

A           VIRUDHUNAGAR HINDU NADARGAL  
DHARMA PARIBALANA SABAI & ORS.

v.

TUTICORIN EDUCATIONAL SOCIETY & ORS.

B           (Civil Appeal No. 7764 of 2019)

OCTOBER 03, 2019

**[R. F. NARIMAN AND V. RAMASUBRAMANIAN, JJ.]**

*Constitution of India:*

C           *Art.227 – Jurisdiction under – Scope of – Though availability of a remedy of appeal may not always be a bar for exercise of supervisory jurisdiction of High Court – But in civil proceedings under CPC, when the forum is civil court, availability of remedy under CPC, will deter the High Court from exercising its power of superintendence under Art.227 – In the present case, since specific remedy of appeal was available to the party, High Court should not have entertained the revision u/Art. 227.*

*Injunction:*

E           *Interim injunction in a civil suit – Restraining interalia the respondent-Secretary of the respondent-Society from functioning as Secretary – Challenged in revision petition – High Court allowed the petition setting aside the injunction order holding that the same was passed in haste – Appeal to Supreme Court – Held: High Court had overlooked the fact that the respondent-Secretary having been injunction from acting as a Secretary of the respondent-Society, could not have filed revision petition on behalf of the respondent-Society – High Court was also wrong in holding that the order was passed in haste – Injunction order was passed after duly hearing the opposite party – Order XXXIX r.3A of CPC also mandates disposal of injunction application within 30 days – Therefore, impugned order set aside – Advocate Commissioner appointed to convene the ‘General Body’ as well as ‘Executive Committee’ meeting for the election of Office Bearers – Code of Civil Procedure, 1908 – Or. XXXIX r.3A.*

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**Allowing the appeal, the Court**

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**HELD:** 1. Primarily the High Court went wrong in overlooking the fact that there was already an appeal under Order XLI, Rule 1(r) of CPC, at the instance of the fifth defendant in the suit (third respondent), as against the very same order of injunction and, therefore, there was no justification for invoking the supervisory jurisdiction under Article 227. [Para 11] [639-H; 640-A]

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2. The High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order XLIII, Rule 1(r) of CPC was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of CPC and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. "*orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.*" Therefore wherever the proceedings are under CPC and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself. [Paras 12, 13 and 14] [640-B-G; 641-A-B]

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- A        3. Another aspect that was overlooked by the High Court was that the second respondent was already restrained by the Sub-Court, from functioning as the Secretary of the first respondent society. It is seen from the records that the civil revision was filed before the High court by the first respondent society as well the second respondent. The second respondent was not only the second petitioner in the Civil Revision Petition filed before the High Court, but he also sought to represent the first respondent-Society as its Secretary, before the High court in the Civil Revision. On the date on which the first respondent-Society filed the Civil Revision before the High court, the second respondent was not the secretary and could not have acted on behalf of the society. This aspect was also overlooked by the High Court. [Paras 15 and 16] [641-C-D; G-H]
- B        4. The observation of the High Court that the trial Court proceeded in great haste, appears to be uncharitable. Order XXXIX Rule 3A of CPC itself mandates the disposal of an application for injunction within 30 days, whenever an injunction was granted without notice to the opposite party. In the present case, the trial Court, without granting an *ex-parte* order of injunction, chose to allow the opposite parties to file counter affidavit(s) along with documents and then heard the opposite parties before allowing the application for injunction. Finding the line of demarcation between speedy disposal and hurried dispatch, with mathematical precision, is not possible. In any case, even if the High Court was convinced that the trial Court had proceeded hastily, the High Court could have only remanded the matter back. But the High Court allowed the application for injunction without recording any finding on merits. In fact the order of the Trial Court deals with the rival contentions and is one passed on merits after due consideration of the pleadings and documents. The High Court did not even deal with the matter on merits to over turn the decision of the Trial Court. Therefore, the order of the High Court is liable to be set aside and the order of the Trial Court is liable to be restored. [Paras 17 and 18] [642-A-E]
- C        5. It is brought to the notice of the Court that after the High Court allowed the Civil Revision petition by its order dated

28.08.2018, the second respondent proceeded with the meeting of the General Body and the Executive Committee on 25.09.2018 and also conducted elections. Notice was ordered and the interim order of the *status quo* was passed in the above special leave petition only on 8.10.2018. Normally, in the above circumstances, the appeal could have been held having become infructuous. But in the present case every meeting of the General Body and every attempt at holding elections to the first respondent-Society have created a series of litigation before three different fora namely (i) the Civil Courts (ii) the Registrar of Societies (iii) the High court (in Writ Petitions arising out of orders of the Registrar of Societies). Therefore, the only way to bring to an end all the litigations between the parties before various fora would be to set aside the impugned order and the elections held pursuant thereto and to appoint an Advocate Commissioner to convene the General Body as well as the Executive Committee for the election of office bearers. Accordingly, the order of the High court as well as the elections purportedly held pursuant to the order of the High Court are set aside. [Paras 19, 20 and 21] [642-F-H; 644-C-E]

