



C.M.A. Nos.2482-3312/2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.02.2025	04.03.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NOS. 2482 & 3312 OF 2024

AND

C.M.P. NOS. 27920, 19705 & 19706 OF 2024

Lt. Colonel
Sandeep Dewan (Veteran)

.. Appellant in both appeals

- Vs -

M/s.Ootacamund Club
Rep. By its President
No.179, Club Road
Ootacamund, The Nilgiris.

.. Respondent in both appeals

C.M.A. No.2482/2024 filed under Order XLIII Rule 1 (r) of the Code of Civil Procedure praying to set aside the order and decreetal order dated 8.7.2024 passed in I.A. No.7/2024 in O.S. No.65 of 2022 on the file of the learned Sessions Judge, Magalir Neethimandram (FTMC), Udhagamandalum.

C.M.A. No.3312 of 2024 filed under Order XLIII Rule 1 (r) of the Code of Civil Procedure praying to set aside the order and decreetal order dated 8.7.2024



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passed in I.A. No.8/2024 in O.S. No.65 of 2022 on the file of the learned Sessions Judge, Magalir Neethimandram (FTMC), Udthagamandalum.

For Appellant : Mr. Lt. Colonel Sandeep Dewan
(Party-in-Person)

For Respondent : Mr. Suhrith Parthasarathy

COMMON JUDGMENT

While the appeal in C.M.A. No.2482/2024 has been filed aggrieved by the order made in I.A. No.7/2024 in C.S. No.65/2022 in and by which the prayer for a direction to the respondent/defendant to provide all the club facilities and amenities to the appellant was dismissed pending the suit; C.M.A. No.3312 of 2024 has been filed against the dismissal of I.A. No.8/2024 in and by which plea for initiation of prosecution against the committee members and Secretary of the respondent Club u/s 195 (1)(b)(ii) Cr.P.C. was dismissed. As both the appeals are interconnected, they are taken up together and disposed of by this common judgment.

The matter was initially reserved for orders on 23.01.2025 upon hearing learned counsel on either side and, thereafter, on the request of the party-in-



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person, for clarifying certain issues, the said matter was listed for clarification on 30.01.2025. However, on the said date, due to personal inconvenience, the party-in-person could not appear and after hearing the learned counsel for the respondent, the matter was listed on 13.02.2025. However, due to change of roster, inadvertently the matter was not listed and, thereafter, on coming to notice about the non-listing, the matter was listed on 19.2.2025.

On 19.02.2025, this Court heard the party-in-person who submitted that if the Court intends to take the compilation submitted by the respondent, then the petitioner may be granted some time to file his counter and make his submissions. When this Court pointed out that the materials in the compilation are not relevant for deciding the said case, though it has some connection with the case, learned counsel for the respondent submitted that he is not pressing the said compilation as also the memo filed along with the said compilation. The party-in-person also agreed to not press the memo filed with regard to his stand on the said compilation. The said request of either side is recorded and the compilation as also the memo filed by the respondent as also the memo filed by the petitioner on the said compilation are not taken on file as the said materials



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are not pressed by the respective parties. Thereafter, this Court heard the parties further and, thereafter, reserved the case for orders on 19.02.2025.

2. It is the case of the appellant that he is a veteran officer of the Indian Army, who had retired after serving for nearly 25 years and that the meritorious service of the appellant has resulted in the appellant being the recipient of many meritorious and gallantry awards.

3. It is the further case of the appellant that he initiated the suit against the respondent herein questioning the illegal suspension order dated 2.6.2022 in and by which the permanent membership of the appellant was suspended for a period of 12 months. Further the suspension period stood expired on 1.6.2023. It is the further case of the appellant that when he called on the Secretary of the Club over phone on 2.6.2023 requesting to use the club facilities citing the completion of one year suspension period, he was denied access citing instructions from the President of the Club without any valid reason.

4. It is the further case of the appellant that he had sent an email to the Club against the said high-handed and illegal prevention of the appellant from



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entering the Club for which no response was forthcoming and the access to the Club for the appellant was prevented beyond 1.6.2023, which is impermissible as the maximum suspension period of 12 months alone is permitted under Bye-Law 23 (ii) of the Club, which stood already expired.

