



WEB COPY



C.R.P.No.3934 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P.No.3934 of 2022
and C.M.P.No.20529 of 2022

The Chief Executive Officer and Secretary,
Madras Race Club,
Having its office at Post Box No.2639,
Guindy, Chennai – 600 032. .. Petitioner/Petitioner/Defendant

Vs.

D.Selvam .. Respondent/Respondent/Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 14.06.2022 passed by XIII Assistant City Civil Court, XIV Assistant City Civil Judge (FAC), Chennai in I.A.No.4/2021 in O.S.No.3962 of 2020.

For Petitioner : Mr.P.H.Arvind Pandian
Senior Counsel
for Mr.T.Balaji

For Respondent : Mr.C.K.Chandrasekhar
for M/s.R.A.Shinusha



C.R.P.No.3934 of 2022

WEB COPY

ORDER

This Civil Revision Petition is filed as against the order passed in I.A.No.4 of 2021 in O.S.No.3962 of 2020 on the file of XIV Assistant City Civil Court, Chennai dated 14.06.2022 wherein the petitioner herein has filed an Interlocutory Application before the trial Court to reject the plaint and the same was dismissed.

2. The brief averments of the petition filed before the trial Court are as follows:

The petitioner is the defendant in the suit and the respondent as plaintiff filed a suit for the relief of declaration to declare the notice dated 29.10.2020 issued to him by the petitioner / defendant is illegal and the same is not binding on the respondent / plaintiff and also for a consequential relief permanent injunction restraining the petitioner / defendant, their men, their servants and others acting on their behalf from removing and prohibiting the respondent / plaintiff's entry in the Madras Race Club including the benefit as a Stand Member SMS 2303, except by due process of law under the bye laws of the petitioner / defendant's Club.



C.R.P.No.3934 of 2022

WEB COPY

2.1 The petitioner / defendant Club is a company defined under Section 2(20) of the Companies Act, 2013 and the Club is governed by a committee of management which is equivalent of the Board of Directors. The Club has two categories of members namely Club Members and Stand Members. As per Article 4(Amended as Article 7) of the Articles of Association of the Club, the Club members alone are entitled to vote at an Annual General Body meeting of the Club.

2.2 The respondent / plaintiff claiming himself to be a Stand Member of the Club, had filed a petition in C.P.No.31 of 2017 which is pending before the National Company Law Tribunal (hereinafter referred to as “NCLT”). The petitioner / defendant Club brought to the notice of the NCLT that the audit and investigation into the validity of the members of the Club was completed and in that report 924 persons alone were found to be the members of the Club. Subsequently, the NCLT appointed Hon'ble Mr.Justice K.P.Sivasubramaniam to independently conduct an investigation into the genuineness of the members of the Club and also to file a report. As per his report, 635 persons were identified as persons who



C.R.P.No.3934 of 2022

WEB COPY

were not validly admitted as Club members. Hence, the NCLT has directed the petitioner / defendant to rectify its register of members by removing the name of those 635 persons and the same was also complied by the petitioner / defendant. Challenging the said order of NCLT, the appeals in Company Appeal (AT) No.332 of 2019 and Company Appeal (AT) No.367 of 2019 are pending.

2.3 There is no difference between Stand Members and the Club Members as far as the need to satisfy certain requirements and procedures laid down in the Articles of Association for their being admitted to the Club. Each of the Stand Members are elected only by the majority of Club Members. Pursuant to the resolution of the committee of the Club, notice were issued to Stand Members including the respondent / plaintiff requesting them to furnish proof in relation to the validity of their membership.

2.4 The petitioner / defendant granted sufficient time to the respondent / plaintiff to produce the material proof that he became member of the Club in the manner known to the provisions of the Club. The



C.R.P.No.3934 of 2022

WEB COPY

respondent / plaintiff realizing his inability to produce such records is seeking to pre-empt the entire process by virtue of the present suit. The relief sought for in the plaint effectively amounts to a direction to the petitioner / defendant Club not to remove the respondent / plaintiff from the members register and only the NCLT has the jurisdiction to enquire into and pass orders in terms of Section 59 of the Companies Act, 2013. Accordingly, as per Section 430 of the Companies Act, the Civil Court has no jurisdiction in respect of the matters to be adjudicated by the NCLT.

2.5 A challenge cannot lie as against a mere notice. The plaint does not disclose any cause of action and the rights of all the members are subject to the bye-laws / articles of the company. The respondent / plaintiff was chosen only by the Club members and not otherwise. Therefore, the plaint has to be rejected.

