THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 04.08.2025	Order pronounced on : 29.08.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.2034 of 2025
& CMP.No.11846 of 2025

Chettinad Cement Corporation Limited,
Rani Seethai Hall Building 603,
Anna Salai, Chennai – 600 006. ..Petitioner

Vs.

1.MAM Ramaswamy Chettiar Charitable Trust
Represented by its Trustee Mr.A.C.Muthiah,
Chettinad House, Raja Annamalaipuram,
Chennai – 600 028.

2.M.A.M.R.Muthiah
3.Geetha Muthiah ..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 14.02.2025 passed by the II Additional City Civil Court, Chennai in I.A.No.2 of 2023 in O.S.No.8652 of 2021.

For Petitioner : Mr.R.Jawaharlal
for Mr.T.Balaji

For Respondents : Mr.Ravi
Senior Counsel
for Mrs.S.Indumathi for R1

No appearance for RR2 and 3

ORDER

The 1st defendant in O.S.No.8652 of 2024, aggrieved by the dismissal of his application in I.A.No.2 of 2023, is before this Court with the above revision.

2.I have heard Mr.R.Jawaharlal, learned counsel for Mr.T.Balaji, learned counsel for the petitioner and Mr.Ravi, learned Senior Counsel for Mrs.S.Indumathi, learned counsel for the respondents 2 and 3.

3.The learned counsel for the petitioner would submit that the Trial Court has erroneously dismissed the application filed for rejection of the plaint under Order VII Rule 11 of CPC. The fulcrum of the argument of the learned counsel for the petitioner is that there is a clear bar under Section 430 of the Companies Act and the suit ought not to have been allowed to continue to be on file. The learned counsel for the petitioner, taking me through the various dates on which the provisions of the Companies Act, 2013, came into force, would contend that the suit has been admittedly filed after Section 430 of the Companies Act was notified. He would also refer to Section 465 of the Companies Act, which came into force on 30.01.2019, repealing the entire earlier Act of 1956. He also pointing out that the plaintiff was not a shareholder and no shares were transferred in his name and in view of Section 2(55), the plaintiff is a rank outsider and would be entitled to transfer of shares only if he succeeds in the probate petition.

4.The learned counsel for the petitioner would also contend that the remedy of the petitioner can be only before the National Company Law Tribunal (hereinafter called as NCLT) and refer to the fact that a similarly placed person, who moved NCLT was unsuccessful. He would therefore state that there is absolutely no cause of action for the suit and the plaintiff is only indulging in forum shopping, which is not permissible. He would therefore state that the Trial court has clearly fell in error in dismissing the application for rejecting the plaint. He would also place reliance on the following decisions:

1.Binapani Kar Chowdhury Vs. Sri Satyabrata Basu and Another ((2006) 10 SCC 442).
2.Sardesai Engineering Private Limited and Others Vs. Mahadeo Appasaheb Jagtap and Others (CRP.No.141 of 2022 dated 22.01.2024).
3.Jithendra Parlapalli Vs. Wirecard India Private Limited (2023 SCC Online NCLAT 1435).
4.Dahiben Vs. Arvindbhai Kalyanji Bhanusali (died) through LRs and Others (2020 7 SCC 366).
5.Viji Joseph Vs. P.Chander and Others (2019 SCC Online Mad 10424).

5.Per contra, Mr.S.Ravi, learned Senior Counsel appearing for the 1st respondent would state that the Trial Court has rightly stuck to the principles of going only by the plaint and plaint averments and testing the same for the purposes of deciding the application seeking rejection of the plaint and havi found that the plaint, discloses a cause of action and cannot be rejected at the threshold, the Trial Court has dismissed the Order VII Rule 11 of CPC petition seeking rejection of the plaint. He would therefore state that there is no infirmity in the order of the Trial Court.

