



C.R.P.(PD)No.4341 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4341 of 2024
and C.M.P.No.24158 of 2024

V.Tharani

.. Petitioner

Vs

1. Kanchipuram Retired Police Personnel
Welfare Association (Reg.No.74/2009),
Represented by its Member M.V.Santhakumar
S/o. Vethantham
No.17B, Soleeswarar Koil street,
Pillaiyarpalayam, Kanchipuram District.

2. T.Manimaran

3. Arumugam

4. E.Bharatheedasan

5. G.Narasimman

6. M.Ranganathan

7. V.Natarajan

8. K.Murugesan

9. K.Nagadevan



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10. The District Registrar,
No.52, Orikkai Madura,
Udayamangalam Village,
Kancheepuram – 631 502.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 30.08.2024 made in I.A.No.3 of 2024 in O.S.No.166 of 2024 on the file of the District Munsif Court at Kanchipuram.

For Petitioner : Mr.J.Ram

For R1 : Mr.D.Murthy

For R10 : Mr.R.Siddharth, Govt. Advocate

ORDER

This civil revision petition arises against the order of the learned Principal District Munsif at Kanchipuram in I.A.No.3 of 2024 in O.S.No.166 of 2024 dated 30.08.2024.

2. O.S.No.166 of 2024 is a suit filed by the 1st respondent for the following reliefs:

“(i) to grant a permanent injunction against the defendants 1 to 9 and their men or subordinates restraining them from in any way either conducting the General Body Meeting of the Kancheepuram



Retired Police Personnel Welfare Association (Regn. No.74/2009) proposed to be held on 01.09.2024 at Kavalar Samuthaya Koodam, Kancheepuram or on subsequent dates at Kavalar Samuthaya Koodam, Kancheepuram and also in any other places;

(ii) to grant a mandatory injunction against the first defendant directing him to hand over the accounts, bank account and other register books of the Kancheepuram Retired Police Personnel Welfare Association (Regn. No.74/2009) to the present elected president and other office bearers of the said society namely the plaintiffs 1 to 3 herein;

(iii) to grant mandatory injunction directing the District Registrar, Kancheepuram, who is the Tenth defendant herein to conduct the election of the plaintiffs' association as per its By laws with the help of Advocate Commissioner to be appointed by this Hon'ble Court for electing the President, Secretary, Treasurer and other office bearers of the plaintiffs association."

3. The apprehension of the plaintiff is that under the guise of holding a general body meeting on 01.09.2024, the defendants 1 to 9 had



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proposed to elect the office bearers of the plaintiff association.

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4. This suit is a result of a tug of war between one Mr.M.V.Santhakumar and the defendants 1 to 9. The society is the Kanchipuram Retired Police Personnel Welfare Association. It is a society registered under the Society's Registration Act.

5. Pleading that the defendants 1 to 9 are not the members of the association, one Mr.M.V.Santhakumar approached the District Registrar of the Registration in order to resolve the disputes. The District Registrar realising that he does not have the requisite powers to resolve the dispute that had been raised between the parties, by an order dated 20.08.2024, directed the parties to approach the competent Civil Court to work out their rights in accordance with law.

6. After the order dated 20.08.2024, the defendants 1 to 9 issued a notice calling for a general body meeting with the following agendas:

பொருள் - நிரல்

1. நமது சங்கத்தின் ஆண்டு அறிக்கை வாசித்தல்.
2. 2023-2024 ஆம் ஆண்டிற்கான நிதி நிலை அறிக்கையை வாசித்து ஒப்புதல் பெறுதல்.



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3. நமது சங்கத்தின் தீர்மானங்களை வாசித்தல்.
4. 2024-2025 ஆம் ஆண்டிற்கான கணக்கு தனிக்கையாளரை நியமித்தல்.
5. சங்க உறுப்பினர்கள் கொண்டு வரும் இதர தீர்மானங்கள் குறித்து முடிவெடுத்தல்.

7. Taken aback by this general body meeting notification, the plaintiff approached the Court for the aforesaid reliefs. He moved two applications in I.A.Nos.3 & 4 of 2024. I.A.No.3 of 2024 sought for injunction restraining the defendants 1 to 9 from conducting the general body meeting of the Kanchipuram Retired Police Personnel Welfare Association on 01.09.2024 or on any other subsequent dates at the Kavalur Samudhaya Koodam, Kancheepuram or in any other venue, pending disposal of the suit.

8. I.A.No.4 of 2024 sought for appointment of an Advocate Commissioner to assist the District Registrar, the 10th defendant to conduct the election for the plaintiff association.