3. The brief averments of the counter filed by the respondent before the trial Court are as follows:

The respondent / plaintiff is a Stand Member of the Club and he is not a Club member and he has no power to vote whereas, the Club members



C.R.P.No.3934 of 2022

WEB COPY

alone are entitled to attend the meeting of the Club and vote. Therefore, the Club members alone can approach the NCLT in respect of infringement of rights and other duties towards the administration of the club. The jurisdiction of the Civil Court is not excluded under Section 430 of the Companies Act, 2013 since the issue for determination before this Court is under the equity, in exercising common law remedies and this issue cannot be agitated before the NCLT. Therefore, the Civil Court has jurisdiction to entertain this suit.

3.1 The respondent / plaintiff as a Stand Member of the petitioner / defendant's Club has no other alternative to seek his efficacious remedy except before this Court. The adjudication before the NCLT are pertaining only to the rights of the Club members seeking for convening of Annual General Body meeting, rectifying and updating the Club members who are entitled to vote in the Annual General Body meeting has no relevance to the issue of stand members who do not have the right to vote. The Club members alone are having preferential rights over the members and further the register of each categories of the members of the Club ought to have been separately maintained by the petitioner / defendant in the renewal



C.R.P.No.3934 of 2022

WEB COPY

course of business in accordance with the Articles of Association. Hence, the decision rendered by the NCLT have no relevance for the facts of the case.

3.2 This is a case of illegality arising out of clear and manifest violations of contractual obligations after duly admitted in accordance and in compliance of the Article 10 of the Articles of Association. The respondent / plaintiff is entitled for equitable remedy and hence this Court has jurisdiction to entertain the suit. The Stand Members only have the privilege of enjoying the benefits of the petitioner / defendant Club and do not have any right to question any activities of the said Club. Therefore there are triable issues and thereby, the plaint cannot be rejected at the threshold stage.

4. Before the trial Court, no oral or documentary evidence were adduced on either side. The trial Court, after hearing both sides, dismissed the petition. Aggrieved by the said order the present petition has been filed.



C.R.P.No.3934 of 2022

WEB COPY

5. The learned counsel appearing for the petitioner would contend that the petitioner is the defendant in the main suit and the respondent / plaintiff has filed a suit against the petitioner / defendant for the relief of declaration and consequential relief of permanent injunction challenging the notice issued by the petitioner Club. The petitioner / defendant Club is the company defined under the Companies Act and is governed by committee of management as Article 4 (amended as Article 7) of the Articles of Association of the Club, the Club members alone are entitled to vote at an Annual General Body meeting of the Club. As per Section 430 of the Companies Act, the jurisdiction of the Civil Court is barred as the power is vested with the NCLT in respect of election or admission of members as per Section 53 of Companies Act. The respondent also challenged the notice issued by the Club and he has to approach the NCLT as per Section 59 of the Companies Act and the dispute pertaining to the Register of Members has to be decided by the NCLT.

5.1 Already as per the order of the NCLT, the Hon'ble Mr. Justice K.P.Sivasubramaniam was appointed to independently conduct



C.R.P.No.3934 of 2022

WEB COPY

investigation about the admission of Club members and he identified that 635 persons were not validly admitted to Club as members of the Club.

Therefore, as per Section 59 of the Companies Act, in respect of membership, the petitioner has to approach NCLT and the Civil Court has no jurisdiction to entertain the suit under Section 430 of the Companies Act. But the trial Court failed to consider the same and dismissed the petition filed by the petitioner to reject the plaint under Order 7 Rule 11 of CPC. Therefore, the order passed by the trial Court is liable to be set aside and the plaint is liable to be rejected.