6.Meeting the argument of the learned counsel for the petitioner with regard to the bar of Section 430 operating that the remedy available is only under Section 241 and 242, the learned Senior Counsel for the 1st respondent would submit that under Section 241, only a member is entitled to move NCLT. He would also take me through Section 2(55) of the Act and he would contend that when the Tribunal is not competent to try the present suit at the instance of a non member admittedly, then the suit is certainly maintainable. He would also place reliance on the decision of the Bombay High Court in *CDS Financial Services (Mauritius) Limited Vs. BPL Communications Limited and Others*, reported in *2001 SCC Online Bom 1112*.

7.I have carefully considered the submissions advanced by the learned counsel for the petitioner and the learned Senior Counsel for the 1st respondent. I have also gone through the plaint as well as the order of the Trial Court, dismissing the application filed by the petitioner seeking rejection of the plaint.

8.The primordial ground of seeking rejection of the plaint is that the Companies Act, 2013, in and by Section 430, imposes a bar of jurisdiction of Civil Courts. It is contended by the learned counsel for the petitioner that when there is an express ouster of civil court's jurisdiction, the plaintiff can have recourse only to the provisions available under the Companies Act, by approaching the Tribunals constituted thereunder. It is therefore the contention of the learned counsel for the petitioner that the suit is barred under law and consequently, the plaint is liable to be rejected under Order VII Rule 11(d) of CPC.

9.On a reading of the plaint, it is seen that the plaintiff had initially approached this Court in C.S.No.492 of 2016, in and whereby, he sought for the relief of declaration that the resolutions passed on 28.03.2016 by the shareholders of the 1st defendant are contrary to law and unenforceable and for the relief of a permanent injunction to restrain the 1st defendant from giving effect to the resolution passed on 28.03.2016. This Court also granted an ex-parte interim injunction on 10.08.2016, however, the same was vacated, upon the petitioner filing a counter affidavit and also gave an undertaking to this Court that two sharers, who were allotted fresh shares after consolidation, would not have any voting rights, pending the suit. Thereafter, the suit has been transferred to the file of the City civil Court on account of enhancement pecuniary jurisdiction of the City Civil court.

10.No doubt, the plaintiff cannot claim to be a registered member of the defendant Company. However, the plaintiff claims right as a legatee under the Will of late Dr.M.A.M.Ramaswamy and in the event of ultimately probate being granted, then the petitioner's right would get validated. Though it is contended by the learned counsel for the petitioner that in the event of the suit being decreed and ultimately the probate being refused, then it would lead to an anomalous situation. That by itself cannot give a ground for rejecting the plaint, as there is always a possibility that the Will may also be found to be true and genuine and probate may be granted. The converse situation alone cannot be put against the plaintiff and rejection of the plaint be sought for.

11.Insofar as the contention regarding a bar under Section 430 of the Companies Act, in view of wide powers given to NCLT and the jurisdiction of Civil Court has been taken away expressly and as regards oppression and mismanagement as well, as rightly contended by Mr.Ravi, learned Senior Counsel, as long as the plaintiff is not a registered member of the 1st defendant, the plaintiff cannot approach the NCLT under Section 241 of the Companies Act, 2013 and seek remedy.

12.There is no quarrel with regard to the fact that as on date, the plaintiff is not a registered member of the Company and in order to fall within the ambit of member under Section 2(55), the person has to satisfy twin conditions, namely there being an agreement in writing to evidence that he has become a member and there being a corresponding entry in the register and only if both these twin conditions are satisfied, a person can claim status of being a member.

13.The Bombay High Court, in *CDS Financial Services's case*, held that the bar under Section 430 of the Companies Act is not an absolute bar and if it is found that the right is traceable to general law of contract or if it is a common law right, then it can be enforced in a Civil Court, even though the forum under the statute has been created to enforce the said right. Even according to the learned counsel for the petitioner, when the plaintiff is not a registered member of the Company, he cannot approach the Tribunal and seek relief. However, it is the argument of the learned counsel for the petitioner is that the plaintiff has no locus and therefore, even the suit is not maintainable, leave alone being estopped from approaching the Tribunal. However, as already discussed, the rights of the petitioner may become available, subject to the probate proceedings pending before this Court on the Original Side. Admittedly, in the present case, there can be no quarrel that the plaintiff is not a member, falli within the definition of Section 2(55) of the Companies Act.

