
(2010) 06 MAD CK 0301

In the Madras High Court

Case No : Original Suit Appeal No's. 232 of 2009 and 23 of 2010

K. Veeramani

APPELLANT

Vs

T.S. Mani and Others

RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:

Citation : (2010) 44 PTC 422

Hon'ble Judges : N. Kirubakaran, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : A. Thiagarajan for V.R. Shanmuganathan and K.V. Venkatapathy for S. Shankaran in Original Suit Appeal No. 23 of 2010, for the Appellant; S. Doraisamy for the Respondent No. 1, R. Thiagarajan for Gladys Daniel for the Respondent No. 2, D. Veerasekaran for the Respondent No. 1 in Original Suit Appeal No. 23 of 2010, V. Elangovan the Respondent No. 2 in Original Suit Appeal No. 23 of 2010 and D. Rajkumar the Respondent No. 3 in Original Suit Appeal No. 23 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—O.S.A. No. 232 of 2009 has been preferred challenging the order dated 27.07.2009 passed in Original Application No. 940 of 2008 in C.S. No. 814 of 2008. O.S.A. No. 23 of 2010 has been preferred against the order dated 29.01.2009 passed in Application No. 4331 of 2008 in C.S. No. 814 of 2008. By order dated 29.01.2009 passed in A. No. 4331 of 2008, the learned Single Judge dismissed the application of the Appellant in O.S.A. No. 23 of 2010 for getting itself impleaded in the suit for infringement of copy rights laid by the Appellant in O.S.A. No. 232 of 2009. By order dated 27.07.2009, in the application of the Appellant in O.S.A. No. 232 of 2009 seeking an order of ad-interim injunction restraining the Respondents in the said suit from in any manner infringing the copyrights of the Appellant relating to Kudiয়ারasu and other scripts, books, publications pending suit, the learned Single Judge dismissed the application. As the issues involved in both these appeals are interconnected, both the appeals are disposed of by this common judgment.

2. According to the Appellant in O.S.A. No. 232 of 2009, (hereinafter referred to as "the Appellant"), it is a Public Charitable Society (Trust) registered under the Societies Registration Act, 1860, that Thiru. Erode Venkatanaikar Ramasamy, popularly known as Thanthai Periyar, was the founder and member of the Appellant-trust, which was registered on 23.9.1952, that he was the Life President of the Appellant trust, that Thanthai Periyar endowed his literary works and as its original owner along with other properties endowed them to the Appellant trust, that he was also carrying on the paper publication, that by operation of law, the Appellant trust became the copyright owner of all the literary works of Thanthai Periyar. It is claimed by the Appellant trust that as per the Memorandum and Articles of Association of the Appellant trust and also its Rules and Regulations the Appellant trust became an exclusive and absolute owner of all the literary works of late Thanthai Periyar. It is claimed that the speeches, writings and other literary works of Thanthai Periyar were periodically published in the Weekly called Kudiyarasu owned by Thanthai Periyar from the year 1925. It is further claimed that the literary works of late Thanthai Periyar from 1925 was arranged chronologically and subject wise by a team of persons nominated by the Appellant trust on 02.05.1983 headed by one Thiru. G. Imayavaramban which team carried the work of compiling the literary works of Thanthai Periyar which was later on transferred into compact Disc as well as in book form, to which the Appellant-trust became an exclusive owner and consequently, possessed copyrights from the original owner late Thanthai Periyar. It is stated that the Respondents in OSA. No. 232 of 2009, (hereinafter referred to as "the Respondents"), by collecting the compilation made by the Appellant trust, intended to publish the same on 17.9.2008 and since the said attempt of the Respondents would infringe the exclusive copyrights of the Appellant trust, it had come forward with the present suit for permanent injunction to restrain them and any one acting on their behalf from in any manner infringing the copyrights of the Appellant trust relating to Kudiyarasu and other scripts, books, publications etc.

