
(2013) 01 MAD CK 0145
In the Madras High Court
Case No : O.S.A. No. 399 of 2012

All India SC/ST Railway Employees Association	APPELLANT
Vs	
S. Kumar	RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 6 Rule 16, Order 7 Rule 11, Order 7 Rule 7

Citation : (2013) 01 MAD CK 0145

Hon'ble Judges : R. Banumathi, J; K.K. Sasidharan, J

Bench : Division Bench

Advocate : N.G.R. Prasad for Mr. S. Vijayakumar, for the Appellant; Chitra Sampath for M/s. T.S. Baskaran, for the Respondent

Final Decision : Allowed

Judgement

1. Being aggrieved by the dismissal of the application in A. No. 2749 of 2012 in C.S. No. 272 of 2012 and declining to reject the plaint filed by

the respondent/plaintiff, the Appellants/defendants have preferred this appeal. The case of the respondent/plaintiff is that he is an employee of

Railways and he joined the service in 2004. Presently, he is working as Senior Ticket Examiner at Station Manager Office, Madras Central

Station, Chennai. The employees of Railways are governed by Railway Service (Conduct) Rules 1996, which stipulate the activities which are

prohibited and which are permitted with prior approval. One such activity prohibited in the Service Rules is participating in politics in any form

under Rule 5 of Railway Service (Conduct) Rules, 1966.

2. The 2nd Appellant viz., A. Gnanasekaran, who is presently working as Senior Section Engineer, CWM/Perambur, also claiming as Zonal

General Secretary of 1st Appellant Association, was a member of the State Political party called "Pattali Makkal Katchi". During November

2011, the 2nd Appellant had given an interview to the Tamil daily Malai Malar and the same was published in the newspaper on 23.11.2011 in

which it was stated that the 2nd Appellant came out of the political party ""Pattali Makkal Katchi"" for certain reasons and that he is going to start a

new political party with the members of the Railway employees on 1.12.2011. Subsequently, the 2nd Appellant has started a new political party

called "Desia Ambedkar Makkal Kazhagam"" (DAMK) on 1.12.2011 for which wide publication was made in the newspapers. The 2nd

Appellant's activities involving himself in political activity is against the railway service and conduct rules. According to the respondent, though the

2nd Appellant's activities have been brought to the knowledge of the railway administration on many occasions, they failed to initiate any action.

Hence, the respondent/plaintiff filed the suit against the Appellants/defendants for:-(i) a declaration that the 2nd Appellant has become disqualified

to be a member of the 1st Appellant Association by his involvement in politics and starting a political party called ""Desia Ambedkar Makkal

Kazhagam"" on his own; and (ii) for consequential injunction restraining the 2nd Appellant from associating with the 1st Appellant Association in any

manner. Pending suit, the respondent filed O.A. No. 325 of 2012 to grant interim injunction restraining the 2nd Appellant from discharging any

function or from carrying on any activity and notice was ordered.

3. Before the Single Judge, on notice, the Appellants/defendants filed an application for rejection of plaint in A. No. 2749 of 2012 under Order

VII Rule 11 C.P.C. According to the Appellants, the plaint filed by the respondent is liable to be rejected on the ground of jurisdiction since

Madras High Court has no jurisdiction to entertain the suit in the matter pertaining to the affairs of the 1st Appellant Association, in view of the

specific clause for jurisdiction provided in the Byelaws of the 1st Appellant association that the member has to approach the Civil Court, Delhi for

appropriate relief. Though the respondent claims to be the member of the Association of the 1st Appellant, the present suit has been filed by him in

a representative capacity under Order I Rule 8 of C.P.C. by making frivolous and vexatious allegations against the 2nd Appellant. The plaint is also

liable to be rejected on the ground of non-joinder of necessary parties since the respondent has not chosen to implead the Railways. The

respondent has no locus standi to question the affairs of the 1st Appellant Association as he is not even a member of any of the division and that he

has not produced any supporting document to show that he is a member of the 1st Appellant Association and hence, he is not entitled to file the

present suit as against the Association.

