A. Viswanathan vs Madras Race Club on 5 April, 2018

Author: R. Subbiah

Bench: R. Subbiah, P.D. Audikesavalu

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.03.2018

Pronounced on : 05-04-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Original Side Appeal Nos. 64 and 65 of 2018
and
Civil Miscellaneous Petition Nos. 3811 and 3812 of 2018

A. Viswanathan .. Appellant in both the appe

Versus

1. Madras Race Club
a Company within the meaning of Section 8
of The Companies Act, 2013
having its Registered Office at
Race Course Road, Guindy
Chennai 600 032
represented by its Secretary S.M. Karthikeyan

2. DLF Universal Limited
(formerly DLF Retail Developers Limited)
a company incorporated under the Companies Act
1956, represented by its Director
having its Southern Regional Office at
DLF Centre, No.17, Judge Jambulingam Street
Mylapore, Chennai 600 004 .. Respondents in both the appe

Original Side Appeals filed under Order XXXVI Rule 11 of Original Side Rules rea

For Appellant : Mr. T. Mohan
for Mrs. S. Menaka
in both the appeals

For Respondents : Mr. P.S. Raman, Senior Advocate
for Mr. R. Parthasarathy for first respondent
in O.S.A. No. 64 of 2018
Mr. Satish Parasaran, Senior Advocate
for Mr. R. Parthasrathy
in O.S.A. No. 65 of 2018

Mr. T.R. Rajagopalan, Senior Advocate
for M/s. Aiyar and Dolia
for R2 in both the appeals

COMMON JUDGMENT

R. Subbiah, J These intra-court appeals are preferred by the appellant questioning the correctness and or validity of the Order dated 07.02.2018 dismissing the O.A. No. 52 of 2018 and O.A. No. 53 of 2018 in C.S. No. 43 of 2018 filed by him.

2. As both the appeals arise out of a common order passed by the learned single Judge, dismissing the applications filed by the appellant, these appeals are heard together and are disposed of by this Court.

3. The appellant has filed the suit in C.S. No. 43 of 2018 for the following relief:-

> The Plaintiff prays for a Judgment and Decree for a
>
> (a) Declaration declaring that the Minutes of the Meeting dated 07.01.2018 held by the Committee of Management of the first defendant is illegal and in contravention of the Articles of Association of the 1st defendant club;
>
> (b) Declaration to declare the meeting of the committee of management of the first defendant scheduled on 18.01.2018, Thursday at 4.00 pm is illegal and in contravention of the Articles of Association of the 1st defendant club;
>
> (c) Permanent injunction restraining the first defendant Club from implementing the decisions likely to be taken in the meeting of the Committee of the Management of the first defendant club scheduled on 18.01.2018 or any other date until the AGM is convened as per the directions of the National Company Law Tribunal;
>
> (d) Permanent injunction restraining the first defendant club, its Office bearers, men, agents, representatives, or any other person or persons from taking any decision on the transfer of the property at T.S. No.3, Block No.7, Venkatapuram Village,

Mambalam-Guindy Taluk, Chennai District, which is morefully described in the schedule mentioned hereunder at the meeting of the Committee of the Management of the first defendant's Club to be held on 18.01.2018 Thursday at 4.00 pm or any other date.

(e) Such other relief or reliefs as this Honourable Court may deem fit

(f) Cost of the suit.

4. Pending suit, the plaintiff/appellant herein has filed O.A. No. 52 of 2018 with the following prayer:-

To grant an order of ad-interim injunction restraining the first respondent club, its office bearers, men, agents, representatives, or any other person or persons from taking any decision on the transfer of the property at T.S. No.3, Block No.7, Venkatapuram Village, Mambalam-Guindy Taluk, Chennai District, which is morefully described in the schedule mentioned hereunder at the meeting of the Committee of the Management of the first defendant's Club to be held on 18.01.2018 Thursday at 4.00 pm or any other date.

5. The plaintiff/appellant herein has also filed O.A. No. 53 of 2018 in which he has sought the below mentioned relief:-

To grant an order of ad-interim injunction restraining the first respondent club from implementing the decisions likely to be taken in the meeting of the Committee of Management of the first respondent club scheduled on 18.01.2018 or any other date until the AGM is convened as per the directions of the National Company Law Tribunal pending disposal of the above suit and thus render justice.

6. The sum and substance of the averments made in O.A. Nos. 52 and 53, as could be inferred from the affidavit filed in support of the respective applications, are briefly stated as under:-

7. The first respondent is a club set up for the purpose of promoting sports, particularly horse racing and enjoys the status of a company as contemplated under Section 8 of the Companies Act, 2013. The appellant is one of the members of the first respondent club, having been inducted as a Member during the year 1973 with Membership Number CMV No. 039, besides he is also one of the members of the Committee of Management of the first respondent club for the last ten years. The first respondent club has got certain lands having been leased out by the Government of Tamil Nadu where it carries the sport activities. Apart from the land leased out by the Government, the club owns certain parcels of land which includes the property measuring an extent of 5.556 acres of vacant land, which is also known as Race Hall Property comprised in T.S. No.3, Block No.7, Venkatapuram Village, Mambalam-Guindy Taluk, which is the subject matter of the suit filed by the appellant. The said property was hitherto used as the residential bungalow of the Secretary of the first respondent Club and during October 2006, it was felt that the said property can be

commercially exploited for the benefit of the club inter alia to augment it's income. Therefore, the first respondent circulated an Information Memorandum pertaining to the suit property prepared by Cushman and Wakefield and based on the same, a lease deed dated 20.12.2006 was entered into between the first respondent to lease out the property to the second respondent initially for a period of four years with an option to renew the lease for a further period of 62 years at the sole discretion of the second respondent. The lease deed dated 20.12.2006 was registered as document No. 709 of 2007 in the office of the Sub-Registrar, Adyar. At the time of getting the lease deed registered, the second respondent paid a sum of Rs.60 Crores as refundable security deposit to the first respondent club. The period of lease commenced from 01.01.2007 to 31.12.2010. A sum of Rs.1.30 crores was fixed as lease rent for the first three years and the lease rent will be Rs.2.60 crores for the fourth, fifth and sixth year and thereafter the lease rent of Rs.2.86 crores has to be paid by the second respondent for the 7th year. Thereafter, it was agreed to enhance the lease rent periodically from 10th, 13th and 16th year and so on as per the terms and conditions to be mutually agreed between the parties. The purpose of the lease was to enable the second respondent to develop the land into a commercial complex/mall. For this purpose, the first respondent has submitted an application to the Chennai Metropolitan Development Authority for conversion of the usage of the land and the said authority has also, after public hearing, as required, approved the conversion of the land from institutional area into one of commercial zone. For this purpose, the first respondent has also executed a Gift Deed in favour of the Chennai Metropolitan Development Authority gifting land measuring 2110 square meter out of 5.556 acres towards Open Space Reservation and another gift deed gifting land measuring 1475.51 square meter out of 5.556 acres in their favour towards Road widening. Further, the first respondent has also obtained No Objection from Raj Bhavan and Airport Authority of India for development of the said property. Thereafter, the second respondent was permitted to put up a building in the property in question.