9. The suit as well as the applications came to be filed on 30.08.2024 i.e. two days before holding of the general body meeting. The



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hearing date in the suit was fixed as 30.09.2024.

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10. The learned Judge took up the application for injunction in I.A.No.3 of 2024 and passed the following order:

“Heard the petitioner. Document No.(1) to (5) perused. Notice to respondents by 3/9. Private notice permitted.

Sd.”

11. Simultaneously, in I.A.No.4 of 2024, the learned Judge passed the following order:

“Notice to respondents by 3.9.24. Private notice permitted.

Sd.”

12. For the reasons which have not been made clear in the order, the order issuing notice was struck off by the learned Judge and on the very same day, the learned Judge seems to have passed the following order:

“Heard the petitioner counsel. Document



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No.(1) is the bye law of the plaintiff association. Document No.(2) is the intimation to the general body meeting. Document No.(3) is the order of District Registrar directing both parties to settle their dispute in appropriate forum. Document No.(4) is the pamphlet issued by the defendants for conducting the general body meeting on 1.9.24. Document No.(5) is the letter of the plaintiff association to the 1st defendant. From the available records, it shows that there is dispute between the plaintiff and defendants. At this stage, considering the facts and circumstances, status-quo ordered till 3.9.24. Notice to respondents C/o. 3/9. Private notice permitted. O.39 Rule (2)(A) to be complied.

Sd.”

13. The civil revision petitioner/1st defendant is aggrieved by the fact that the learned Judge, who initially ordered notice, had struck off the same and thereafter, passed a fresh order granting status-quo. Hence, this revision.

14. The Registry of this Court entertained a doubt whether the revision is maintainable on account of the fact that it was an order passed



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under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure (C.P.C.).

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15. Mr.J.Ram had made the following endorsement:

“The Order in IA.3/2024 in OS.No.166/24 is facie illegal and the petitioner seeks to invoke superintendence power of the Hon'ble High Court under Article 227 of the Indian Constitution and the Revision is filed appropriately.”

16. I directed the matter to be listed for maintainability on 24.10.2024. After hearing the arguments of Mr.J.Ram and after perusal of the certified copy of the order produced before me, I was convinced that the learned Judge had originally passed an order issuing notice in the application and thereafter, had struck off the same and had granted an order of status-quo. Since this is not a procedure contemplated under law or followed by the Courts subordinate to this Court, I entertained this revision. I also called for a report from the learned Principal District Munsif at Kanchipuram as to how after originally ordered notice in the application, the learned Judge granted an interim order striking out the previous order.



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17. In obedience to the directions given above, the learned Principal District Munsif at Kanchipuram has submitted a report stating that she had issued notice in I.A.No.3 of 2024 under the impression that she was dealing with the application for appointment of Advocate Commissioner. She has stated, upon realisation of the error that had been committed by her, she struck out the order and passed a fresh order of status-quo. Hence, she has sought for, her explanation to be accepted. Along with the said report, she has also sent copies of the applications filed in I.A.No.3 of 2024 (Order XXXIX Rule 1 and 2 of the C.P.C.) and I.A.No.4 of 2024 (Order XXVI Rule 9 of the C.P.C.) for the perusal of this Court.

18. Mr.D.Murthy appeared on behalf of the caveator/1st respondent/plaintiff.

19. I heard Mr.J.Ram for the civil revision petitioner/1st defendant and Mr.D.Murthy for the 1st respondent/plaintiff.

20. Mr.J.Ram pointed out that an error that had been committed by the learned trial Judge and pleaded that the Court, once having passed an



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order and having signed the said order, does not possess the power to strike off the said order and passed a fresh order directly contrary to the order originally passed. In fine, his argument is that there is no power of the *suo motu* review for the Trial Court having originally ordered notice, to strike off the same and thereafter, granted an order of injunction/status-quo.

21. Mr.J.Ram further pleaded that the meeting to be called for on 01.09.2024 is not an election meeting as set forth in paragraph no.10 of the plaint. He states it only a regular general body meeting for the purpose of deciding on the agenda that circulated in document no.4 filed along with the plaint. He further pointed out that being a Court having constitutional superintendence over the Courts subordinates to this Court, in case any serious error is committed by the Subordinate Courts in the manner and conduct of proceedings, a revision under Article 227 of the Constitution of India is maintainable. Hence, he prays for the revision to be allowed and the order to be set aside.

