for the respondents 1 to 4 and Dr.S.Suriya, learned Additional Government Pleader appearing for the 5th respondent.



C.R.P.(PD).No.3172 of 2023

7. Mr.S.T.Bharath Gowtham, took me through the plaint and pointed out that though the petitioner has filed the suit as an individual, he had enclosed authorisation letters and affidavits. He has referred to the authorisation sent through e-mails commencing from Page No.84 of the typed-set of papers till Page No.115. Apart from that, he has produced affidavits running from Page No.117 to Page No.150. A perusal of the e-mails as well as the affidavits, which no doubt as pointed out by Mr.A.R.Sakthivel are stereotype, makes it clear that the members of the 1st defendant association authorised Mr.Diamond Das (the plaintiff/civil revision petitioner) to represent the persons, who have sent the e-mails or signed the affidavits to challenge the action of the 1st defendant-association (CCRWA) regarding the illegal resolutions and acts being inflicted upon its members. A perusal of the impugned order passed by the learned Principal District Judge, Kancheepuram District at Chengalpattu does not show that the learned Judge has referred to these authorisations anywhere.

8. Mr.A.R.Sakthivel, would point out that in the cause title, the petitioner has pleaded that he is representing the residents/members of Cosmo



C.R.P.(PD).No.3172 of 2023

City and CCRWA, whereas such is not the case. He would also state that the authorisation letters were not presented as plaint documents. Therefore, he would plead that the plaintiff cannot claim to represent the entire body of members of the Cosmo City and Cosmo City Residents Welfare Association (CCRWA).

9. I have carefully considered the arguments on either side and perused the records.

10. What is otherwise called as a class action suit is contemplated by Civil Procedure Code under Order 1 Rule 8. Where there are numerous persons having the same interest in one suit, one or more of such persons with the permission of the Court can sue or be sued for the benefit of all persons so interested. The condition before the permission is granted under Order 1 Rule 8 Sub-Clause 1 is that notice is to be given at the plaintiff's expense about the institution of the suit to all persons, who are so interested. It is not disputed that in the present case, in terms of Order 1 Rule 8 (2), publication was effected in a daily circulating in the area.



WEB COPY

11. Though Mr.A.R.Sakthivel, would submit that objections had been received by the learned Principal District Judge. A perusal of the order shows that nowhere in the order, the Court speaks about any objections alleged to have been received by the Court. Dehors the objections, the Court would have to go as per the averments made in the plaint and find out if the plaintiff is representing himself or whether he is representing the interest of numerous persons. In case, he is representing the interest of numerous persons, then the Court must follow the procedure under Order 1 Rule 8(2) of the Code of Civil Procedure. This is essential because if leave is granted to file a suit in a representative capacity, the decree granted in such a suit is binding not only on the parties to the suit but also on non-parties who the plaintiff claims to represent. That is why, it has been made mandatory under Order 1 Rule 8(2) of CPC that notice be issued to all the parties individually, and if it is not possible to issue a notice to all the parties, then by publication of the same by advertisement.

12. Further, returning to the impugned order, the person who has objected to the grant of permission are none else than the 1st defendant. It is



C.R.P.(PD).No.3172 of 2023

but obvious that the 1st defendant will be interested to defend any resolution that is passed by it. Therefore, to dismiss the petition stating that the defendants are opposing the application begs to question. The Court while dealing with Order 1 Rule 8 of the Code of Civil Procedure, does not deal with the merits of the case but only sees whether the plaintiff is representing the same interest as shared by numerous persons. There is no reference in the impugned order even to the authorisation that has been issued by e-mails and affidavits in favour of the plaintiff.

13. I find patent non-application of mind since the court below has not gone through the plaint, the emails and the authorisation affidavits filed by the plaintiff. I am convinced, the plaintiff is representing the interest of numerous persons, who are living in Cosmo City and who by virtue of their ownership or membership in the 1st defendant-association have authorised the plaintiff to represent their shared interest. Therefore, the refusal to grant leave is interfered with.



C.R.P.(PD).No.3172 of 2023

14. **In fine**,

WEB COPY

- (i) The Civil Revision Petition stands allowed and the fair and decretal order dated 08.02.2023 in I.A.No.2 of 2022 in O.S.No.148 of 2022 passed by the learned Principal District Judge, Kancheepuram District at Chengalpattu, is set aside.
- (ii) Leave to file a suit in terms of Order 1 Rule 8 of the Code of Civil Procedure is granted and I.A.No.2 of 2022 stands allowed.
- (iii) There shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

12.07.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

1.The Principal District Judge,
Chengalpattu.

2.The District Registrar of Societies,
Chengalpattu



WEB COPY



C.R.P.(PD).No.3172 of 2023

V.LAKSHMINARAYANAN, J.

dm

C.R.P.(PD).No.3172 of 2023

12.07.2024