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C.R.P.(PD).No.8 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.8 of 2025

and

C.M.P.No.57 of 2025

Selvaraju Duraisamy

... Petitioner

Versus

1. M/s.Radiance Icon Owners Association (RIOA),
Represented by its President/Secretary,
Bearing Reg.No.SRG/Chennai Central/16/2022,
No.1167 Poonamallee High Road,
Koyambedu, Chennai- 600 107.
2. Hariharan
3. Vendhoti Vamsikrishna
4. Joseph Amalraj
5. K.Shiva Sai
6. Anandvirvi Shankar
- 7.Prasanna Venkatesh
8. N.Ravi
- 9.Vasanthi Ramachandran
- 10.B.Satheesh
- 11.T.Arun Raja
- 12.Baidyanath Kumar Pandey @ B.K.Pandey
- 13.P.Narayanan
- 14.B.Bhaskaran
- 15.S.R.Babu

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16.John Xavier

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 12.12.2024 passed by the Hon'ble XXI Additional City Civil Court at Chennai in I.A.No.10 of 2024 in O.S.No.2093 of 2024, by allowing this Civil Revision Petition.

For Petitioner : Mr.S.Subbiah
for Mr.Ralph Manohar
For Respondents : Ms.S.Viji (R1 to R16)

ORDER

This civil revision petition challenges the order passed by the learned XXI Additional City Civil Court, Chennai, in I.A.No.10 of 2024 in O.S.No.2093 of 2024 dated 12.12.2024.

2. The revision came up for maintainability before me. As I.A. No. 10 of 2024 is an application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, the Office entertained a doubt regarding the maintainability of the revision, as an appeal can be presented under Order XLIII, Rule 1 (r) of the Code of Civil Procedure.

3. The learned Counsel for the Petitioner, Mr.Ralph Manohar, relied



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upon a Judgment of Hon'ble Mr. Justice R.Subramanian in C.R.P.SR. Nos. 109971 and 111067 of 2021, dated 06-12-2021, whereby, the learned Judge had held that the Registry cannot raise an issue of maintainability of a revision under Article 227 of the Constitution of India.

4. It was pointed out by the learned Judge that whether this Court entertains the revision or not, is a matter which has to be dealt with by it, on its judicial side and that it is not open to the Registry to question as to how a revision is being presented when an alternate remedy is available.

5. Apart from this Judgment, I have to point out that in order to prefer an appeal under Order XLIII Rule 1 of the Code, the order passed should be in the nature of an "Order" under Section 2(14) of the Code. Unless and until the order passed by the learned Trial Judge finally disposes of the injunction application, an appeal would not be maintainable. Since, I.A No. 10 of 2024 is still pending disposal before the Trial Court, I have to hold the revision is maintainable.



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6. Respectfully following the above said judgment, I directed the Office to number the revision and post the matter for admission today.

7. I have heard Mr.S.Subbiah, learned senior counsel for Mr.Ralph Manohar on behalf of the petitioner and Ms.S.Viji, the learned counsel for the respondents.

8. The matter is on a very narrow campus. The plaintiff, who is the civil revision petitioner had presented a suit for damages, declaration and for prohibitory injunction as against the respondents. As the interim injunction application is still pending disposal before the learned XXI Additional City Civil Judge, it would not be appropriate for me to delve deep into the disputed facts presented before me.

9. Suffice it to say that the civil revision petitioner approached the National Green Tribunal, alleging that the environmental clearance granted to the Sewage Treatment Plant in the apartment complex situated in No.



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1167, Poonamallee High Road Koyambedu Chennai - 107 is improper. In the said proceedings, he had impleaded the 1st respondent herein as a party to the proceedings. The 1st respondent felt aggrieved that it had been impleaded as a party. This is because the Executive Committee members of the 1st respondent had already initiated proceedings against the builder before the Tamil Nadu Real Estate Regulatory Authority, Therefore, they felt that impleading the 1st respondent and its members is an unnecessary one.

10. As a result, they decided to invoke Clause 4.2 sub-clause (vii) of the by-laws of the 1st respondent Association and take action as against the civil revision petitioner. Being left with no other option, he filed the suit for the aforesaid reliefs. Pending disposal of the suit, he took out an application for interim injunction to restrain the respondents herein from in any manner invoking Clause 4.2(i)(vii) of the by-laws against him.

11. The learned Trial Judge granted an order of injunction on 13-09-2024. Subsequently, the respondents entered appearance and filed a detailed



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counter.

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12. When the matter was called on 12-12-2024, the respondents represented before the learned Trial Judge that the petitioner had not yet been declared as an inactive member in terms of the by-laws and that only a proposal had been made to that effect. They further submitted that in the Annual General Body Meeting to be held on 05.01.2025, the said proposal will be placed as a resolution before the (AGM) and the AGM would decide on the same.

13. Recording this statement, the learned Trial Judge permitted the Association to proceed further to conduct the AGM. Aggrieved by this modification, the present civil revision petition has come up before me.

14. When a party approaches the Court with a grievance, the Court has to decide whether the grievance requires to be addressed or whether it is a frivolous claim. If pending an application, the Court permits the respondents to proceed further, thereby rendering the injunction application



infructuous, it only adds insult to the injury. The Court in this case found a *prima facie* case and granted an order of injunction. His grievance would increase multi fold, if, under the orders of the Court, a meeting is held and a resolution declaring him as a inactive member is passed.

15. As much as, a party should not prevent a fait accompli to Court, equally the Court should not create a situation which will result in the application filed before it as infructuous.

16. I am aware that the arms of the law are all long enough to set right a wrong which has occurred pending litigation. Yet, it is advisable that such a situation be avoided. It is not as if a declaration of the Plaintiff as an

inactive member is the sole agenda in the proceeding. There other matter which requires the attention of the AGM. Hence, I am inclined to pass the following order:

(i) The 1st respondent shall hold the Annual General Body Meeting as proposed on 05.01.2025. However, the proposed Resolution titled B 'Mr. Selvaraju, B.1708 shall not be put to vote.



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(ii) The learned Trial Judge is requested to take up I.A. No. 10 of 2024 on 02.01.2025. After hearing the parties, the Trial Court dispose of the application by **28.02.2025**.

(iii) Depending upon the result of I.A.No.10 of 2024, further proceedings can be initiated by the 1st respondent. To make it clear, in case I.A No.10 of 2024 is allowed, the question of holding a meeting will not arise. In case, I.A No. 10 of 2024 is dismissed, the 1st respondent will not be restrained from calling for a meeting to vote on the aforesaid agenda. For the purpose of such a meeting, since the 1st respondent has been restrained by an order of the Court, the issue of giving a fresh notice calling for the meeting would not arise.

With the above directions, this civil revision petition is disposed of.

No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2025

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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no



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To

The XXI Additional City Civil Court,
Chennai

V.LAKSHMINARAYANAN, J.

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