22. Per contra, Mr.D.Murthy pleads that the revision under Article 227 of the Constitution of India is not maintainable, since the petitioner



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has two alternate modes available to him namely, (i) to file an application to vacate the order of status-quo or (ii) to prefer an appeal against the said order. He further adds that no illegality has been committed by the learned District Munsif and therefore, interference by this Court is not essential. Extending this argument, he pleaded that the order originally passed by the learned Judge on 30.08.2024 was an order, which had not considered the merits of the case, but later on, the learned Judge considered the merits and granted the order. He states that there is an inherent right of a person to maintain a suit and therefore, no exception can be taken for the 1st respondent for having approached the learned Principal District Munsif at Kanchipuram for the aforesaid relief.

23. I have carefully considered the submissions of Mr.J.Ram and Mr.D.Murthy and I have gone through the records.

24. Since Mr.D.Murthy has raised a preliminary objection on the maintainability of the revision, I will have to deal with the same before I proceed with the discussion on the merits of the case.

25. Constitution of India vests with the Court the power of



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superintendence over all Courts and Tribunals subordinate to this Court.

The Constitution further points out that the power that was available to this Court under the previous British regime continues to be available to this Court by virtue of Article 225 of the Constitution of India. A reference to Section 15 of the Indian High Courts Act, 1861, which establish this High Court shows that the power of superintendence had been exercised by this Court right from the time the High Courts were established by the British in 1861. This was further fortified by the Letters Patent that was issued by the sovereign in the year 1862. A combined reading of the Indian High Courts Act, 1861, Letters Patent of 1862, Article 225 of the Constitution of India and Article 227 of the Constitution of India makes it clear that not only does this Court have the superintendence over the orders that have been passed by the Subordinate Courts, but also in the conduct and the manner in which the Courts have to proceed in the conduct and disposal of the cases.

26. The supplementary plea of Mr.D.Murthy that the defendants 1 to 9 could have moved an application under Order XXXIX Rule 4 of the C.P.C. or preferred an appeal under Order XLIII Rule 1 of the C.P.C. has to be dealt with here.



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27. This Court does not exercise the power of a revision in all cases where an appeal is maintainable as a self-imposed restriction. As pointed out by the Hon'ble Mr.Justice V.Ramasubramaniam in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & others v. Tuticorin Educational Society & others***, AIR ONLINE 2019 SC 2691, where an alternate remedy is available, this Court should not normally interfere with the order. However, the learned Judge, who authored the said judgment, was careful enough to state that “a near total bar” exists in entertaining the revision, but he did not hold that there is a total bar against entertaining the revision, when an appellate or alternate remedy is available. When it is brought to the notice of this Court that the proceeding before the Court subordinate to this Court has gone on contrary to the Code of Civil Procedure and the practice that has been evolved over the period of two centuries, then it is certainly an exception and cries out for exercise of that power. Therefore, I am not willing to non suit the civil revision petitioner on the ground that he could have approached the very same Judge by way of an application to vacate the injunction.

28. The plea of the petitioner is that, all is not well before the Principal District Munsif at Kanchipuram and if I were to push the civil



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revision petitioner back to the very same authority, it would amount to the cure being worse than the disease.

29. With respect to the plea that an appeal would be maintainable as against the grant of interim order, I have to refer three provisions namely, Section 2(14), Section 104 and Order XLIII of the C.P.C. In order to maintain an appeal under Section 104, it has to be an order within the meaning of the Code of Civil Procedure. Section 104 has to be read with Order XLIII, because it is these provisions, which confer the right of the appeal on a party.

30. Section 104(1)(i) read with Order XLIII Rule 1(r) are grants a right of an appeal for a party as against the order of injunction. Therefore, I have to read Section 2(14) in order to see whether an ad interim order granted by the learned Judge can be treated as an order for the purpose of filing an appeal. Under Section 2(14), an order means a formal expression of any decision of a Civil Court which is not a decree. This implies that the application should have been finally disposed of by the learned Judge before an appeal can be entertained by the appellate Court. The order passed in the present instance is only an ad interim order of status-quo in exercise of the powers under Order XXXIX Rule 1 and 2.



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No formal expression had been recorded by the learned Judge, while passing an order on 30.08.2024. Therefore, even if the civil revision petitioner had preferred an appeal, the appeal would not have been maintainable.

31. Putting the preliminary objection behind me, I now proceed to the other submissions that have been made by the respective counsel for the parties. I would agree with Mr.J.Ram that, if a Court orders notice in the application, it does not possess the power to strike off the order after it has been signed by the learned Judge and pass an order totally opposed to the order originally passed. An order comes into effect the minute the learned Judge, who dealing with the application, signs the order. It is presumed that prior to signing the order, the learned Judge would have read the order understood the effect of such order and thereafter signed the same. Having signed the order, it is not open to the Court to recall the said order and pass another order whether it is directly in contradiction of the order or otherwise previously passed. If the subordinate Courts were permitted to pass such orders, it will affect the faith in the judiciary.