8. While the facts are so as stated above, according to the appellant, the second respondent committed default in payment of the lease rent from June 2010 which led to dispute between the first and second respondent. In such circumstance, the first respondent invoked the arbitration clause contained in the lease agreement and filed an Original Petition before this Court under Section 9 of the Arbitration and Conciliation Act, 1996. During the pendency of the arbitration proceedings, the parties agreed to compromise the issue and after deliberations, the management committee of the first respondent has taken a decision on 22.01.2011 to sell the land to the second respondent and a Memorandum of Understanding dated 15.02.2011 came to be executed between the first and second respondent and the same was also approved in the Extra Ordinary General Meeting of the first respondent held on 15.02.2011. As per the Memorandum of Understanding, the first respondent agreed to offer the property for outright sale to the second respondent and the second respondent also agreed to purchase the property in question for a sum of Rs.325 crores. As per Clause 1 of the Memorandum of Understanding dated 15.02.2011 the second respondent shall clear all the lease rent outstanding to the first respondent. Clause 7 (a) of the Memorandum of Understanding indicates that the first respondent expressed their inclination to sell the property to the second respondent for Rs.325 crores and the sale price is subject to obtaining a valuation report for the property by two internationally reputed realtors namely M/s. Jones Lang La Salle (JLL) or M/s. CB Richard Ellis (CBRE) or Cushman & Wakefield (C&W) to assess the value of the property. Clause 8 thereof provides that the second respondent can seek conveyance of the property after 18

months but before 28.02.2013. Clause 4 of the Memorandum of Understanding also provides that in the event of default by the second respondent, the lease deed dated 20.12.2006 shall prevail and a fresh lease deed shall be entered into between the first and second respondent for leasing out the property on lease from 06.06.2011 and 28.02.2013.

9. According to the appellant, as per the terms and conditions of the lease deed, the land could not be developed and planning permission could not be obtained from the competent authority and therefore, the second respondent sought for extension of the lease on 06.06.2011. In consideration of the request of the second respondent, a supplementary Memorandum of Understanding dated 25.02.2013 was entered into between the first and second respondent whereby the Memorandum of Understanding dated 15.02.2011 was amended and the period of lease was extended for a further period of six months from 01.03.2013 to 31.08.2013 for completion of the sale transaction. Thereafter, another supplementary agreement dated 23.10.2013 was also entered into between the first and second respondent whereby the period of lease was further extended till 31.08.2015 subject to payment of Rs.3 crores as monthly rent for the period from 01.09.2013 to 31.03.2014 and at the rate of Rs.3.5 crores for the period from 01.04.2014 to 31.03.2015 by the second respondent to the first respondent. Further, it was specifically agreed that no further time limit will be extended for completion of the sale.

10. While so, on 30.09.2016, the term of office of the Members of the Committee of Management of the first respondent club expired. Out of the 16 Management Committee members, the term of 8 members expired by rotation as per the provisions contained in the Indian Companies Act, 2013 and the Articles of Association of the first respondent club, including the term of office of the appellant. While so, the members of the management committee of the first respondent club, without proceeding to convene Annual General Meeting, decided to take action against some of the members who failed to remit the membership fee/renewal fee. For this purpose, the first respondent appointed an independent Auditor firm namely Bhramaiya and Company to scrutinise and verify the details of the defaulting members. As against such decision taken by the first respondent club, particularly the failure of the first respondent club to convene the Annual General Meeting, one of the members of the first respondent club filed Company Petition No. 31 of 2017 under Section 97 of the Companies Act, 2013 before the National Company Law Board against the first respondent. The National Company Law Board, taking into consideration of all the relevant factors, passed an order dated 13.12.2017 directing the first respondent club to convene the Annual General Meeting on 26.02.2018 or on 19.03.2018 by appointing Mr. R. Ramakrishnan as Chairman of the Annual General Meeting and Honourable Mr. Justice K.P. Siva Subramaniam, a retired Judge of this Court as an Independent Observer. According to the appellant, it is evident from the order dated 13.12.2017 passed by the National Company Law Board that the term of office of the existing majority of members of the Committee of Management expired by rotation and the election of office bearers is due since 30th September 2016.

11. In the meantime, according to appellant, once again, there was breach of terms and conditions of supplementary agreement committed by second respondent and there were disputes with respect to non-adherence of terms of the supplementary lease deeds. In this context, the second respondent invoked the arbitration clause contained in the agreement of lease as well as the supplementary

agreements and an Arbitral Tribunal was constituted consisting of three Honourable retired Judges of the Honourable Supreme Court. The Arbitral Tribunal passed an interim order under Section 17 of the Arbitration and Conciliation Act and directed the second respondent to pay 50% of the lease rent and the arbitral Tribunal had specifically rejected the contention of second respondent to adjust the arrears of lease from the refundable security deposit of Rs.60 crores lying with the first respondent. Thereafter, when the arbitration case was taken up for hearing during December 2017, an offer was made by the second respondent to settle the dispute with the first respondent amicably and the Arbitral Tribunal also felt that the long standing dispute between the first and second respondent could be mutually resolved among themselves. Accordingly the second respondent offered to pay a sum of Rs.360 crores, which is inclusive of Rs.60 crores already paid as refundable security deposit and the said sum of Rs.360 crores will be paid at the time of registration of the sale deed in their favour. Such an offer made by the second respondent was placed in the management committee meeting of the first respondent club held on 07.01.2018 and it was unanimously agreed to accept the offer made by the second respondent. Subsequently, another meeting was proposed to be held on 18.01.2018 to work out the modalities for accepting the proposal made by the second respondent to purchase the property. At this stage, the appellant, who is one of the Members of the first club, has filed the subject suit for the relief stated supra. The suit was filed by the appellant contending that the decision already taken by the first respondent in the meeting convened on 07.01.2018 and the proposed meeting to be convened on 18.01.2018 at 4.00 pm is bad in law and it is contrary to the Articles of Association of the first respondent club.

12. The main grievance of the appellant, as could be inferred from the affidavits filed in support of the Original Application, is that when the Memorandum of Understanding entered into between the first respondent and the second respondent clearly stipulate that the minimum sale price for the property in favour of the second respondent was Rs.325 crores, the decision taken by the first respondent club in the meeting dated 07.01.2018 to sell the property to the second respondent at Rs.300 crores, that too without the consultation of the committee members, is arbitrary and such an attempt would cause monetary loss to the first respondent club. It is the further grievance of the appellant that even though the National Company Law Board directed the first respondent to conduct the Annual General Meeting on 26.02.2018 or on 19.03.2018, the first respondent did not convene the meeting and without convening the Annual General Meeting, the decision taken to sell the property for a price lower than what was agreed earlier is uncalled for. Therefore, the appellant has filed the suit for the relief stated supra. Pending suit, the appellant has also filed O.A. Nos. 52 and 53 of 2018 for the relief stated above.