3. The cause of action, according to the Appellant trust was an interview published in a bi-weekly called "Kumudam Reporter" dated 21.08.2008. It was published under the caption "Periyar Yaaruku Sontham", wherein it was disclosed that they intended to publish the Kudiyarasu on 17.09.2008. As such, the Appellant sought for permanent injunction in the suit as well as sought for award of damages of Rs. 15 lakhs. The Appellant trust also filed an Application No. 940 of 2008 for an ad-interim injunction pending suit.

4. Initially by order dated 28.08.2008, the first Respondent was directed to maintain status quo until further orders and the application was directed to be posted on 01.09.2008. Subsequently, by order dated 16.09.2008, passed in O.A. No. 940 of 2008 and in Application No. 4331 of 2008 in C.S. No. 814 of 2008, both the Defendants were directed to maintain status quo until further orders and that all the Respondents were directed not to sell the books till the court dispose of the application seeking an order of injunction. The applications were

directed to be posted on 18.09.2008. Subsequently, on 22.10.2008, the order to maintain status quo was extended till 31.10.2008 and the application was also posted on that date. A detailed counter affidavit was filed by the first Respondent on 05.09.2008. The second Respondent filed his counter affidavit on 07.09.2008.

5. Be that as it may, the Appellant in O.S.A. No. 23 of 2010 came forward with an application in A. No. 4331 of 2008, seeking to get itself impleaded in the main suit as well as in the interim application on the footing that he is the President of the Appellant in O.S.A. No. 23 of 2010, that since according to the second Defendant in the suit, the copy of the book intended to be published by the first Defendant in the suit was stated to have been obtained from the Appellant in O.S.A. No. 23 of 2010 and since he had personal knowledge about the said issue, he should also fallowed to be impleaded as a party in the suit as well as in the application. The application for impleading the Appellant in O.S.A. No. 23 of 2010 was resisted by both the Respondents in O.S.A. No. 232 of 2009. In the order dated 29.01.2009, the learned Judge after considering the rival contentions of the parties, noted that the issue before the Court related to the ownership of the copyrights of the work of Thanthai Periyar, that the Appellant in O.S.A. No. 23 of 2010 did not claim exclusive copyrights over the work of Thanthai Periyar, and his claim that he assisted in the Herculean task of compiling the work of Thanthai Periyar and since it was the admitted case of the Appellant trust that he is under their control, at best, he can be examined as a star witness in the suit and he cannot claim any participatory role in the lis which is seriously contested by the Respondents in O.S.A. No. 232 of 2009. Based on such a decision the learned Judge held that there was no right for the Appellant in O.S.A. No. 23 of 2010 to invoke Order 1 Rule 10 for getting himself impleaded in the suit as well as in the application. The learned Judge therefore held that it was neither a necessary party, nor a proper party to the suit which can be thrashed out even without the association of the Appellant in O.S.A. No. 23 of 2010 as a party.

6. Having heard Mr. K.V. Venkatapathy, learned Senior Counsel for the Appellant in O.S.A. No. 23 of 2010, learned Counsel for the Respondents 2 and 3 and having perused the order in A. No. 4331 of 2008, we are not inclined to take a different view from what has been stated by the learned Judge in the order dated 29.01.2009 passed in Application No. 4331 of 2008. As rightly held by the learned Judge, the core issue involved in the suit, as well as, in the application related to ownership of copyrights of the literary works of late Thanthai Periyar, as claimed by the Appellant trust vis-a-vis the Respondents. The sum and substance of the claim of the Appellant in O.S.A. No. 23 of 2010 is that there was a statement made by one of the Respondents that copy of the compilation of the literary works of Thanthai Periyar was collected from the Appellant in O.S.A. No. 23 of 2010 and according to the said Appellant, such compilation was owned by the Appellant trust. On that basis, it cannot be even remotely held that the said Appellant in O.S.A. No. 23 of 2010 will become a necessary and proper party. It cannot also be held that without the presence of the said Appellant, the court will not be able to effectively adjudicate upon all the questions involved in the suit.

As has been noted by the learned Judge, based on the slender claim of the Appellant in O.S.A. No. 23 of 2010, there was no scope to hold that it was absolutely necessary to order the impleading of the said Appellant. We, therefore, do not find any merit at all in the said appeal seeking to challenge the order of the learned Single Judge dated 29.01.2009 passed in Application No. 4331 of 2008 and the appeal, therefore, accordingly stand dismissed.