5.2 In order to support his contention, the learned counsel for the petitioner relied on the following judgments :

i) Judgment of the Hon'ble Supreme Court in ***Shashi Prakash Khemka (dead) through legal representatives and another Vs. Nephc Micon (Now NEPC India Limited) and others*** reported in ***(2019) 18 SCC 569***;

ii) Judgment of this Court in ***Viji Joseph Vs. P.Chander and others*** reported in ***2019 SCC OnLine Mad 10424***;

iii) Judgment of High Court of Delhi in ***Jaiveer Singh Virk Vs. Sir***



C.R.P.No.3934 of 2022

WEB COPY

Sobha Singh & sons private limited reported in ***(2020) 1 High Court Cases (Del) 208;***

iv) Order of this Court in ***P.Anand & others Vs. Era.Velusamy*** in ***CRP No.3019 of 2022 dated 19.10.2023;***

v) Order of Bombay High Court in ***Shankar Assana Gaddam Vs. Achanak Associates Realtors Pvt.Ltd.,*** reported in ***2021(2) Mh.L.J.;***

vi) Order of this Court in ***Chiranjeevi Rathnam and others Vs. Ramesh and another*** reported in ***(2020) 222 Comp Cas 85 (Mad).***

6. The learned counsel appearing for the respondent would contend that the respondent is not a Club member who has voting right and he is a Stand Member and has no right in respect of administration of the Club and he can only enjoy the facilities of the Club. Therefore, he need not go to the NCLT since there is no administration of the Club involved in this case. The petitioner / defendant issued notice dated 29.10.2020 and the same was challenged through the suit and thereby the Civil Court is having the jurisdiction. It is true that the affairs of the company and the membership of the company have to be decided by NCLT as per Section 59 of the Companies Act. But as far as this respondent is concerned, he is



C.R.P.No.3934 of 2022

WEB COPY

only a Stand Member who has no power to vote and thereby he need not go before NCLT and the Civil Court only has the jurisdiction. The trial Court has rightly dismissed the petition and that there are triable issues and certain points have to be decided after full trial.

6.1 As far as the appointment of Hon'ble Mr.Justice K.P.Sivasubramaniam to identify the membership is concerned, the Hon'ble Justice only identified the Club members and there is no reference about the Stand Members and therefore, the membership of the stand members cannot go for NCLT. Since the civil right is infringed in this case, the petitioner can very well approach the Civil Court. The trial Court also after considering the rival submissions, dismissed the petition by holding that the contention of the petitioner can be decided after full trial.

6.2 In order to substantiate his above contention, the learned counsel for the respondent relied on the following judgments:

i) Order of the Orissa High Court in ***N.R.Murty Vs. Industrial Development corporation of Orissa Ltd., and others*** reported in ***1977 SCC OnLine Ori 84;***



C.R.P.No.3934 of 2022

WEB COPY

ii) Judgment of High Court of Calcutta in ***Eastern Indian Motion Picture Association and others Vs. Milan Bhowmik and others*** reported in ***2024 SCC OnLine Cal 1325***.

7. This Court heard both sides and perused the materials available on record.

8. In this case the petitioner is the defendant in the main suit and the respondent herein had filed a suit challenging the notice issued by the petitioner Club. According to the petitioner, the suit is barred by law and thereby, a petition has been filed to reject the plaint on the ground that the petitioner Club is a company registered under the Companies Act and thereby, the dispute relating to membership has to be decided by NCLT as per Section 59 of the Companies Act and there is a bar to entertain the suit by the Civil Court under Section 430 of the Companies Act. According to the respondent, the respondent is not a Club Member and he is only a Stand Member and he has no right to vote and there is a difference between Stand Members and Club Members. Club members can only participate in the affairs of the company and they have voting right



C.R.P.No.3934 of 2022

WEB COPY

whereas, the Stand Members can only enjoy the facilities of the Club.

Therefore, the Stand Members cannot be equated with the Club Members and therefore they need not go before the NCLT and they can very well approach the Civil Court.

9. This Court carefully perused the records and on perusal of the records it is seen that there is no dispute that the respondent / plaintiff is the Stand Member of the petitioner Club. As per Section 59 of the Companies Act, “if the name of a person is without sufficient cause entered in the Registers of Members of a company or after having been entered into register, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the Register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of a company or the company may appeal in such form as may be prescribed to Tribunal or to a competent Court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India for rectification of Register. In the case on hand the respondent / plaintiff is admittedly a Stand Member of the petitioner club and according to the



C.R.P.No.3934 of 2022

WEB COPY

respondent / plaintiff he is noway connected with the company and he can only enjoy the amenities of the Club and he has no voting power. Even as per the petitioner / defendant, the committee appointed by NCLT to investigate the matter in respect of membership only refers about the Club Members and there is no reference about the Stand Members. Therefore, it needs elaborate trial whether the Stand Member includes the members as referred in Section 59 of the Companies Act.

10. It is true that the Civil Court is barred under Section 430 of the Companies Act. For clarity, Section 430 of the Companies Act is extracted hereunder:

“ 430. Civil Court not to have jurisdiction: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.”