13. When the Original Applications were taken up for hearing on 18.01.2018, this Court granted an interim order to the effect that the first respondent club can proceed with the meeting on 18.01.2018 and discuss the Agenda, but till a counter is filed and the matter is heard, it would be only appropriate that the decision taken thereof is not given effect to.

14. On notice, the first respondent Club filed a counter affidavit opposing the relief sought for in the applications filed by the appellant. According to the first respondent, the appellant, who is one of the Committee Members of the first respondent club from 22.01.2011 has no locus standi to question the decision taken by the Committee of Management of the first respondent to sell the property in

question to the second respondent by filing the suit and the present Original Applications and on that ground alone, the appeals are liable to be dismissed.

15. It is stated by the first respondent in the counter affidavit that the property in question was hitherto utilised for accommodating the Secretary of the Club and during December 2006 it was unanimously decided to commercially exploit the property so as to augment the income of the club. Accordingly, a lease agreement was entered into with the second respondent on 20.12.2006 which was also registered on the file of Sub-Registrar, Adyar. The lease was for a period of four years from 01.01.2007 to 31.12.2010 with an option for renewal at the discretion of the second respondent for a further period not exceeding 62 years subject to payment of lease rentals. On execution of the lease deed, the second respondent was put in possession of the property in question. The lease deed also provides for monthly rentals payable by the second respondent during the subsistence of the lease period. Even as admitted by the appellant, the first respondent has converted the land use from institutional area into commercial zone after obtaining necessary approval from the Chennai Metropolitan Development Authority on 26.03.2008 and also obtained No Objection from Raj Bhavan officials as well as the Airports Authority of India for the proposed construction a commercial complex/mall, to be put up by the second respondent.

16. It is the further contention of the first respondent in the counter affidavit that from July 2010, the second respondent committed default in payment of lease rentals and therefore, the first respondent invoked the clauses contained in the lease deed and filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 before this Court. During the pendency of the arbitration proceedings, the parties agreed to compromise the issue and entered into a Memorandum of Understanding dated 15.02.2011 whereby the first respondent offered to sell the land in question to the second respondent for a minimum sale price of Rs.325 crores subject to obtaining valuation from two reputed international realtors. Such a decision taken by the first respondent was also placed in the Extraordinary General Meeting of the first respondent club held on 15.02.2011 and it was approved. While so, the second respondent confronted certain issues pertaining to development of the land and therefore, they sought time till 06.06.2011 for performance of their part of the obligations. In this context, two Supplementary Memorandum of Understanding dated 25.02.2013 and 23.10.2013 were entered into between the first and second respondent whereby time was extended to enable the second respondent to conclude the contract. Even thereafter, the second respondent did not come forward to perform their part of the contract, instead, the second respondent sought more time. The first respondent refused to extend the period for performing the contract and sought to terminate the lease deed. At this stage, the second respondent initiated arbitration proceedings before the Arbitral Tribunal consisting of three retired Judges of the Honourable Supreme Court praying to (i) declare that that the termination of the agreement by the first respondent is illegal (ii) to declare that the letters sent by the first respondent for surrendering the possession is invalid (iii) to declare that time is the essence of the contract (iv) to declare that the letters of the first respondent calling upon the second respondent to renegotiate the terms as illegal (v) to direct the first respondent to execute the sale deed and register the sale deed by re-fixing the sale consideration taking into account the adjustment of rents paid till 31.03.2015 or (vi) alternatively to refund the sum of Rs.300 crore paid as rent and another sum of Rs.250 crores as damages due to opportunity loss. The arbitration proceedings continued for about two years and

when the matter was posted for argument during December 2017, the second respondent, instead of prosecuting the arbitration proceedings on merits, made an offer to resolve the dispute amicably. Based on such offer made by the second respondent, the matter was deliberated by 6 committee members of the first respondent club on 23.12.2017. Subsequently, the matter was placed before the Committee of Management on 07.01.2018. Since the time was too short for circulating the agenda for the meeting on 07.01.2018, the agenda was sent by circulation on 05.01.2018. On 07.01.2018, 6 committee members, including the appellant, were present and all the committee members unanimously agreed to accept the offer made by the second respondent for selling the property for a sum of Rs.300 crores to the second respondent apart from the sum of Rs.60 crores already deposited by the second respondent towards refundable security deposit. Subsequently, another meeting was called on 18.01.2018 to discuss various routine issues, including the agenda for settlement of the dispute with the second respondent on the basis of the inputs received from the discussion in the meeting that took place on 07.01.2018. Even on 18.01.2018, the issue with respect to the sale of property to the second respondent was fully deliberated and it was unanimously agreed to accept the offer made by the second respondent. In the meeting held on 18.01.2018, the appellant was present but he did not raise his little finger as against the acceptance of the offer made by the second respondent. However, after conclusion of the meeting on 18.01.2018, it came to light that the appellant has filed the suit and thereafter, he had sent a dissent note by e-mail on 20.01.2018, a copy of which was also served in person on 22.01.2018. Thus, according to the first respondent Club, the filing of the present suit and the Original Applications by the appellant are an after thought and it clearly reveals the malafide intention on his part to stall the legitimate sale transaction with the second respondent, which was also accepted by many of the members of the first respondent club.

17. The contention of the appellant that out of the 12 elected committee members of the first respondent club, 8 of them had already retired by rotation and that the present committee consists of only 4 elected members is untenable. Having made such an averment, the appellant also admits that he had participated in all the meetings since August 2016 as a committee member but has not objected to the quorum for the meeting. Further, the appellant has filed O.S. No. 3690 of 2017 on the file of XV Assistant Judge, City Civil Court, Chennai challenging the validity of the committee meeting held on 12.07.2017 in which he has contended that he is a committee member of the first respondent club for the past ten years. Thus the conduct of the appellant would show that he is taking a contrary stand with respect to his membership in the first respondent club.