7. When we consider the challenge made in O.S.A. No. 232 of 2009, we find that the application for interim injunction made in O.A. No. 940 of 2008 was elaborately heard by the learned Single Judge, who, in his eloquent judgment, ultimately held that there was no case made out to continue the interim injunction granted earlier. The learned Judge also held that the issue raised is covered by the exemption provided u/s 52(1)(m) of the Copyright Act, 1957 and dismissed the application.

8. We heard Mr. A. Thiyagarajan, learned senior counsel for Mr. V.R. Shanmuganathan, counsel for the Appellant trust, Mr. S. Doraiswami, learned Counsel for the first Respondent and Mr. R. Thiyagarajan, learned senior counsel for Mrs. Gladys Daniel, learned Counsel for the second Respondent.

9. Mr. A. Thiyagarajan, learned senior counsel, in his submissions contended that the Memorandum and Articles of Association as well as the Rules and Regulations of the Appellant trust, which was registered under the Societies Registration Act on 23.09.1952 contained a Clause viz., Clause 22 in the Rules and Regulations, which specifically stated that the Life members of the Executive Committee of the Appellant trust alone shall be the trustees of the properties already endowed by Thanthai Periyar as well as the properties to be acquired thereafter for the institution, which made it clear that the literary works of Thanthai Periyar, which were part of the objects of the Appellant trust as per the Memorandum and Articles of Association, and consequently, such literary works of Thanthai Periyar, which were published in the various journals between 1925 and 1949 were owned by Thanthai Periyar inclusive of its copyrights and that after his death on 24.12.1973, such ownership continue to vest with the Appellant trust and therefore, the compilations of such writings and speeches of Thanthai Periyar made at the instance of the Appellant trust should be held to be owned by the Appellant trust with its copyrights and consequently, the Respondents should be enjoined from making the intended publications as reported by them in the "Kumudam Reporter" dated 21.8.2008.

10. In support of such submissions, the learned Counsel also relied upon the following instances:

(i) The editorial in the Newspaper "Viduthalai" dated 02.10.1952, in which Thanthai Periyar was an Editor, wherein a reference was made to the properties of the Appellant trust. The said editorial contained the statement to the effect that,--

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(ii) The Articles published in the Annual Digest of the Appellant trust magazine dated 2.5.1983 which stated that the compilations of the writings and speeches and anecdotes of Thanthai Periyar from the year 1925 was carried out under the leadership of Puzhavar Ko. Imayavaramban and along with him several other persons.

(iii) A news item in the daily newspaper called Viduthalai dated 22.11.2000 which stated that the articles published in Kudiyarasu between the years 1928 and 1931 had been compiled in a compact disk form.

(iv) The announcement made by the second Respondent in "Kumudham s Reporter" dated 21.8.2008, wherein it was stated to the effect that,

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(v) A Foreword written by one V. Aanaimuthu in a publication called "Periyar E.V. Ra Chinthanaihal", which disclose that Thanthai Periyar agreed on 9.1.1972 to allow him to compile his speeches and writings based on which a compilation was made by him, which he did between September 1972 and February 1973. The said Foreword also stated that in the compilation, the signature of Thanthai Periyar acknowledging his approval was also obtained.

(vi) The pamphlets with its Annexures 1 to 3 published by the first Respondent, which disclose that even as admitted by the first Respondent, the writings and speeches of Thanthai Periyar were compiled at the instance of the Dravida Kazhagam, which constituted a Committee under the leadership of Imayavaramban in the year 1983, who handed over the compilation to the Appellant trust.