C.R.P.No.3934 of 2022

WEB COPY

11. On a careful perusal of the above said provision, it is clear that the Civil Court has no jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine any other law for time being in force. In the case on hand the jurisdiction of Tribunal itself is in question since the respondent / plaintiff is a Stand Member and thereby the case needs elaborate trial.

12. The trial Court also in this context, after elaborate discussion, fairly came to a conclusion that the petitioner / defendant claims that it is a matter relating to Register of Members. Whether the subject matter of the suit can be considered as a matter relating to Register of Members or Register of Members only in the event of terminating / suspending a member, is also to be scrutinized through the relevant documents. The procedures for removing the Stand Member in the bye-laws and the Articles of Association is not known to this Court. Therefore, the trial Court dismissed the petition for the aforesaid reasons.



C.R.P.No.3934 of 2022

WEB COPY

13. At this juncture it is relevant to refer the judgments of the learned counsel for the petitioner:

i) Judgment of the Hon'ble Supreme Court in ***Shashi Prakash Khemka (dead) through legal representatives and another Vs. Nepc Micon (Now NEPC India Limited) and others*** reported in (2019) 18 SCC 569;

ii) Judgment of this Court in ***Viji Joseph Vs. P.Chander and others*** reported in 2019 SCC OnLine Mad 10424;

iii) Judgment of High Court of Delhi in ***Jaiveer Singh Virk Vs. Sir Sobha Singh & sons private limited*** reported in (2020) 1 High Court Cases (Del) 208;

iv) Order of this Court in ***P.Anand & others Vs. Era.Velusamy*** in CRP No.3019 of 2022 dated 19.10.2023;

v) Order of Bombay High Court in ***Shankar Assana Gaddam Vs. Achanak Associates Realtors Pvt.Ltd.,*** reported in 2021(2) Mh.L.J.;

vi) Order of this Court in ***Chiranjeevi Rathnam and others Vs. Ramesh and another*** reported in (2020) 222 Comp Cas 85 (Mad).



C.R.P.No.3934 of 2022

WEB COPY

14. On careful perusal of the above judgments, it is clear that Section 430 of the Companies Act, bars the Civil Court to entertain the suit which the NCLT and National Company Law Appellate Tribunal (NCLAT) is empowered to determine the issue. In the case on hand the only issue that has to be decided is whether the matter comes under the purview of NCLT or not and for the same it needs elaborate trial and the bye-laws of the petitioner club are also not produced by the respondents / plaintiffs thereby the above said judgments will not be applicable to the facts of the present case.

15. The learned counsel for the respondent relied on the following judgments:

i) Order of the Orissa High Court in *N.R.Murty Vs. Industrial Development corporation of Orissa Ltd., and others* reported in 1977 *SCC OnLine Ori 84*;

ii) Judgment of High Court of Calcutta in *Eastern Indian Motion Picture Association and others Vs. Milan Bhowmik and others* reported in 2024 *SCC OnLine Cal 1325*.



C.R.P.No.3934 of 2022

WEB COPY

16. As far as the judgments relied on by the learned counsel for the respondent is concerned, they are in respect of election and they are not applicable to the present facts of the case.

17. Considering the facts of the present case, this Court is of the opinion that the dispute in respect of the difference between the Stand Member and the Club Member of the defendant club has to be decided only after full trial and at this stage the plaint cannot be rejected. The petitioner can agitate before the trial Court the grounds raised in this petition as defense in the mains suit. Therefore, the Civil Revision Petition is devoid of merits and deserves to be dismissed.

18. In the result, the Civil Revision Petition stands dismissed and the order passed by the learned XIV Assistant City Civil Judge (FAC) Chennai in I.A.No.1 of 2021 in O.S.No.3962 of 2020 dated 14.06.2022, is hereby confirmed. No costs. Connected miscellaneous petition is closed.

09.07.2024

Index: Yes / No

Speaking order / Non speaking order



C.R.P.No.3934 of 2022

Neutral Citation : Yes / No

WEB COPY
bkn



C.R.P.No.3934 of 2022

WEB COPY Copy to:

The XIV Assistant City Civil Judge (FAC),
XIII Assistant City Civil Court,
Chennai.



WEB COPY



C.R.P.No.3934 of 2022

P.DHANABAL, J.,

bkn

C.R.P.No.3934 of 2022

09.07.2024