18. The first respondent vehemently contended in the counter affidavit that the acceptance of offer made by the second respondent is in the best interest of the first respondent club and there is no loss that may be caused to the first respondent. The procedures that were contemplated preceding the sale transaction were transparent and valid. In fact, the sale price was fixed on the basis of the valuation report submitted by two internationally reputed realtors. One of the realtors M/s. Cushman & Wakefield submitted a valuation report dated 27.11.2013 valuing the property at Rs.302.5 crores, while the other realtor M/s. CB Richand Ellis South Asia Private Limited submitted a valuation report on 30.11.2013 valuing the property between Rs.297.8 crore and Rs.313.2 crore. It is based on such valuation reports, the sale price for the property was fixed at Rs.325 crores. In any event, all the decisions taken by the first respondent club to sell the property to the second respondent was placed before the Committee of Management of the first respondent

at various stages and it was also unanimously approved by the first respondent club. In all the meetings, the appellant participated but he has not made any objection for passing the resolution. While so, the filing of the suit and the original applications are nothing but an attempt to stall the legitimate sale transaction resorted to by the first respondent club. In fact, during the pendency of the arbitration proceedings before the Arbitral Tribunal consisting of three Honourable retired Judges of the Supreme Court, by an order dated 04.02.2016, the second respondent was directed to pay 50% of all the arrears of lease rentals upto that date and continue to pay 50% of the lease rentals as claimed. Admittedly, the second respondent is complying with the said order dated 04.02.2016 till this date. Therefore, the first respondent prayed for dismissal of the Original Applications.

19. The second respondent filed a counter affidavit contending that they have entered into a registered lease deed with the first respondent on 20.12.2006 and on that date they have paid a sum of Rs.60 crores to the first respondent club towards refundable security deposit and such amount is retained by the first respondent till date. Further, as per the direction of the Arbitral Tribunal dated 04.02.2016, the second respondent is remitting 50% of the lease rentals to the first respondent without any default. The second respondent has acquired an accrued right and interest over the property in question. In any event, the value offered by the second respondent is much more than the prevailing market value and therefore, by reason of acceptance of the offer made by the second respondent, no prejudice will be caused to the first respondent club. When the first respondent club has unanimously agreed and accepted to sell the property in question to the second respondent, the present attempt of the appellant would only further delay the sale transaction and thereby it will cause monetary loss to the second respondent.

20. A common rejoinder was filed by the appellant before the learned single Judge contending inter alia that as a member of the Management Committee of the first respondent, he has locus standi to question the sale transaction especially when the price at which the property is likely to be sold to the second respondent would cause monetary loss to the first respondent. The appellant is aggrieved only by the offer made by the second respondent for purchasing the property at Rs.300 crores which is Rs.25 crores lesser than what was accepted by the second respondent in 2011. It is further contended that the arrears of lease rent was Rs.69 crores and if the refundable security deposit made by the second respondent at Rs.60 crores was adjusted, still, there was an arrears of Rs.9 crores payable by the second respondent and therefore, after adjusting the sum of Rs.9 crores, the property is sought to be sold at Rs.291 crores (Rs.300 crores Rs.9 crores). It is vehemently contended by the appellant that in the meeting convened on 18.01.2018, no decision was taken by the management committee of the first respondent club and the meeting was concluded within 15 minutes. He would further contend that there was no resolution passed on 18.01.2018 and therefore, the contention of the first respondent that a resolution was passed on 18.01.2018 is nothing but a falsehood besides that such a resolution is a fabricated document.

21. The learned single Judge, after elaborate discussion of the rival submissions and taking into consideration the above aspects, concluded that the balance of convenience is in favour of the first and second respondent because the second respondent has admittedly paid a sum of Rs.60 crores even during the year 2006 and they have got an accrued right and interest over the property. The sale transactions are also approved by the Management committee of the first respondent Club.

Therefore, the learned single Judge held that the intention of the plaintiff/appellant is only to frustrate any decision that may be legitimately taken by the first respondent club and the intention of the appellant is not bona fide. Accordingly, the learned single Judge, by order dated 07.02.2018, dismissed both the original Applications filed by the appellant, which is subjected to challenge in these appeals.

22. Assailing the Order dated 07.02.2018 passed by the learned single Judge, the learned counsel appearing for the appellant would vehemently contend that during the year 2006, the first respondent club had taken an unanimous decision to commercially exploit the property in question which was hitherto occupied by the Secretary of the Club. Accordingly, a registered lease deed dated 20.12.2006 was executed by the first respondent in favour of the second respondent granting lease initially for a period of four years from 01.01.2007 to 31.12.2010, which is renewable at the option of the second respondent for a further period of not less than 62 years. At the time of granting lease, the second respondent paid a sum of Rs.60 crores towards refundable security deposit. A sum of Rs.1.30 crores was fixed as lease rent for the first three years, which will be enhanced to Rs.2.60 crores for the fourth, fifth and sixth year and thereafter the lease rent payable by the second respondent was fixed at Rs.2.86 crores for the 7th year. For the subsequent period, it was agreed to enhance the lease rent periodically from 10th, 13th and 16th year and so on as may be mutually agreed between the parties. Since the second respondent committed default in payment of lease rent, the first respondent, by invoking the arbitration clause contained in the agreement dated 20.12.2006 filed a Original Petition before this Court under Section 9 of the Arbitration and Conciliation Act and during the pendency of arbitration proceedings first and second respondent entered into a compromise which resulted in execution of a Memorandum of Understanding dated 15.02.2011 whereby the first respondent offered to sell the land in question to the second respondent for sale for a minimum sale price of Rs.325 crores subject to obtaining valuation report from two reputed international realtors, which was also approved in the Extraordinary General Meeting. Thereafter, there were further disputes between the first and second respondent and ultimately the matter ended in compromise before the Arbitral Tribunal consisting of three Honourable retired Judges of the Supreme Court, whereby the first respondent unceremoniously agreed to sell the property to the second respondent for a sum of Rs.300 crores, than the one agreed by them. By reason of such an attempt on the part of the first respondent, the club had suffered a monetary loss of Rs.25 crores. When the second respondent committed default in the conditions incorporated in the lease deed and the consequent Memorandum of Understandings, the first respondent ought not to have accepted the offer made by the second respondent for sale of the property for a lesser amount, instead, the first respondent ought to have terminated the contract with the second respondent. Even otherwise, the amount of Rs.325 crores was offered by the second respondent for outright purchase of the property in the year 2011, however, after seven years, a compromise was effected whereby the property was offered for sale for Rs.300 crores. According to the learned counsel for the appellant, the value of the property that existed in the year 2011 would have sky rocketed and therefore, the first respondent would only be justified in selling the property for a higher rate than Rs.325 crores, on the contrary, the first respondent agreed to sell the property for a throw away price of Rs.300 crores. The appellant, as a member of the Committee of Management of the first respondent objected to such sale transaction whereby the property was offered for sale at a meagre rate and it is not in consonance with the prevailing market value of the property. When the

matter was placed before the Committee of Management on 07.01.2018, it was objected to by the appellant but his objection were not recorded in the minutes of the meeting. Subsequently, another meeting was called on 18.01.2018 for settlement of the dispute with the second respondent. On 18.01.2018, there was no deliberations made with respect to the sale transaction with the second respondent and the entire meeting came to an end within 15 minutes. Even on the date of the meeting on 18.01.2018, the appellant has filed the instant suit and obtained an order restraining the first respondent from giving effect to the resolution or decision, if any taken on 18.01.2018.