14.In fact, the question whether a non member can file an application under Section 241 before the Tribunal constituted under the Companies Act fell for consideration before the Bombay High Court in *Sardesai Engineering Private Limited's case* as stated supra, where the learned Single Judge of the Bombay High Court felt that the question was of the importance and has referred the matter for being answered by a Larger Bench. The learned counsel for the petitioner however states that to his knowledge, there were no further orders passed, as on date, by any Larger Bench constituted pursuant to order dated 22.01.2024 by the Bombay High Court.

15.Reliance is also placed on the order of the National Company Law Appellate Tribunal in *Jithendra Parlapalli's case* as stated supra, where the NCLAT, after considering the decision in *Viji Joseph's case* as stated supra, has held that in order to approach the Tribunal, the complainant must be a member of the company and a non member cannot invoke the provisions of Section 241 of the Companies Act and complain of oppression and mismanagement.

16.In *Chiranjeevi Rathnam and Others Vs. Ramesh and Anoth* reported in *2017 SCC Online Mad 23049*, this Court, after considering the object and scope of Sections 430, 241 and 242 of the Companies Act at paragraph No.24, has held that right to approach Tribunal is given to the members and none else can have any cause of action or complaint against the indoor management of the Company and that the matters are concerned pertaining to bye-laws are only matters are concerned of members and not outsiders/non members. However, in paragraph No.25, the learned Judge has held that the word 'member' employed in Section 241 cannot be given or restricted meaning and applying the doctrine of reading down and rule of statutory construction.

17.This Court, reading Section 241 and 242 of the Companies Act together, held that the word member referred under Section 241 should not be read in isolation, but read down along with Section 242 and it would also include a person, who bears a character of a member or has substantial interest in the internal affairs of the Company. However, it was a case where the issue was pertaining to a suit for declaration, declaring the appointment and co-action of the defendants as Directors of the Company to be illegal and void, alleging violation of mandatory legal procedures and for a permanent injunction. Considering the reliefs sought for, this Court held that the case on hand can be decided only by NCLT and in such context, finding that the plaintiffs have a claimed status as Directors in the Company, they carried all the trappings/characters of a member of the Company and in such circumstances, found that they were entitled to approach the Tribunal.

18.In *Viji Joseph's case* as stated supra, the Hon'ble Division Bench held that Section 430 of the Companies Act provides an absolute bar to the Civil Court to entertain any suit or proceedings, which the Tribunal is empowered to do so under the Act. That was a case where an election dispute pertaining to the Company and the Division Bench held that such a dispute would have to be tried only by the Tribunal and not by the Civil Court. In fact, the Division Bench has also quoted with approval, the decision of this Court in *Chiranjeevi Rathnam's case*. The Hon'ble Division Bench also took note of the fact that the cause of action for the suit on the facts of the said case had arisen before the enactment of Section 430 of the Companies Act, 2013, but however, considering subsequent developments in the said case, relegated the parties to seek remedy before the NCLT constituted under the Companies Act. I do not see how these decisions would therefore apply to the facts of the present case, where admittedly the plaintiff is not a member as defined under Section 2(55) of the Companies Act and he also does carry the trappings and characters of a member of the company, by not having substantial interest in the internal affairs of the Company.

19.In view of the above, the parties would have to be necessarily relegated to trial and it is not a case where the plaint calls for rejection on the ground that there is a bar under Section 430 of the Companies Act. In view of the above, I do not find any grounds being available to the revision petitioner to seek rejection of the plaint under Order VII Rule 11 of CPC. The order of the Trial Court does not warrant any interference.

20.In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

29.08.2025

Speaking/Non-speaking order
Index : Yes/No
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To

The II Additional City Civil Court, Chennai.

P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.2034 of 2025
& CMP.No.11846 of 2025

29.08.2025