4. According to the Appellants, the Byelaws of the 1st Appellant Association contains a provision for settlement of disputes among the members of

the Association. Though it is not admitted that the respondent is a member of 1st Appellant Association, the remedy open to the member is to

express his grievances to the Apex body known as ""Central Executive Committee"" (CEC). Clauses 30 and 31 envisage that any dispute should be

resolved with the help of any good office. In any event, the decision of CEC, the 1st respondent shall be final and binding on the units and the

members.

5. Resisting the application, respondent/plaintiff filed counter stating that the suit is one for a declaration that the 2nd Appellant ceased to be the

member of the 1st Appellant Association and the relief sought for is in relation to the status of the 2nd Appellant vis-à-vis the 1st Appellant

Association. Hence, the bar of jurisdiction mentioned in the Byelaw in regard to the filing of the suit against the 1st Appellant Association does not

apply to the facts of the case. The 2nd Appellant has not made out a case for rejection of plaint under Order VII Rule 11 C.P.C. and the suit is

perfectly maintainable both on law as well as on facts.

6. Upon consideration of rival contentions, the learned single Judge held that the suit C.S. No. 272 of 2012 is filed to enforce the Byelaws only as

against the 2nd Appellant since he had started a political party in violating the terms of the Byelaws and therefore Original Side of Madras High

Court has jurisdiction to try the suit. Learned single Judge further held that only if the relief is against the General Secretary of 1st Appellant

Association, the question of approaching CEC, New Delhi would arise and non-approach to CEC will not prevent the respondent/plaintiff to file

the suit.

7. Being aggrieved by the dismissal of application, the Appellants have filed this

appeal. On behalf of the Appellants, the learned Senior Counsel

Mr. N.G.R. Prasad inter alia made the following submissions:

There is no cause of action to proceed against the Appellants seeking reliefs as sought for in the plaint; Madras High Court has no jurisdiction to

entertain the suit in view of the specific clause regarding jurisdiction provided in the Byelaws of 1st Appellant Association and the learned single

Judge overlooked the vital aspects that the Byelaws of the Association provides clauses for jurisdiction.

The allegations referred to in the plaint are clear abuse of process of law and the plaint is liable to be struck down as contemplated under Order VI

Rule 16 C.P.C.

The learned counsel further submitted that the learned single Judge ought to have seen that in similar circumstances in W.A. No. 915 of 2006 the

Hon"ble First Bench of this Court has categorically held that the Courts in Delhi alone shall have the jurisdiction to decide the disputes among the

members of the 1st Appellant Association.

8. The learned senior counsel for respondent/plaintiff Mrs. Chitra Sampath contended that the suit is one for declaration; that the 2nd Appellant

ceased to be member of 1st Appellant Association in view of violation of mandatory provisions of the Byelaws of 1st Appellant Association and

since the relief sought for is in relation to the status of the 2nd Appellant vis-à-vis the 1st Appellant Association, the suit is well maintainable. The

learned Senior Counsel further submitted that the bar of jurisdiction mentioned in the Byelaws of 1st Appellant Association does not apply to the

facts of the present case.

9. Before we go into the factual aspects, it is necessary to refer to the well settled principles of Order 7, Rule 11 C.P.C. In Saleem Bhai and

Others Vs. State of Maharashtra and Others, the Supreme Court held that with reference to Order 7, Rule 11 of the Code only the plaint

averments are the relevant facts which need to be looked into for deciding an application. The trial Court can exercise the power at any stage of

the suit before registering the plaint or after issuing summons to the Defendant or at any time before the conclusion of the trial. For the purposes of

deciding an application under clauses (a) and (d) of Order 7, Rule 11 of C.P.C., the averments in the plaint are germane and the pleas taken by the

Defendant in the written statement would be wholly irrelevant at that stage.