*Venkatasubbiah Naidu v. S. Chellappan & Ors. (2000) 7 SCC 695 : [2000] 3 Suppl. SCR 303 ; Radhey Shyam v. Chhabil Nath (2015) 5 SCC 423 : [2015] 3 SCR 197 – relied on.*

*Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675 : [2003] 2 Suppl. SCR 290 – stood overruled.*

<u>Case Law Reference</u>		
[2000] 3 Suppl. SCR 303	relied on	Para 12
[2003] 2 Suppl. SCR 290	stood overruled	Para 13
[2015] 3 SCR 197	relied on	Para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7764 G of 2019.

From the Judgment and Order dated 21.08.2018 of the Madurai Bench of the High Court of Madras in C.R.P. No. 1084 of 2018.

R. Anand Padmanabhan, K. Selvaraj, Aravind C., Shashi Bhushan Kumar, Advs. for the Appellants. H

A       Vijay Hansaria, Sr. Adv., Ashok Mathur, R. Kannan, T. Antony A., Advs. for the Respondents.

The Judgment of the Court was delivered by

**V. RAMASUBRAMANIAN**

B       1. Leave granted.

2. Aggrieved by an order of the High Court passed under Article 227 of the Constitution, vacating an interim order of injunction granted by the trial Court, the plaintiffs have come up with this appeal.

C       3. We have heard Mr. R. Anand Padmanabhan, learned counsel for the appellants and Mr. Vijay Hansaria, learned Senior Counsel for the respondent Nos. 1 & 2.

4. The appellants *herein* filed a suit O. S. No. 145 of 2018 on the file of Principal District Munsif, at Thoothukudi praying (*i*) for a

D       declaration that the notice issued by the sixth defendant (second respondent in this appeal) convening the General Body Meeting of the first respondent-Society at 5 P.M. and the Executive Committee meeting at 5:30 P.M. on the same day *namely* 05.05.2018 was illegal; (*ii*) for a decree of permanent injunction restraining the defendant Nos.

E       5 & 6 from convening the meetings of the General Body and the Executive Committee of the first respondent-society; (*iii*) for a declaration that the appointment of the fifth defendant (third respondent in this appeal) as patron for life of the first defendant-Society was unlawful; (*iv*) for a permanent injunction restraining the sixth defendant (second respondent in the appeal) from acting as the Secretary of the

F       first defendant-Society and (*v*) for the appointment of a Commissioner to receive the list of members and to conduct free and fair election of office bearers of the first defendant-Society.

G       5. Along with the suit, the appellants/plaintiffs moved an Interlocutory Application i.e. I. A. No. 386 of 2018 seeking an interim order of injunction restraining the respondents from convening the meetings of the general Body and the Executive Committee on 5.5.2018. It appears that the appellants/plaintiffs also moved one more Interlocutory Application i.e. Interlocutory Application No.387 of 2018 seeking an injunction restraining the defendant nos. 5 & 6 from acting H respectively as Patron and the Secretary.

6. It appears that the suit was filed on 23.04.2018 and the application for interim injunction was moved on 24.04.2018. The Contesting defendants filed a counter affidavit on the very next day *namely* 25.04.2018 along with 19 documents.

7. Therefore, after hearing both sides, the trial Court passed an order on 26.04.2018 allowing Interlocutory Application No.386 of 2018 and injuncting the defendants from proceeding with the Meeting of the General Body and the Executive Committee as scheduled on 5.5.2018. It is relevant to note that the trial Court not only took note of the pleadings on both sides but also took note of 12 documents filed by the plaintiffs and 19 documents filed along with the counter affidavits of the defendants.

8. As against the order of the trial court granting injunction, the fifth defendant in the suit (the third respondent in this appeal) who was claiming to be the Patron for life, filed a Regular Appeal in C.M.A No.1 of 2018 on the file of the Sub-Court at Thoothukudi under Order XLIII Rule 1(r) of the Code of Civil Procedure. But the respondent nos.1 & 2 *herein* who were the defendant Nos.1 & 6 respectively, instead of filing a Regular Appeal, filed a Civil Revision in C.R.P.(MD) (PD) No.1084 of 2018 on the file of the Madurai Bench of the Madras High Court, under Article 227 of the Constitution of India.

