



CRP No.4957 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2024

CORAM

THE HON'BLE MR.JUSTICE **V.LAKSHMINARAYANAN**

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and

CMP No.27910 of 2024

S.Sridharan

.. Petitioner

-VS-

Joshua

Treasurer, The Retreat by Mint Homes

Residents Association, M-203, Senthil Nagar,
Sowripalayam Road, Coimbatore 641 028.

.. Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 02.07.2024 passed in I.A.No.1 of 2023 in O.S.No.594 of 2022 on the file of Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr.S.Venugopalraj

* * * * *



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ORDER

This civil revision petition arises against the order passed by the learned Principal Subordinate Judge at Coimbatore in I.A.No.1 of 2023 in O.S.No.594 of 2022 dated 02.07.2024. The civil revision petitioner is the defendant in the suit.

2. O.S.No.594 of 2022 is a suit for recovery of a sum of Rs.5,50,560/- together with interest at the rate of 18% per annum. The case of the plaintiff is that the defendant is an occupant of the Flat bearing No.307 in the apartment complex under the name and style "The Retreat by Mint Homes". As per the resolution passed by the General Body, the annual maintenance for the flat occupied by the defendant was fixed at Rs.75,000/- for the year 2019-20. It had to be paid on or before 01.10.2019. The plaintiff alleged that despite the fact that the common amenities and other facilities like common lightings, common fittings, lift, water, power backup generators,



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sewage treatment, garbage picking by Corporation, park, play grounds, were being enjoyed by the defendant, he failed to pay the dues from 2014 onwards. The plaint proceeds, despite several requests made by the plaintiff to the defendant, the defendant did not show any response. Being left with no other alternative, the plaintiff came forth with the suit.

3. On being served with the summons, the defendant took out an application for rejection of plaint. He pleaded that the plaintiff has sued in his personal capacity and has not produced the bye-laws of the association, in order to demonstrate before the Court that, the treasurer of the association is entitled to file the suit. He further alleged that the plaint has not been filed by the association nor by the President, but by an individual and hence, the suit is not maintainable and it is liable to be rejected.

4. A counter was presented by the plaintiff. In the said counter, it was asserted that the suit has not been presented in his personal capacity, but as the treasurer of the association. He stated that as treasurer, he has every



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right to institute the legal proceedings. He pointed out that as per the Memorandum of Association and its bye-laws dated 07.10.2008, it is the treasurer of the association, who is having all rights, to act on behalf of the association. Finally, he pleaded that the suit is filed as the treasurer in the official capacity and since the dues have not been paid to the association, there also exists a cause of action for continuance of the suit.

5. The learned trial Judge came to a conclusion that the suit has been presented only in the official capacity and that the plaintiff always has the time to produce the bye-laws during the course of trial. Consequently, he dismissed the application. Aggrieved by the order of dismissal, the defendant is on revision before me.

6. I heard Mr.Venugopalraj in support of the revision.

7. Mr.Venugopalraj placing reliance upon Section 6 of the Societies Registration Act, 1860, urges that as per the proviso, every society registered



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may sue or be sued only by the President, Chairman, Principal Secretary or the Trustees as determined by the rules and regulations of the society. Since the bye-laws have not been produced by the plaintiff, he is not entitled to proceed further with the suit. He relies upon a judgment of the Supreme Court in *P.Nazeer vs. Salafi Trust and Another*, Civil Appeal Nos.3132-3133 of 2016 dated 30.03.2022 to urge that the suit is not maintainable and hence, liable to be rejected.

8. At the outset, I should point out that the legislation which the civil revision petitioner relies upon namely, The Societies Registration Act, 1860, does not apply in the State of Tamil Nadu. It was repealed by the Tamil Nadu Societies Registration Act of 1975. In terms of Section 57(1) of the 1975 Act, on and from the date of notification of the Tamil Nadu Societies Registration Act, 1975, the operation of the Societies Registration Act, 1860 ceases. The corresponding provision to present suit is found in the Tamil Nadu Societies Registration Act under Section 20. In terms of Section 20, a suit can be presented by any officer or committee of a registered society,



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when it is so authorised by the society. Such a suit can be initiated or defended with respect to any matter touching or concerning any property right or claim of the registered society.