32. Let us take this very case as an example, the learned Judge,



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after perusal of the document nos.1 to 5 filed along with the plaint, came to the conclusion that it is not a case for grant of an interim *ex parte* order and issue notice. She had also signed the said order. Subsequently, the very same learned Judge, on the basis of the very same materials, has granted an *ex parte* order of status-quo. The second order passed does not make it clear as to why the first order was struck off and state the circumstances for passing the second order and that too, on the same day. Such kind of procedures if adopted by the Civil Courts would be equivalent to the manner of disposal adopted by the Queen in Alice in wonderland and not for a regularly constituted Civil Courts governed by the Code of Civil Procedure and by other laws.

33. Therefore, I would conclude the discussion holding that once the learned Judge signs the order, it is not open to the Court to *suo motu* recall the order without even an application and pass another order. There has to be an uniformity in disposal of the applications. It is not open to the Court, as pointed out by the Hon'ble Justice Mr.Markandey Katju, for the Judges are not Nawabs of ancient days to recall and pass orders as they please.



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34. The next plea of Mr.D.Murthy is that the first order that had been passed by the learned Judge had not considered the merits of the case and therefore, on the plea of the parties, the learned Judge reconsidered her opinion and passed a detailed order subsequently.

35. I have extracted both the orders passed on 30.08.2024 above. It shows that the learned Judge had, prior to passing the first order, has recorded that she perused document Nos.1 to 5 and came to a conclusion that it is the case for notice and not a case for *exparte* injunction. Curiously enough, after perusing the same documents, she had come to a conclusion that it is a case for *exparte* order of status-quo. Therefore, the plea that the learned Judge had not perused the document nos.1 to 5 before passing the first order on 30.08.2024 cannot be accepted as correct in the light of the aforesaid facts. This plea also runs contrary to the report submitted.

36. The last plea of Mr.D.Murthy that a party has an inherent right to approach a Court and file a suit cannot be disputed at all.

37. If there is a dispute over a society, any party, who is a member



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of the society, can certainly approach the Civil Court and seek for orders.

At no point of time, Mr.J.Ram argued that the plaintiff has no right to approach the Civil Court. The entire plea has been based on the fact that “flip-flop” procedure had been adopted by the Court while granting an interim order.

38. At this juncture, I should also point out that prior to granting an interim order, the Code of Civil Procedure demands that a Court should record, there is a *prima facie* case in favour of the plaintiff, there is balance of convenience in favour of the plaintiff and that if an *exparte* interim order is not granted, the plaintiff will be put to irreparable loss and prejudice, which cannot be compensated in terms of money. The last of this clause is not only found under Order XXXIX Rule 1 & 2 of the C.P.C., but is also referable to the substantive provision under Section 40 of the Specific Relief Act.

39. A reading of the second order passed by the learned Judge on 30.08.2024 reveals that the “triple test” has laid down by the Supreme Court and this Court consistently, has not even been followed in its form let alone in spirit.



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40. I should also refer to the submissions of Mr.J.Ram here that the purpose of the meeting on 01.09.2024 was, on the basis of the specified agendas, set out in document no.4 of the plaint documents. I have, for the sake of convenience, extracted the agenda in the earlier part of this order. None of the agendas relate to conduct of the election. Therefore, the apprehension of the plaintiff in paragraph no.10 of the plaint that under the guise of holding a general body meeting to pass the resolutions set forth above, the defendants might hold elections and get themselves declared elected is absolutely unfounded. It is settled law that, prior to holding of an election, it is mandatory that the notice for the meeting should be issued and such notice should be for the purpose of holding an election meeting. Mr.J.Ram, in very clear and categorical terms, submits that the injuncted meeting, if it is permitted to be held by this Court, then no elections will be conducted in the said meeting. The submission of Mr.J.Ram is recorded.

41. It is made clear that defendants 1 to 9 while holding the general body meeting will be confined it to the five agendas set forth above. It is always open to the general body to appoint an election officer for the purpose of holding the meeting at a later date, but that by itself does not mean that the meeting with specified agendas can be interpreted to hold



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an election and elect members, when the said agenda is not specifically included.

42. In the light of the above discussions, the civil revision petition succeeds and stands allowed on the following terms:

(i) The order passed by the learned Judge in I.A.No.3 of 2024 in O.S.No.166 of 2024 dated 30.08.2024 is set aside.

(ii) Since Mr.J.Ram has given an undertaking that an election would not be conducted pursuant to the notification issued in the plaint document no.4, the apprehension of the plaintiff stands allayed.

(iii) The application in I.A.No.3 of 2024 stands closed in the light of the recording of the undertaking. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No

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