10. The well settled position is that the averments in the plaint as a whole have to be considered to find out whether clause (d) of Rule 11 of Order

7 C.P.C. was applicable. The question whether plaint discloses any cause of action and whether it is barred by any law is to be decided by looking

at the averments contained in the plaint itself and not the defence set up in the written statement. While considering the application, the strength or

weakness of the case of the plaintiff is not to be examined. It is fairly well settled that the Court has to find out from the allegations made in the

plaint itself and not beyond it as to whether any vexatious or frivolous litigation has been initiated by the plaintiff. The Court cannot take into

account materials beyond the plaint to declare that the case of the plaintiff is frivolous or is barred by any law.

11. The scope of Order VII Rule 7 C.P.C. has been elaborately considered in *Sopan Sukhdeo Sable and Others Vs. Assistant Charity*

Commissioner and Others, wherein the Supreme Court held as under:

10. In *Saleem Bhai and Others Vs. State of Maharashtra and Others*, it was held with reference to Order 7 Rule 11 of the Code that the relevant

facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at

any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the

purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane: the pleas

taken by the defendant in the written statement would be wholly irrelevant at that stage.

11. In *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, it was held that the basic question to be decided while dealing with an

application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has

been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of

not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned

therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the

party searchingly under Order 10 of the Code. (See T. Arivandandam Vs. T.V. Satyapal and Another,

13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal

Sathi Vs. Nachhattar Singh, only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

14. In M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property, it was observed that the averments in the plaint as a whole have to be seen to find

out whether clause (d) of Rule 11 of Order 7 was applicable.

15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a

course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain

its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and

not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of

its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as

a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

12. Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, has been referred to in the subsequent judgment- Popat

and Kotecha Property Vs. State Bank of India Staff Association, As held by the Supreme Court in Popat and Kotecha Property Vs. State Bank

of India Staff Association, , the real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible suits. Therefore, Order 10 of the

Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view

that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11

of the Code can be exercised.

13. In the light of the above principles, it is to be considered whether the single Judge was right in dismissing the application filed under Order VII

Rule 11 C.P.C. holding that the cause of action has arisen in Chennai and that Original Side of Madras High Court has jurisdiction to entertain the suit.

14. Case of respondent/plaintiff is that the 1st Appellant All India SC/ST Railway Employees Association was formed with various objects so as

to promote cooperation and unity among its members. Clause 3(e) clearly excludes the political activity from its objects as its members, who are

the railway servants, are prohibited as per the Conduct Rules of the Railways from taking part in Politics during their employment. The 2nd

Appellant started a new political party called Desia Ambedkar Makkal Kazhagam on 1.12.2011 for which he had made wide publication in news

papers and that forming of a new political party is in clear violation of Clause 3(e) of the Objects of 1st Appellant SC/ST Railway Employees

Association.

15. Further case of respondent/plaintiff is that the 2nd appellant is continuing to act against the objects of the Association by starting a political

party and as per Clause 10 of Byelaw of Association, the 2nd Appellant is liable to be suspended/removed. Paragraph No. 10 of the plaint refers

to Byelaw No. 10 of the 1st Appellant Association. On those averments, in the suit, respondent/plaintiff sought for reliefs:

(a) for declaration that the second defendant has become disqualified to be a member of the first defendant Association by his involvement in

politics and starting a political party called ""Desia Ambedkar Makkal Kazhagam, on his own;

and

(b) for a consequential permanent injunction restraining the second defendant from associating with the first defendant association in any manner

whatsoever.

16. Even though the plaintiff sought for a declaration that the 2nd appellant has become disqualified to be a member of 1st Appellant Association

by his involvement in Politics, by starting a new political party, relief is indirectly sought for only against the 1st Appellant Association. Even as per

the plaint averments, in Paragraph No. 13 of the plaint, the issues involved in the

suit pertains to the enforcement of the Byelaws of the 1st Appellant

Association. The prayer in the plaint is couched in such a manner to appear as if no relief has been sought for against the 1st Appellant Association

and that the 1st Appellant Association is only a formal party.