5. It is the further averment of the appellant that he has, since 2016 been paying the subscription, including the period of his suspension and a special subscription fee of Rs.7,500/- demanded was also paid by the appellant. Aggrieved by the act of oppression and mismanagement of the club, the appellant moved the National Company Law Tribunal against the Extraordinary General Body Meeting in which NCLT had ordered the conduct of the EGM but held that the declaration of results would be subject to the results of the applications pending before it. An application was also filed before the Registrar of Companies, Coimbatore to initiate action against the respondent for breach of the Companies Act, which is also pending.

6. However, the respondent, without proper advertment to the Articles of Association of the Club and not following the Bye-Laws, had conducted EGM,



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without giving proper notice, which is a gross violation of Article 42 of the Memorandum and Articles of Association. It is the further averment of the appellant that the e-mail calling for the meeting on 1.6.2023 is illegal as the legal date for convening the meeting ought to be 3.6.2023, but the meeting was subsequently held on 30.06.2023 and on the said dates, the appellant was a member of the club and not under suspension as the suspension stood expired on 1.6.2023.

7. In the above backdrop, the plea of the appellant is his right to enter the club as a matter of right and to use the facilities post the expiry of his suspension on 1.6.2023 and the action of the respondent in preventing the entry of the appellant to enter the club and use the facilities is arbitrary as on the date when the EGM was held and convened, viz., 30.6.2023, the appellant was not under any order of suspension and further NCLT has clearly stated that the decision of the EGM will be subject to its final orders, which clearly shows that the respondent cannot prevent the entry of the appellant into the Club. Since the period of suspension is already over, during which time the appellant was put to irreparable injury and mental agony, the further attempt of the respondent to



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prevent the appellant from using the facilities of the Club is grossly erroneous and arbitrary and, therefore, I.A. No.7/2024 has been filed.

8. Insofar as IC.M.A. No.3312/2024 is concerned, which is the off-shoot of I.A. No.8/2024, it is the case of the appellant that the respondent and the committee members, President, Secretary and office staff of the club have fabricated voluminous enquiry report and sought for a direction to the police to register FIR against the said persons, which was dismissed on the ground that the said alleged fabrication, even according to the appellant was made before the documents were produced before the Court and as such the rigours of Section 195 (1)(b)(ii) Cr.P.C. would not stand attracted. Aggrieved by the order of dismissal, the present appeal has been filed.

9. The appellant appearing as party-in-person submitted that the EGM is ab initio void, as the requisite period of time to convene the meeting was not given as mandated under the Companies Act. It is the submission of the appellant that the matter was sub judice before the NCLT and even the Managing



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Committee had deliberated on the conduct of the EGM and decided to take the permission of NCLT before conducting the EGM on 30.6.2023.

10. It is the further submission of the appellant that Section 169 of the companies Act has been pressed into service, which pertains to removal of Directors and it does not pertain to removal of a member of a company. In fact, the entire Companies Act is devoid of any provision to remove a member and no meeting can be convened for the purpose of expelling a member. When the convening of EGM is only for the purpose of ousting a member, which is not the intent of the Legislature while enacting the law, the action of the respondent is grossly illegal, as the convening of the EGM u/s 169 of the Companies Act is wholly flawed.

11. It is the further submission of the appellant that the even the calling for EGM at the behest of the requisitionist by the Managing Committee is bad as it is hit by Section 100 of the Companies Act, which expressly provides that upon receipt of any such request, viz., 25.4.2023 EGM ought to have been called within 21 days therefrom and within 45 days from the date of requisition, viz.,



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19.5.2023. However, the EGM was conducted only on 30.6.2023 and only to fill up the lacunae, the respondent had approached the NCLT to grant permission to grant EGM, which is even barred as NCLT is estopped from going beyond the Act and the NCLT had lost sight of the reason for the respondent in approaching it.

12. It is the further submission of the appellant that the respondent has tried to mislead both the court below as also this Court that the appellant had approached multiple forums for reliefs. It is the contention of the appellant that for oppression and mismanagement, the proper remedy is available only before NCLT and not before the Civil Court. Therefore, the act of the appellant in approaching different forums does not pertain to forum shopping but is on the basis of the jurisdiction of the respective forum to take up the issue and adjudicate on it and averments to the contra is grossly erroneous.

13. It is the further submission of the appellant that pending the appeal, the revision petitions in CRP Nos.4111 and 4738 of 2024 to amend the plaint have been allowed by allowing I.A. No.13/2024 in O.S. No.65/2022, whereby the illegal conduct of EGM has been allowed to form part of the averments in the



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plaint, which clearly shows that there is a prima facie case against the respondent.