23. The learned counsel for the appellant would contend that the first respondent did not produce any record to show that there were deliberations taken place in the meeting held on 07.01.2018. However, when a minutes of the meeting dated 07.01.2018 was circulated, the appellant was shocked to notice that it was recorded in the minutes of the meeting as if there were deliberations and it was unanimously accepted to sell the property to the second respondent. Even at the time when the meeting was convened on 18.01.2018 at 4.00 pm the appellant had already filed the suit and circulated the typed set of papers to the counsel who appeared for the first respondent. The minutes of the meeting dated 18.01.2018 contains misrepresentation of the facts. When there were only 4 of the 12 elected members who continued to hold the office and when no election was conducted for the Committee of Management, there was no compelling urgency to pass a resolution in the meeting held on 18.01.2018 without convening a general body meeting. In any event, there is no urgency to pass a resolution on 18.01.2018 to sell the property to the second respondent. Above all, even in the minutes of the meeting dated 07.01.2018, it was recorded that the second respondent was in arrears of Rs.69 crores towards lease rent and after adjusting the refundable security deposit of Rs.60 crores paid by the second respondent on 15.02.2011, still, there remains a balance of Rs.9 crores payable by the second respondent. In essence, even though it was alleged that the second respondent offered to purchase the property for Rs.360 crores, including the sum of Rs.60 crores paid on 20.12.2006, if the arrears payable by the second respondent is taken into account namely Rs.69 crore, literally the property is being sold only for Rs.291 crores and this amount is even less than the minimum price offered by the second respondent on 15.02.2011 at Rs.325 crores. In such circumstance, the appellant, as a Member of the Committee of Management, has locus standi to question the decision taken by the first respondent club to sell the property in question for a paltry sum. Even though the first respondent has now produced a copy of the valuation report dated 15.03.2018 submitted by M/s. CBRE Asia Private Limited, it was not placed before the Committee of Management. Therefore, there are several irregularities committed by the first respondent in the matter of sale of the property in question to the second respondent. However, the learned single Judge brushed aside those short comings on the part of the second respondent and dismissed the Original Applications. The learned counsel for the appellant therefore prayed for setting aside the order passed by the learned single Judge and to allow the Original Side Appeals.

24. Per contra, the learned Senior counsel appearing for the first respondent in both these appeals, in unison, would contend that the decision taken by the first respondent is in the best interest of the club. The first respondent club had received a sum of Rs.60 crores paid by the second respondent towards refundable security deposit even in the year 2006 and this amount is retained by the first respondent till date. In the memorandum of understanding dated 15.02.2011, an option was given to the second respondent to purchase the land within a period of two years. However, due to certain

financial hiccup and for want of permit from the Government, the second respondent could not honour their commitment within the period prescribed and therefore, after deliberations two Supplementary Memorandum of Understanding dated 25.02.2013 and 23.10.2013 came to be executed whereby time was given to the second respondent to perform their part of the contract. Inspite of such time granted, the second respondent failed to perform their obligations and therefore, the first respondent had proposed to terminate the contract. At this stage, the second respondent filed O.A. Nos. 360 and 361 of 2015 before this Court under Section 9 of the Arbitration and Conciliation Act and obtained an interim order and thereafter the Arbital Tribunal consisting of three Retired Judges of the Honourable Supreme Court was constituted and the first respondent also contested the Petition filed by the second respondent. On 04.02.2016, the applications filed by the first respondent as well as the second respondent under Section 17 of the Arbitration and Conciliation Act, were considered by the Arbitral Tribunal and which passed an order directing the second respondent to pay 50% of the lease rent during the pendency of the dispute. The said order passed by the Arbitral Tribunal has been complied with by the second respondent without any default and the lease rent has been paid upto January 2018. Further, till 30.11.2017, the second respondent has remitted a sum of Rs.307.794 crores by way of rent to the first respondent without even exploring the property in question and the land remained vacant and no construction has been put up by the second respondent even though they are in possession of the property since 2006. In such circumstances, during December 2017, the second respondent made an offer to amicably settle the dispute. In fact, the Honourable Arbitral Tribunal also suggested that settling the dispute among the parties will be in the best interest of the first and second respondent. The offer made by the second respondent to purchase the property for Rs.300 crores is in tune with the valuation report submitted by two renowned realtors. As per the valuation report dated 27.11.2013 of M/s. Cushman & Wakefield, the value of the property was assessed at Rs.302.5 crores. The other report submitted by M/s. CB Richard Ellis South Asia Pvt Ltd., indicates that the market value of the property is in the range of Rs.297.8 crore and Rs.313.2 crore. Therefore also, the learned Senior counsels appearing for the first respondent, in unison, would contend that the offer made by the second respondent is in tune with the market value of the property and it is supported by the two reputed international realtors. Therefore, the learned Senior counsels for the first respondent would pray this Court to brush aside the contentions urged on behalf of the appellant that the property in question is sought to be sold to the second respondent for a paltry or throw away price and such contention is without any basis.

25. It is further submitted by the respective learned Senior counsel appearing for the first respondent that 8 of the 12 elected members of the first respondent are required to retire on rotation. As per the notification dated 05.06.2015 issued by the Ministry of Corporate Affairs and in the light of Section 8 of the Companies Act, 8 members or 25% of the total strength of the committee, whichever is less, is required as a quorum for the committee meeting. In the case of the first respondent, as per Article 26 of the Articles of Association of the first respondent Club, the quorum required is 12 elected members and 4 nominated members, taking the total strength of the members to attend the committee meeting to 16 members out of which the 25% works out to 4 members. As per Article 28 of the Articles of Association of the first respondent club, every year, elected members are required to retire by rotation and such rotation shall be those who have been longest in the office since their last rotation. Going by this requirement, 4 members viz., Mr. K.

Balamukunda Das, Mr. S. Ganapathy, Mr. A.L. Murugappan and Mr. A. Viswanathan (appellant) were required to retire in 2016. In this fashion, as on January 2018, the elected committee members who are entitled to continue in the committee are Mr. R. Ramakrishnan (Chairman), Dr. Md. Javeed Ghatala, Mr. P.T. Ramkumar and Mr. M. Rosevelt. Apart from these 4 Elected Members of the Committee, there are 4 Government nominees in the committee of Management, who are not required to retire every year as per Article 26, hence, the total strength of the present Committee as on January is 8 persons. In the meeting convened on 07.01.2018, 8 persons including the appellant attended during which the issue relating to acceptance of the settlement offered by the second respondent was discussed. In the meeting convened on 07.01.2018, it was unanimously agreed to accept the offer made by the second respondent on payment of Rs.300 crores. In any event, the meeting was attended by required number of members and it cannot be said that the meeting was not attended by the minimum number of members to satisfy the quorum.