9. Despite objections to the maintainability of the revision on the ground of availability of an appellate remedy under the Code, the High Court allowed the Civil Revision Petition and set aside the order of injunction granted by the trial Court. It is against the said order that the plaintiffs have come up with the above appeal.

10. The objection to the maintainability of the revision was sought to be overcome by the High Court on the basis of a few decisions which revolved around the supervisory jurisdiction of the High Court to keep the subordinate courts within the bounds of law. Then the High Court found fault with the trial Court for taking up the application for injunction filed on 24.04.2018, for hearing on 25.04.2018 and passing an order on 26.4.2018. This, in the opinion of the High Court, was a case of justice being hurried and consequently getting buried. Therefore, the High Court allowed the revision and set aside the order of injunction.

11. Primarily the High Court, in our view, went wrong in overlooking the fact that there was already an appeal in C.M.A. No. 1

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- A of 2018 filed before the Sub-Court at Tuticorin under Order XLI, Rule 1 (r) of the Code, at the instance of the fifth defendant in the suit (third respondent herein), as against the very same order of injunction and, therefore, there was no justification for invoking the supervisory jurisdiction under Article 227.
- B 12. Secondly, the High Court ought to have seen that when a remedy of appeal under section 104 (1)(i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors.*<sup>1</sup>, this Court held that “*though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy*”.
- C 13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar.
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- G Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in *Surya Dev Rai vs. Ram Chander Rai*<sup>2</sup>, pointed out in *Radhey Shyam Vs. Chhabri Nath*<sup>3</sup> that “*orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts*.”

<sup>1</sup> (2000) 7 SCC 695

<sup>2</sup> (2003) 6 SCC 675

<sup>3</sup> (2015) 5 SCC 423

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.

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15. Another aspect that was overlooked by the High Court was that the second respondent *herein* namely Shri A. Rajendran was already restrained by the Sub-Court, from functioning as the Secretary of the first respondent society. It is seen from the records that the civil revision was filed before the High court by the first respondent society as well the second respondent herein. The second respondent herein was not only the second petitioner in the Civil Revision Petition filed before the High Court, but he also sought to represent the first respondent-Society as its Secretary, before the High court in the Civil Revision.

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16. But in a connected Civil Miscellaneous Appeal No.7 of 2018 filed by the appellants *herein* (plaintiffs in the suit), the Sub-Court, Thoothukudi passed an order dated 22.04.2018 restraining the second respondent *herein* for acting as the Secretary of the first respondent-Society. This appeal arose out of the dismissal by the trial court, of an interlocutory application I.A.No. 387 of 2018 filed by the appellants herein for restraining the second respondent *herein* from acting as the Secretary and another person from acting as the Patron. The trial Court dismissed I.A.No.387 of 2018, but the plaintiffs filed an appeal in Civil Misc. Appeal No.7 of 2018. The same was allowed by an order dated 22.04.2018 by the Sub-court, Thoothukudi unseating the second respondent as the Secretary. Though the second respondent has claimed in his rejoinder, that the order passed in C. M. A. No. 7 of 2018 was challenged in a revision in CRP (MD) No. 1295 of 2019 and an order of status quo was obtained, from the Madurai Bench of the Madras High Court, the same happened after more than a year. Therefore, on the date on which the first respondent-Society filed the Civil Revision CRP (MD) No. 1084 of 2018 before the high court, the second respondent herein was not the secretary and could not have acted on behalf of the society. This aspect was also overlooked by the High Court.

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- A        17. The observation of the High Court that the trial Court proceeded in great haste, appears to be uncharitable. It is true that the application for injunction was moved on 24.4.2018 but the respondent nos. 1 & 2 were very vigilant, if not overzealous and, hence, they not only filed a counter affidavit to the application for injunction on 25.04.2018, but also filed 19 documents. They also advanced arguments, only after considering which the trial Court passed an order on 26.4.2018.
- B        18. Order XXXIX Rule 3A of the Code of Civil Procedure itself mandates the disposal of an application for injunction within 30 days, whenever an injunction was granted without notice to the opposite party.
- C        In this case, the trial Court, without granting an ex-parte order of injunction, chose to allow the opposite parties to file counter affidavit(s) along with documents and then heard the opposite parties before allowing the application for injunction. Finding the line of demarcation between speedy disposal and hurried dispatch, with mathematical precision, is not possible. In any case, even if the High Court was convinced that the trial Court had proceeded hastily, the High Court could have only remanded the matter back. But the High Court allowed the application for injunction without recording any finding on merits. In fact the order of the Trial Court deals with the rival contentions and is one passed on merits after due consideration of the pleadings and documents. The High Court unfortunately did not even deal with the matter on merits to over turn the decision of the Trial Court. Therefore, the order of the High Court is liable to be set aside and the order of the Trial Court is liable to be restored.
- D        19. But it is brought to our notice that after the High Court allowed the Civil Revision petition by its order dated 28.08.2018, the second respondent *herein* proceeded with the meeting of the General Body and the Executive Committee on 25.09.2018 and also conducted elections. Notice was ordered and the interim order of the *status quo* was passed in the above special leave petition only on 8.10.2018. Hence,
- E        G it was sought to be contended that the above appeal has virtually become infructuous.
- F        20. In normal circumstances, we would have agreed. But this is a case where every meeting of the General Body and every attempt at holding elections to the first respondent-Society seem to have created H a series of litigation before three different fora namely (i) the Civil