14. Insofar as CMA No.3312/2024 is concerned, it is the contention of the appellant that during the conduct of the EGM, the records, which form part of the EGM, which are vital to the case of the appellant have been tampered with and the enquiry report filed does not reveal the truth as many vital documents have been destroyed or has been fabricated to suit the convenience of the respondent and attempts to mislead the court and to cause prejudice to the appellant. Therefore, the interlocutory application was filed praying the Court to direct the law enforcing agency to register the FIR. Placing reliance upon the counter filed in the court below, the appellant sought to establish the fabrication of documents and, therefore, sought indulgence of this Court to set aside the aforesaid orders.

15. Per contra, learned counsel appearing for the respondent submitted that the appellant has knocked the doors of this Court as well as NCLT for the



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very same relief and, therefore, the present appeal deserves to be dismissed *in limine*.

16. It is the further submission of the learned counsel that O.S. No.65/2022 was initially filed seeking a declaration that the suspension order dated 2.6.2022 was null and void and for permanent injunction and, thereafter, I.A. No.7/2024 was filed seeking reliefs, which are based on subsequent facts, viz., the expulsion of the appellant after the conduct of EGM and the said reliefs being beyond the suit prayers and unsupported by any pleadings, the court below had rightly dismissed the application.

17. It is the further submission of the learned counsel that though later in CRP Nos.4111 and 4738/2024, the amendment sought for to O.S. No.65/2022 having been allowed and the plaint would be amended after completing the formalities, the present appeal, whereby the appellant has sought interim reliefs in the interlocutory applications cannot be maintained and they were rightly dismissed.



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18. It is the further submission of the learned counsel that EGM was convened after obtaining the orders of NCLT on the basis of the requisition made by the members of the club in which permission was granted in IA No.64/2023 in CP No.113/2022, which was questioned before NCLAT by the appellant in CA (AT) Nos.74, 84 and 85 of 2023, however the same were dismissed as withdrawn on 11.10.2023 from which it is clear that the appellant has no authority to question the EGM in the present manner. The EGM was convened following the procedures contemplated under the Companies Act and it was a unanimous decision of the club to expel the appellant resulting in NCLT dismissing CP No.113/2022 filed by the petitioner by order dated 9.5.2024. Therefore, no interim relief sought for could be granted to the appellant.

19. It is the further submission of the learned counsel that the continued and pestering acts of the appellant had resulted in the expulsion of the appellant and also his conduct in filing false and frivolous cases against the respondent and its members before the law enforcing agency, which was subsequently closed as nothing was made out. The conduct of the appellant had resulted in action being taken against the appellant, including his expulsion from the club and, therefore,



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the conduct of the appellant cannot be given any lenience in the form of any interim orders.

20. It is the further submission of the learned counsel that in CMA No.2518/2022, in the earlier round of litigation, this Court had directed the disposal of the suit in three months, which was frustrated by the appellant by filing numerous interlocutory applications and also making allegations against the Presiding Officer leading to the recusal of the Presiding Officer. The conduct of the appellant does not call for any lenience at the hands of this Court and the court below, appreciating all the aforesaid materials had rightly dismissed the interlocutory applications which does not require any interference at the hands of this Court.

21. Insofar as CMA No.3312/2024 is concerned, it is the contention of the learned counsel that the fabrication alleged by the appellant not being alleged when the documents were in the custody of the court, the rigours of Section 195 (1)(b)(ii) Cr.P.C. would not stand attracted and the Court below cannot direct the registration of FIR against the respondent and rightly appreciating the above, the



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court below had negatived the interlocutory application and, therefore, no interference is warranted with the same.

22. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

23. Initially a suit in O.S. No.65/2022 was filed by the appellant praying for a declaration that the suspension order dated 2.6.2022 is null and void and for a permanent injunction restraining the defendant club, its men, officials, servants, agents from taking any steps or further steps on the basis of or giving any effect to the suspension order dated 2.6.2022.

24. It is the case of the appellant that the suspension of the appellant was for a period of one year, which ends on 1.6.2023. After the order of suspension, it is the claim of the appellant was not allowed entry into the club, which prompted the appellant to file the aforesaid suit for the reliefs noted above. However, pending the suit, inspite of request the appellant was not allowed



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access and at the behest of the members, the alleged erroneous EGM was conducted leading to the expulsion of the appellant.