26. The learned Senior counsel for the first respondent would contend that the first respondent considered the fact that the second respondent offered to pay the sum of Rs.300 crores by a single cheque apart from Rs.60 crores paid by them in the year 2006. Furthermore, the first respondent, taking note of the disputes that had emanated between the first and second respondent and the filing of the arbitration proceedings, decided to give a quietus to the same. Since the modalities of the settlement were required to be worked out and reduced into writing, another meeting was convened on 18.01.2018 and the agenda for the same was circulated well in advance. In the meeting dated 18.01.2018, the issue relating to the sale transaction with the second respondent was listed as item No.6. After receiving the agenda, the appellant, without any justification, has rushed to this Court with the frivolous suit. The learned single Judge, upon appreciating all the above factors, has rightly dismissed the Original Application and such a well considered order need not be interfered with by this Court.

27. The learned Senior counsel for the respective first respondent, in order to fortify their submissions, relied on the decisions rendered by the Honourable Supreme Court in the case of (Wander vs. Antox) reported in 1990 Supplementary SCC 727 and (Ramdev Food Products vs. Arvindhbhai Rambhari Patel) reported in (2006) 8 Supreme Court Cases 726 to contend that the learned single Judge has dismissed the Original Applications filed by the appellant in exercise of his discretionary powers and on appreciation of the factual disputes involved in this case. According to the learned Senior counsel for the first respondent, such discretion exercised by the learned single Judge need not be interfered with by this Court.

28. The learned Senior counsel appearing for the second respondent would contend that the second respondent is an agreement holder and intending purchaser for a valuable sale consideration. Even in the year 2006, the second respondent has paid a sum of Rs.60 crores as refundable security advance and in the year 2011, there were differences which emanated between the first and second respondent and they were resolved by entering into a compromise. In the year 2011, the second respondent offered to purchase the suit property for a sum of Rs.325 crores. Such an offer made by the second respondent was also accepted by the first respondent which could be evident from the Memorandum of Understanding dated 15.02.2011 and the two supplementary Memorandum of Understanding dated 25.02.2013 and 23.10.2013 entered into between the first and second

respondent. Above all, it is vehemently contended by the learned Senior counsel for the second respondent that the second respondent, apart from paying Rs.60 crores during the year 2006 has been paying the monthly lease rent since June 2006 which worked out to Rs.307.794 Crores till February 2018. Thus, by reason of sale of the property in favour of the second respondent, the second respondent could benefit immensely. In other words, the second respondent paid a sum of Rs.60 crores during the year 2006 towards refundable security deposit, which is retained by the first respondent till date. Further, the second respondent paid a total sum of Rs.307.794 crores till February 2018 towards lease rent month after month without utilising the property in question. Apart from this amount, the second respondent is also offering to purchase the property by paying a sum of Rs.300 crores. In fact, the guideline value of the property as on date is only Rs.154 crores, however, the second respondent, in order to purchase peace, has agreed to pay a sum of Rs.300 crores as sale consideration. Thus, viewed from any angle, the acceptance of the offer made by the second respondent is in the best interest of the first respondent club. The appellant, who has not raised any objection at the time when the offer made by the second respondent was taken up for discussion by the first respondent club in the meeting held on 07.01.2018, is estopped from filing the present suit. In any event, the present litigation engineered at the instance of the appellant would only prolong the sale transaction which would frustrate the first and second respondent to complete the contract. The learned Senior counsel for the second respondent therefore prayed for dismissal of the appeals.

29. We have heard the learned counsel on either side and perused the voluminous records placed for our consideration. As we have narrated the factual matrix in detail, we feel it unnecessary to repeat the facts of the case in detail. However, certain facts which are absolutely necessary for the purpose of disposal of these appeals alone are reiterated by us.

30. The property in question namely Race Hall Property, which was hitherto known as Nawabs Gardens and also known as 'Hunt Lodge' comprised in T.S. No. 3, Block No.7, Venkatapuram Village, Mambalam-Guindy Taluk was owned by the first respondent club. This property is one of the parcels of the properties owned by the first respondent club, having purchased it in the year 1926. Till September 2006, this property was utilised for accommodating the Secretary of the Club. During the month of October 2006, the first respondent club decided to commercially exploit the property and in this direction, the first respondent executed a lease deed dated 20.12.2006 in favour of the second respondent, which was registered as document No. 709 of 207 on the file of Sub-Registrar, Adyar. As per the lease deed, the period of lease is from 01.01.2007 to 31.12.2010 for four years and thereafter, at the option of the second respondent, the period of lease can be extended for a minimum period of 62 years subject to terms and conditions that may be agreeable by both sides. At the time of execution of the lease deed dated 20.12.2006, the second respondent paid a sum of Rs.60 crores as refundable security deposit to the first respondent. That apart, the second respondent has to pay a sum of Rs.1.30 crores per month towards lease rent for the first three years, Rs.2.60 crores for the 4th, 5th and 6th year. From the 7th year, the lease rent payable by the second respondent is Rs.2.86 crores and the lease rent will be proportionally increased thereafter. The object with which the lease was granted to the second respondent is to enable the second respondent to put up a commercial complex or mall thereon. For this purpose, at the instance of the first respondent club, the usage of the land was converted from institutional area into

one of commercial zone by obtaining an order to that effect from the Chennai Metropolitan Development Authority. The first respondent also executed Gift Deed in favour of the Chennai Metropolitan Development Authority gifting land measuring 2110 square meter out of 5.556 acres towards Open Space Reservation and another gift deed gifting land measuring 1475.51 square meter out of 5.556 acres in their favour towards Road widening.

