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C.R.P.(PD).No.4187 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.4187 of 2022

Lieutenant Colonel Sandeep Dewan (Veteran) ... Petitioner

-Versus-

M/s.Ootacamund Club Represented by its President,
Having registered office at:
No.179, Club Road, Ootacamund,
The Nilgiris. ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to quash the impugned order passed in I.A.C.F.R.No.3663 of 2022 in A.No.2 of 2022 in O.S.No.65 of 2022 by the learned District Court of Nilgiris in Udthagamandalam.

For Petitioner : Lieutenant Colonel Sandeep
(Party in person) Dewan
For Respondent : Mr.Suhirith Parthasarathy

ORDER

Before the commencement of arguments, I pointed out to the party in



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person as well as to Mr.Suhirith Parthasarathy that a few years ago, I had appeared for the respondent. I, after both sides tendered no objection, heard the matter on merits.

2. This civil revision petition arises against the order passed in I.A.C.F.R.3663 of 2022 in I.A.No.2 of 2022 in O.S.No.65 of 2022 on the file of the learned District Judge, Nilgiris at Udthagamandalam.

3. O.S.No.65 of 2022 has been presented by the Civil Revision Petitioner seeking declaration of his suspension order dated 02.06.2022 as null and void, and for consequential relief of injunction. For the purpose of disposal of this civil revision petition, the detailed facts of the suit are unnecessary.

4. It is the case of the petitioner that without proper enquiry being conducted, he was suspended from the defendant club on 02.06.2022. It is his case that he had given his explanation on 31.05.2022 running to 150 pages, and without perusal of the same, he was placed under suspension. According to him, the enquiry report, on the basis on which his application for mandatory injunction in I.A.No.2 of 2022 was dismissed, is a fabricated and concocted



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document. Therefore, he initiated proceedings in I.A.C.F.R.3663 of 2022 seeking enquiry under Section 340 of Cr.P.C. This was rejected at the numbering stage itself, against which the present revision.

5. Mr.Suhirith Parthasarathy learned counsel appearing for the respondent would submit that a proper enquiry had been conducted, and it was only thereafter that the petitioner was placed under suspension. He would also submit that the parties are also before the NCLT, Chennai Bench, in the proceedings initiated by the civil revision petitioner. Those proceedings have been initiated seeking to waive the statutory threshold as required under Section 240 and Section 241 of the Companies Act, 2013. He would state that the application under Section 340 is premature as the matter is still pending before the court and evidence has not yet commenced in the proceedings.

6. Heard the party in person and Mr.Suhirith Parthasarathy for the respondent.

7. Any application filed by a party in a suit requires to be numbered and notice to be ordered to the respondent in terms of Rule 31(1) of the Civil Rules of Practice framed by this Court under Section 122 of the Code of Civil



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Procedure 1908. The learned District Judge instead of following this procedure, has gone into the merits of the case and has dismissed it as not maintainable. At the same time, he has also granted liberty to the petitioner to file an application afresh after the evidence is over.

8. This court in ***Selvaraj vs. Koodankulam Nuclear Power Plant India Limited represented through its Project Director, (2021) 3 LW 677*** has held that the issue of maintainability require a judicial order and cannot be disposed of on the ministerial side. Till the stage of numbering, the proceedings continue to be on the ministerial side and it is only after the numbering, it turns into judicial proceedings.

9. When an interlocutory application is filed, the learned judge should have granted liberty to the respondent/defendant to file their counter and thereafter, proceeded to dispose of the application. This procedure not having been followed, I am constrained to interfere with the order.

10. There shall be a direction to the learned District Judge, Nilgiris, at Udthagamandalam to number I.A.C.F.R.3663 of 2022 and issue notice to the respondent, who shall thereafter, in case they so desire, file a counter in the application. This need not preclude the court from proceeding with the other



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applications that are pending adjudication.

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11. I am informed that I.A.Nos.3 to 8 of 2024 is pending arguments.

12. In view of the above, while setting aside the order dated 31.10.2022,
I pass the following order:

(a) The Court shall number I.A.C.F.R.3663 of 2022 and issue notice to the respondent and receive the counter from them, in case they desire to file one.

(b) The applications in I.A.Nos.3 to 8 of 2024 shall be disposed of on or before 30.06.2024 and a report will be submitted to this Court in compliance thereof.

(c) After the receipt of the counter and after the disposal of the applications, the court shall frame issues in the suit and take it up for trial.

(d) Once the evidence is recorded in O.S.No.65 of 2022, the Court shall take up the interlocutory application dealing with Section 340 and shall dispose of the same.

(e) Final orders will be passed both in the application and in the suit on the same day.

12. With the above directions, this civil revision petition stands disposed



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of. No costs.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Judicial Magistrate No.I, Tambaram



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V.LAKSHMINARAYANAN, J.

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