25. Even prior to the suit, challenging the suspension, the appellant had filed CMA No.2518/2022, which was dismissed by this Court against which no appeal was filed. The suit was thereafter filed and pending the suit, numerous interlocutory applications were filed, including the aforesaid two interlocutory applications.

26. It is to be noted that in the suit, the relief sought for in I.A. No.7/2024 was not sought for and no pleading to the said effect was available and resultantly, the court below dismissed the said interlocutory application as not maintainable as the relief sought for in I.A. No.7/2024 was not sought for in the suit and no amendment has been made in the plaint nor was there any pleadings to the said effect.

27. However, pending the suit, the appellant filed CRP Nos.4111 and 4738/2024 seeking amendment of the plaint, which were ordered by this court



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on 26.11.2024. However, even prior to the same being ordered, I.A. No.7/2024 had come to be dismissed as not maintainable as no pleadings to the effect as was canvassed in I.A. No.7/2024 was available in O.S. No.65/2022. What is not canvassed in the suit by making the requisite pleadings cannot be sought for in the interlocutory applications, without amending the suit and, therefore, for the said purpose, I.A. No.7/2024 was dismissed.

28. The main suit in O.S. No.65/2022 was filed to declare the suspension order as null and void and for permanent injunction restraining the appellant from taking steps based on the suspension order. However, I.A. No.7/2024 was filed seeking to pass an ex parte ad-interim order restraining the respondent herein from preventing the appellant's entry into the club premises and the club from denying his right to use the facilities of the club and also to pass an order directing the club to provide all the facilities, amenities and all such right to which the appellant is entitled as a permanent member of the respondent club. When the prayer as sought for in I.A. No.7/2024 does not form part of the pleadings and prayer in O.S. No.65/2022, rightly appreciating the aforesaid fact, the court below had dismissed I.A. No.7/2024. The subsequent order in CRP No.4111 and



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4738/2024 permitting amendment of the plaint would in no way affect the order in I.A. No.7/2024, as it was passed anterior in point of time to the order in the civil revision petitions. What is not sought for in the suit cannot be sought for by means of an interlocutory application by means of extension of relief and, therefore, the order passed by the court below does not suffer from any infirmity. Further, it is to be pointed out that the relief sought for in the interlocutory application in I.A. No.7/2024 is much more than the prayer sought for in the suit, which cannot be granted and, therefore, the court below had negatived the said relief, which does not warrant any interference. Accordingly, CMA No.2482/2024 deserves to be dismissed.

29. Insofar as the relief sought for in CMA No.3312/2024 is concerned, the plea in I.A. No.8/2024, which form the basis for the appeal in CMA No.3312/2024 borders on the alleged fabrication of documents by the respondent. The said I.A. No.8/2024 had come to be dismissed by the court below on the ground that though the plea of fabrication of documents is alleged, however, invocation of Section 195 (1)(b)(ii) Cr.P.C. would not be permissible for the simple reason that such fabrication or forgery of documents had not taken place after the said



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document was produced in court. In fact, the suit had not been taken up and the documents were not placed before the court and such being the cast, the documents not being *custodia legis*, viz., in the custody of the court as evidence in any case, invocation of Section 195 (1)(b)(ii) Cr.P.C. would not stand attracted and, therefore, the Court give any direction for registration of FIR.

30. It is not the case of the appellant that the fabrication or forgery alleged had taken place when such documents were in the custody of the court as evidence in any case. In fact the documents are not in the custody of the court and no such allegation is raised even before this Court. The such circumstances, the finding recorded by the court below that Section 195 (1)(b)(ii) Cr.P.C. would not stand attracted is perfectly in order and is the proper interpretation of the provision of law and the said finding does not require any interference at the hands of this Court. Accordingly, CMA No.3312/2024 also deserves to be dismissed.



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31. For the reasons aforesaid, both the appeals are dismissed with the aforesaid observations and directions. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

04.03.2025

Index : Yes / No

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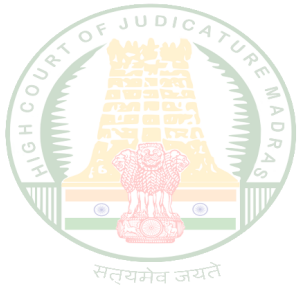


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To

The Sessions Judge
Magalir Neethimandram (FTMC)
Udhagamandalum.



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M.DHANDAPANI, J.

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**PRE-DELIVERY JUDGMENT IN
C.M.A. NOS. 2482 & 3312 OF 2024**

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04.03.2025