31. It is an admitted fact that the second respondent could not honour the terms and conditions of the lease deed dated 20.12.2006 and committed default in payment of lease rent from July 2010. In this context, there were disputes emanated between the first and second respondent, with the result, the first respondent invoked the clauses contained in the lease deed dated 20.12.2006 and filed a Petition before this Court under Section 9 of The Arbitration and Conciliation Act, 1996. During the pendency of arbitration proceedings, the first respondent as well as second respondent agreed to amicably settle the dispute, which resulted in execution of a Memorandum of Understanding dated 15.02.2011 whereby the first respondent agreed to sell the property in question to the second respondent for a outright sale consideration of Rs.325 crores. As per the memorandum of understanding dated 15.02.2011, the second respondent has to pay the entire sale consideration and get the sale deed executed within 24 months from that date. However, it appears that due to financial hiccup, the second respondent could not honour their commitment to pay the sale consideration before the date indicated in the Memorandum of Understanding dated 15.02.2011. The second respondent therefore sought time for performance their obligations contained under the Memorandum of Understanding dated 15.02.2011 and accordingly, two supplementary Memorandum of Understandings dated 25.02.2013 and 23.10.2013 were executed whereby the first respondent extended the time for performance of the conditions incorporated in the Memorandum of Understanding dated 15.02.2011. Even thereafter, it appears that the second respondent could not fulfil their obligations and therefore, the first respondent called upon the second respondent as to why the Memorandum of Understanding dated 15.02.2011 and also the supplementary Memorandum of Understanding dated 25.02.2013 and 23.10.2013 be not cancelled. Aggrieved by the same, the second respondent once again invoked the clause for arbitration contained in the Memorandum of Understanding dated 15.02.2011 and pursuant to which the Arbitral Tribunal consisting of three retired Honourable Judges of the Supreme Court was constituted. The first respondent also contested the arbitral proceedings. During December 2017, when the arbitration proceedings were taken up for arguments, a compromise entered into between the first and second respondent to settle the dispute amicably. The terms of compromise offered by the second respondent were placed in the meeting convened by the first respondent on 07.01.2018 in which the appellant participated. The committee of Management of the first respondent unanimously accepted the offer made by the second respondent so as to give a quietus to the long standing dispute between the first and second respondent. To work out the modalities of the settlement, yet another meeting was convened on 18.01.2018 by the first respondent in which also the appellant participated. On 18.01.2018, the appellant has filed the suit before this Court and obtained an interim order restraining the first respondent from giving effect to the decision taken in the meeting convened on 07.01.2018.

32. With this factual background, it is necessary to appreciate the rival contentions urged before us. The sum and substance of the grievance of the appellant appears to be that by reason of acceptance

of the offer made by the second respondent, the first respondent is put to monetary loss and as a member of the Committee of Management of the first respondent club, he is aggrieved by the decision taken by the first respondent management in the meeting convened on 07.01.2018 and on 18.01.2018 whereby the first respondent accepted the offer made by the second respondent. It is the contention of the appellant that even during the year 2011, the second respondent offered to purchase the property for Rs.325 crores, while so, after six years, during December 2017, an offer was made to purchase the very same property for Rs.300 crores which was accepted by the first respondent. The further grievance of the appellant appears to be that one of the members of the first respondent Management Committee has approached the National Company Law Board and filed a Petition No. 31 of 2017 under Section 97 of the Companies Act, 2013 against the first respondent complaining that the first respondent did not convene the Annual General Meeting. The National Company Law Board, by an order dated 13.12.2017 directed the first respondent club to convene the Annual General Meeting on 26.02.2018 or on 19.03.2018 by appointing Mr. R. Ramakrishnan as Chairman of the Annual General Meeting and Honourable Mr. Justice K.P. Siva Subramaniam, a retired Judge of this Court as Independent Observer. Inspite of such direction, the first respondent did not convene the company law board, rather, taken up the issue relating to sale of the property in favour of the second respondent hastily. It is the further complaint of the appellant that the meeting convened on 07.01.2018 and 18.01.2018 was not attended by requisite members to constitute a valid quorum and therefore also, the decision taken in the meeting held on 07.01.2018 and 18.01.2018 are not valid.

33. At the outset, we find that the appellant attended the meeting convened on 07.01.2018 and 18.01.2018, but did not raise any objection. Even though it is contended that he has raised an objection, there is no material placed on record to substantiate the same. The appellant asserts that he retired from the membership of the first respondent club by rotation along with other members. It is further contended that though the tenure of all the members of Committee of Management of the first respondent club expired during September 2017, except four members, whose term is also likely to expire by September 2018, he attended the meeting as an invitee. This stand of the appellant cannot be countenanced as it is inconsistent with the pleading made. We could see from the records that the appellant attended the Indian Turf Invitation Cup Races at Kolkatta on 03.03.2018 and 04.03.2018, as a delegate and as a committee member of the first respondent club, which could be evident from the Air Tickets acknowedged by him on 03.02.2018. Further, we would also like to observe that the appellant can assert that he has locus standi to file the suit only if he had raised any objection in the meeting convened on 07.01.2018 or 20.01.2018 by substantiating it with material records. Even without raising any objection in the meeting convened on 07.01.2018 and 18.01.2018, the appellant is estopped from filing the present suit. We also would like to observe that none of the members of the first respondent club, except the appellant, have raised any objection for sale of the property in favour of the second respondent. In any event, in the absence of any material evidence to show that the appellant raised an objection in the meeting convened on 07.01.2018 and 18.01.2018, the appellant cannot straight away file the suit before this Court. But it is the contention of the counsel for the appellant that when the appellant comes to know that the so-called objections raised by him were not recorded in the minutes of the meeting held on 07.01.2018 and 18.01.2018, he had sent a letter of objection dated 20.01.2018. But it is pertinent to mention that the letter of objection dated 20.01.2018 has emanated after the institution of the suit on 18.01.2018 and

therefore, no significance could be attached to the said letter of objection.

34. Further, the meeting convened by the first respondent on 07.01.2018 and 18.01.2018 was attended by members to satisfy the requirement of minimum quorum as contemplated under the Section 8 of the Companies Act. It is seen from the records that 8 of the 12 elected members of the first respondent are required to retire on rotation. As per the notification dated 05.06.2015 issued by the Ministry of Corporate Affairs 8 members or 25% of the total strength of the committee, whichever is less, is required to form a valid quorum for convening a committee meeting. Further, as per Article 26 of the Articles of Association of the first respondent Club, the quorum required is 12 elected members and 4 nominated members, taking the total strength of the members to attend the committee meeting to 16 members out of which the 25% works out to 4 members. As per Article 28 of the Articles of Association of the first respondent club, every year, elected members are required to retire by rotation and such rotation shall be those who have been longest in the office since their last rotation. As far as first respondent club is concerned, 4 members viz., Mr. K. Balamukunda Das, Mr. S. Ganapathy, Mr. A.L. Murugappan and Mr. A. Viswanathan (appellant) were required to retire in 2016. In this fashion, as on January 2018, the elected committee members who are entitled to continue in the committee are Mr. R. Ramakrishnan (Chairman), Dr. Md. Javeed Ghatala, Mr. P.T. Ramkumar and Mr. M. Rosevelt. Apart from these 4 Elected Members of the Committee, there are 4 Government nominees in the committee of Management, who are not required to retire every year as per Article 26, hence, the total strength of the present Committee as on January 2018 is 8 persons. In the meeting convened on 07.01.2018, 8 persons including the appellant attended during which the issue relating to acceptance of the settlement offered by the second respondent was discussed. Thus, we are of the view that the meeting convened on 07.01.2018 and 18.01.2018 was attended by required number of members and it cannot be said that the meeting was not attended by the minimum number of members to constitute the quorum.