9. A perusal of the plaint shows that the plaintiff is one Joshua. He has not filed the suit in his personal capacity but only as the treasurer of "The Retreat by Mint Homes Residents Association". It can be pleaded that the cause-title should have been "The Retreat by Mint Homes Residents Association represented by its Treasurer". At best, it is a case of mis-description of the party. A plain reading of the plaint shows that it is not the claim of Mr.Joshua as against the defendant at a personal level. The plaint proceeds that the defendant being a resident, has defaulted in payment of the maintenance charges, while he has been enjoying the common amenities that have been facilitated by the association to the residents of "The Retreat by Mint Homes". For a case of mis-description, a plaint cannot be rejected. It can always be corrected during the course of trial by filing a formal application, see *Chief Conservation of Forests vs. Collector (2003) 3 SCC*



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10. Insofar as the plea of Mr.Venugopalraj that the Articles of Memorandum of Association have not been filed and therefore, the plaint has to be rejected is concerned, no law requires that such filing is mandatory. Order VII Rule 14 (3) of the Code of Civil Procedure enables a plaintiff to present documents, not originally presented along with the plaint, after obtaining the leave of the Court. This shows that non-presentation of documents is not fatal.

11. Apart from that, the plaint, in paragraph 3 specifically states that the association is a registered association in Document No.258/2008 dated 07.10.2008 on the file of the Registrar of Societies at Coimbatore. It is made clear that dues are the dues payable to the association together with the late fee. Therefore, a reading of the plaint shows that there is a cause of action and the plaintiff is not suing in his individual capacity.



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12. Now turning to the judgment that is relied upon by Mr.Venugopalraj, I have to point out that the Hon'ble Mr.Justice V.Ramasubramanian has rendered the judgment, since the society that was involved in the said case was an unregistered society. This is clear from paragraph No.10 of the judgment. A judgment rendered for an unregistered society cannot be made applicable to a situation where the society has been registered. This is because in case of an unregistered society, the party should adopt the procedure followed under Order I Rule 8 of the Code of Civil Procedure, as it represents the interests of numerous persons. Therefore, I am not in a position to apply the said judgment to the facts of the present case.

13. I am also not in a position to take a different view that has been taken by the learned Principal Subordinate Judge in the impugned order. The order passed by the learned trial Judge stands confirmed.



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14. At this stage, Mr.Venugopalraj brought to my notice that the plaintiff has presented a suit in O.S.No.295 of 2024 seeking for a declaration to declare the resolutions on the basis of which the dues have been levied as null and void. This suit is said to be pending on the file of Principal District Munsif at Coimbatore. Once the suit in O.S.No.295 of 2024 challenges the very resolutions on the basis of which the suit in O.S.No.594 of 2022 has been presented, the issues are obviously inter-twined.

15. Hence, in exercise of the power under Article 227 of the Constitution of India, the suit in O.S.No.295 of 2024 is withdrawn from the file of Principal District Munsif at Coimbatore and transferred to the file of Principal Subordinate Judge at Coimbatore. The learned Principal Subordinate Judge shall try O.S.No.594 of 2022 along with O.S.No.295 of 2024 and shall render a common judgment.



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16. Since this Court has exercised the power to transfer and has transferred the proceedings, the learned Principal District Judge at Coimbatore is requested to record this order and close the Transfer O.P.No.254 of 2024, which was filed for the said purpose.

With the aforesaid observation, the civil revision petition is dismissed.
No costs. Consequently, connected miscellaneous petition is also dismissed.

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Index : Yes/No
Neutral Citation : Yes/No

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To

1. The Principal District Judge,
Coimbatore.
2. The Principal Subordinate Judge,
Coimbatore.
3. The Principal District Munsif,
Coimbatore.



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V.LAKSHMINARAYANAN, J.

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