17. Even though respondent/plaintiff seeks for a declaration that the 2nd appellant has become disqualified to be a member of the 1st Appellant

Association, the said prayer is inextricably directed against the 1st Appellant Association. Since the 1st Appellant Association alone has to enforce

the Byelaws, the Byelaws could be enforced only as against the 1st Appellant Association.

18. Clause III of the Byelaws of the 1st Appellant Association provides for jurisdiction that the suit on behalf of or against the Association shall be

filed only at the Courts of Delhi. Clause III reads as under:

SUITS.

All suits on behalf of or against the association shall be brought in the name of the General Secretary, and for that purpose, he shall be authorized

to sign and verify pleadings and engage pleaders advocates etc. Since the Head Office of this association is situated at Delhi and this Association is

registered with the Registrar of Societies at Delhi hence all suits against or in favour of CEC can only be filed at Courts of Delhi area.

19. Clause III in Part II of the Byelaws of the Association clearly stipulates that all suits on behalf of or against the Association shall be brought in

the name of General Secretary. Since the Head Office of the Association is situated at Delhi and the Association is registered at the Registrar of

Societies at Delhi, in view of Clause III of the Byelaws and the specific prohibition contained in the Byelaws of 1st Appellant Association, the

Original Side of Madras High Court has no jurisdiction to try the suit.

20. In our considered view, the learned single Judge overlooked the vital fact that the Byelaws of the Association provides for jurisdiction to

entertain the suit only at Delhi. In a similar circumstance, in W.A. No. 915 of 2006, the Honourable First Bench of this Court has categorically held

that the Courts in Delhi alone shall have the jurisdiction to decide the disputes among the members of the Association. The relevant portion of the

Order dated 20.07.2006 in W.A. No. 915 of 2006 reads as under:

... it is only the Civil Court which has jurisdiction to adjudicate the dispute. Clause (iii) in Part 11 of the Bye-laws of the Association clearly

stipulates that all suits on behalf of or against the Association shall be brought in the name of the General Secretary and since the Head Office of

the Association is situated at Delhi and the Association is registered with the Registrar of Societies at Delhi, all suits against or in favour of the

Association can only be filed at Courts of Delhi area. Therefore the remedy of the petitioner is to approach the Civil Court at Delhi for appropriate

reliefs...

21. The respondent, having sought for a declaratory relief to disqualify the 2nd Appellant by his involvement in the 1st Appellant Association, ought

to have filed the suit before the Courts at Delhi, which alone has got exclusive jurisdiction in terms of the Byelaws of the Appellant Association. As

pointed out earlier, the object of the 1st Appellant Association is to promote co-operation and unity among its members to work for the education,

social, religious and economic well-being of Scheduled Caste and Scheduled Tribe Railway Employees and their dependants. The 1st Appellant

Association, having its registered Office at Delhi has to promote the objects of the Association. Having regard to the benevolent objects of the 1st

Appellant Association, the energy of the Association should be harnessed to accomplish the objects of the Association. If suits of this nature are

filed in various Courts in India, considerable time, energy and money would be wasted fighting out the litigations throughout the country. To avoid

such litigations, the Byelaws-Clause III in Part I stipulates that all suits by or on behalf of or against Association shall be brought in the name of

General Secretary and at the Courts at New Delhi. Merely because the 2nd Appellant is based at Chennai, the Courts at Chennai cannot assume

the jurisdiction to entertain the suit. Therefore, the impugned order dated 23.08.2012 made in A. No. 2749 of 2012 in C.S. No. 272 of 2012

cannot be sustained. In the result, the Order dated 23.08.2012 made in A. No. 2749 of 2012 in C.S. No. 272 of 2012 is set aside and this appeal

is allowed. C.S. No. 272 of 2012 stands rejected. The respondent/plaintiff is at liberty to pursue his remedy by approaching the concerned Court

at Delhi. We make it clear that we have not expressed any opinion on the merits of the matter. However, there is no order as to costs.

Consequently, the connected miscellaneous petition is closed.