35. On perusal of the pleadings of the parties, we could infer that even in the year 2006, the first respondent executed a registered lease deed dated 20.12.2006 in favour of the second respondent and on execution of the lease deed, the second respondent paid a sum of Rs.60 crores and this amount is admittedly retained by the first respondent club till this date. This amount of Rs.60 crores was remitted admittedly towards refundable security deposit, meaning thereby, in the event of termination of the lease deed, the first respondent club has to repay the sum of Rs.60 crores to the second respondent. The period of lease came to an end in the year 2010 and even thereafter, the first respondent continued to retain the sum of Rs.60 crores, which amount would have carried a nominal interest to the first respondent. Be that as it may, the present offer made by the second respondent is to purchase the property for Rs.360 crores. This offer of Rs.360 crores is inclusive of the sum of Rs.60 crores already paid. It is also to be borne in mind that the second respondent is periodically remitting the lease rent for the property in question since June 2006 and which amount, if calculated, works out to Rs.307.794 crores. In this context, we have noticed from Para No.32 of the order passed by the learned single Judge that the second respondent has been remitting the lease rent without even utilising the property which was leased out to him from 2006 and that the property is still vacant. As a matter of fact, as rightly pointed out by the learned single Judge, for a vacant land, in order to ensure that the right of the second respondent as an agreement holder is not deprived, the second respondent so far paid around Rs.307.794 crores as lease rent till

this date without exploiting the land and this amount was not adjusted or in any way sought to be refunded to the second respondent. Apart from this amount, the second respondent offered to pay a sum of Rs.300 crores. This price of Rs.300 crores offered by the second respondent in consonance with the two valuation reports, one dated 27.11.2013 submitted by M/s. Cushman & Wakefield, assessing the property at Rs.302.5 crores and the other report submitted by M/s. CB Richard Ellis South Asia Pvt Ltd., indicating that the market value of the property is in the range of Rs.297.8 crore and Rs.313.2 crore.

36. It is the contention of the counsel for the appellant that there is an inordinate delay of 7 years in concluding the sale transaction from the date of execution of the Memorandum of Understanding dated 15.02.2011 between the first respondent and the second respondent. However, during January 2018, when the second respondent made an offer to purchase the property for Rs.300 Crores, it was accepted by the Management Committee of the first respondent club without placing it in the Extraordinary General Meeting. In our considered opinion, already, the Extraordinary General Body of the first respondent club approved the sale transaction for a consideration of Rs.325 crores in the year 2011. The present offer made by the second respondent is for Rs.300 crores apart from the sum of Rs.60 crores already deposited by them, taking the sale price to Rs.360 crores. If the first respondent club decides to accept the offer for a lesser price than what was agreed, then the question of placing it before the Extraordinary General Body meeting will arise. However, in the present case, the offer made by the second respondent and which was accepted by the first respondent is over and above the sale price agreed earlier. Even otherwise, as per the valuation report dated 15.03.2018 obtained by the first respondent from M/s. CB Richard Ellis, the present market value of the property in question was shown as Rs.293.5 crores. Therefore also, we are of the view that there may not be any occasion for the first respondent to sustain any monetary loss by reason of the acceptance of the offer made by the second respondent. In other words, by accepting the offer made by the second respondent, no prejudice will be caused to the first respondent club, rather, it will only benefit the first respondent club besides giving a quietus to the long standing deferred transaction between the first and second respondent.

37. We also take notice of the fact that during 2010, when the second respondent failed to fulfil the terms of the lease deed, the first respondent approached this Court with a Petition under Section 9 of the Arbitration and Conciliation Act and during the pendency of such proceedings, a compromise arrived at between the first and second respondent. As a result of such compromise, the first respondent agreed to sell the property in question, which was hitherto leased out to the second respondent, for outright sale. In this context, a Memorandum of Understanding dated 15.02.2011 was entered into between the first and second respondent, the terms of which were admittedly not adhered to by the second respondent reportedly due to financial constraints confronted by them. Therefore, at the request of the second respondent, the first respondent extended the time for performance of the contractual obligations by executing two consecutive Supplementary Memorandum of Understanding, one dated 25.02.2013 and the other dated 23.10.2013. Even the ultimatum fixed in these supplementary memorandum of understanding could not be adhered to by the second respondent and therefore, the first respondent intended to terminate the contract. As against such an action of the first respondent, the second respondent initiated arbitration proceedings in the year 2015, which was contested by the first respondent. While so, during

December 2017, once again, the first and second respondent, in order to purchase peace, have decided to settle the long standing dispute among themselves and this is how the second respondent offered to purchase the property by one time payment of Rs.300 crores, which was also agreed by the first respondent club. The offer so made by the second respondent was also placed by the first respondent in the meeting held on 07.01.2018 and 18.01.2018 and the members present in the meeting unanimously agreed to accept the offer. At this stage, even before the dust, which had emanated in the form of disputes between the first and second respondent could settle, the appellant has filed the present suit and the Original Applications and is attempting to unsettle the settled disputes between the parties. As mentioned above, the appellant could have locus standi to question any of the decision of the first respondent if he had raised any objection at the first instance in the meeting convened by the first respondent on 07.01.2018 and 18.01.2018 when the first respondent club unanimously resolved to accept the offer made by the second respondent to purchase the property for a sum of Rs.300 crores. Even though the appellant admitted that he had participated in the meetings, it is alleged that he did raise an objection for accepting the offer made by the second respondent, but it was not recorded. When the appellant alleges that he has raised an objection in the meeting, a duty is cast upon him to substantiate it by material evidence. This is more so that it is disputed by the first respondent that the appellant did not raise any such objection and therefore, the Management Committee of the first respondent unanimously agreed to accept the proposal made by the second respondent. If it is the contention of the appellant that on 18.01.2018 there was no deliberations made, the onus is on him to prove the contrary. In the present case, the appellant has only produced a copy of the letter dated 20.01.2018, two days after the meeting was over, to show that he had resisted the resolution that was passed on 18.01.2018. Therefore, we are of the view that the present action of the appellant in instituting the suit and the original applications will in no way benefit the interest of the first respondent club, rather, it would only frustrate the action of the first respondent club to settle the prolonged sale transaction they have entered with the second respondent. We are therefore of the view that the appellant remained as a stumbling block and attempting to place obstacles to the first respondent club from entering into the sale transaction legitimately with the second respondent, for no cause or reason. Therefore, we are inclined to dismiss these appeals by confirming the order passed by the learned single Judge.

38. In the result, both the Original Side Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.P.S.J.,) (P.D.A.J.,)

05-04-2

rsh

Index : Yes / No

R. SUBBIAH, J
and
P.D. AUDIKESAVALU, J

rsh

Pre-delivery Common Judgment in
OSA Nos. 64 and 65 of 2018

05-04-2018