Courts) (ii) the Registrar of Societies (iii) the High court (in Writ Petitions arising out of orders of the Registrar of Societies). This can be seen from the following table:

S.No	Events which triggered the litigation	Nature of the litigation	Forum where filed	Status	
1.	Notice convening the General Body and Executive Committee on 21.03.2015.	Suit in O.S. No.79 of 2015	Sub-Court, Tuticorin.	Despite undertaking to the Court, the meetings were held and office bearers elected	A
2.	By proceeding dated 27.03.2015, second respondent was appointed as Secretary of the College Committee of the College run by the first respondent-Society. This was by virtue of the elections held on 21.03.2015.	Writ Petition (MD) No.3869 of 2016	Madurai Bench of the Madras High Court.	Pending	B
3.	Form Nos.6 and 7 in terms of the Tamil Nadu Society Registration Act and the Rules framed thereunder were filed by the newly elected office bearers with the Registrar of Societies, for recording the names of the new set of officer bearers. But the Registrar rejected these forms on 24.04.2015.	A writ petition in WP (MD) No.19710 of 2015 filed, challenging the rejection.	Madurai Bench of the Madras High Court.	Pending	C
4.	Elections held on 21.03.2015	A suit O.S No.21 of 2016 was filed by the present appellant No.1 for a declaration that the election allegedly held on 21.03.2015 was null and void and for a permanent injunction	District Munsiff Court at Tuticorin.	Suit pending	D
5.	The newly elected office bearers sought to amend the bye laws. The amendment was rejected by the District Registrar.	A writ petition in WP (MD) No.13144 of 2016 filed challenging the order of the District Registrar.	Madurai Bench of the Madras High Court.	Pending	E
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A	6.	A fresh notice dated 10.06.2017 issued convening the meetings of the General Body and the Executive Committee on 8.07.2017.	A suit O.S. No.195 of 2017 seeking a declaration that the notices were null and void and for a permanent injunction filed by the appellant No.1	District Munsiff Court, Tuticorin	Suit pending
B	7.	By a paper publication dated 12.04.2018, the Second respondent convened the meetings of the General Body and the Executive Committee on 5.05.2018	A suit O.S. No.145 of 2018 (out of which the present appeal arises) was filed for the reliefs stated ( <i>supra</i> )	District Munshif, Tuticorin	Pending
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21. Therefore, we are of the view that the only way to bring to an end all the litigations between the parties before various fora is to set aside the impugned order and the elections held pursuant thereto and to appoint an Advocate Commissioner to convene the General Body as well as the Executive Committee for the election of office bearers. Accordingly, the appeal is allowed, the order of the high court as well as the elections purportedly held pursuant to the order of the High Court are set aside. Smt. S. SORNALATHA, Advocate, No.1, 1<sup>st</sup> Street, Chidambara Nagar, Thoothukkudi-628 008, is appointed as Commissioner with a mandate to do the following:
- (i) Within two weeks of receipt of a copy of this order, the Advocate Commissioner shall address letters to the sponsoring bodies/Societies of the first respondent society, for nominating members to the General Body and the Executive Committee of the first respondent-Society, as per the bye-laws.
- (ii) Within one week of receipt of the letter from the Advocate Commissioner, the sponsoring bodies shall send a list of members nominated by them to the General Body/Executive Committee of the first respondent society
- (iii) Within four weeks of receipt of the nominations, the Advocate Commissioner shall convene a meeting of the General Body and the meeting of the Executive Committee and hold elections in accordance with the bye –laws.

- (iv) After holding elections, the Advocate Commissioner shall ensure that form Nos. 6 and 7 are registered with the Registrar of Societies so that the registration of such forms do not become the subject matter of any litigation at the instance of the rival groups. A
- (v) The Advocate Commissioner shall be paid, by the first respondent society, a remuneration of Rs. 1,00,000/- apart from the reimbursement of the expenses incurred by her. B
- (vi) Till the elections are held and results declared, the Advocate commissioner shall discharge the duties of the Secretary of the first Respondent-Society. C

Kalpana K. Tripathy

Appeal allowed