11. Based on the above instances, learned senior counsel contended that what was sought to be published by the Respondents on 17.09.2008, as reported in the Magazine "Kumadham Reporter" dated 21.8.2008 was nothing, but the verbatim reproduction of the compilation made by the Appellant trust, for which the copyright was owned by it. Learned senior counsel submitted that having regard to the Clause in the Memorandum of Association as well as in the Rules and Regulations of the Appellant trust, when the writings and articles of Thanthai Periyar were part of the properties of the Appellant trust, right from the date of its inception, the said right which was originally owned by Thanthai Periyar as founder member of the Appellant trust got transferred with all the rights existed in it, including the ownership of the copyrights to the Appellant trust and after the demise of Thanthai Periyar, the entire compilation made by the Appellant trust should be held to be the property of the Appellant trust with all the copyrights ownership embedded in it. Learned senior counsel contended that the Respondents had no right to reproduce the said compilation as claimed by them in the pamphlets as well as in the reported news dated 21.8.2008 without the consent of the Appellant trust and therefore, the Appellant trust is entitled for the injunction as prayed for in the application.

12. Learned senior counsel while referring to Section 17(a) and (cc) of the Copyright Act, 1957, contended that the Appellant trust being the owner of the copyrights and having regard to Section 18(2) of the Act, is entitled to all the rights as were available to the author, viz., Thanthai Periyar. Learned senior counsel also contended that as per Section 22 of the said Act, the works of Thanthai Periyar being literary works, for next 60 years, after the year in which Thanthai Periyar died, the right in favour of the Appellant trust continued to exist, during which period, there was no right to anybody else, much less the Respondents herein to infringe such rights. Learned senior counsel, therefore, contended that when neither the Appellant trust nor the Thanthai Periyar himself did not transfer such right in favour of the Respondents, the attempt of the Respondents to publish the compilations would amount to infringement of such copyright, as stipulated u/s 51 of the Act and consequently, the Appellant trust is entitled for the injunction as prayer for.

13. Learned senior counsel relied upon the following decisions in support of his submissions.

- (i) V. Govindan Vs. E.M. Gopalakrishna Kone and Another, ;
- (ii) Associated Publishers (Madras) Ltd. Vs. K. Bashyam alias "Arya" and Another, ;
- (iii) Zee Telefilms Ltd. and Film and Shot and Another Vs. Sundial Communications Pvt. Ltd. and Others, ; and
- (iv) Eastern Book Company and Others Vs. D.B. Modak and Another, .

14. As against the above submissions, Mr. R. Thiagarajan, learned senior counsel appearing for the second Respondent, after referring to the prayer in the plaint submitted that while the prayer related to the so called copyrights of the Appellant trust in Kudiyarasu and other scripts, books, publications etc., the claim based on the said compilations of the speeches and articles of the Thanthai Periyar would show that there was no definite claim in the prayer. According to the learned senior counsel, the prayer is as vague as it could be and therefore, when the prayer in the main suit itself is open to doubt, there was no scope to consider the interim prayer applied for in the application.

15. Learned senior counsel attempted to point out that the pleadings of the Appellant trust does not disclose as to what was the particular literary work with reference to which it owned any copyrights and which right was attempted to be infringed by the Respondents. According to the learned senior counsel for the second Respondent, unless the Appellant trust satisfy the stipulation contained in Section 16 of the Act, namely, ownership of copyrights and the Appellant trust satisfies the other provisions, namely, Sections 17, 18, 19 and 20 of the Act, there would be no scope for granting any relief, much less, the relief of injunction as prayed for. Learned senior counsel while referring to the original publication of Kudiyarasu and its reproduction in the typed set of papers filed by the

Respondents, pointed out that it was nothing, but verbatim reproduction of printed material, which was published in the Kudiyarasu dated 19.01.1930, that when the Appellant trust came (Sic) be established in the year 1952, the publication of Kudiyarasu ceased to exist, that even indisputably Thanthai Periyar was the Editor of Kudiyarasu only upto to 1930 and therefore, there was no scope for the Appellant trust to claim ownership of the writings of Thanthai Periyar. Learned senior counsel contended that having regard to the fact that the writings of Thanthai Periyar were all of the year upto 1930, as Editor of Kudiyarasu, Section 5(1) and (2) of the Indian Copyright Act, 1914 alone was applicable, that going by Section 5(1) and (2) of the said Act, unless the Appellant trust had the assignment of Thanthai Periyar's literary works in writing, as mentioned in the proviso, there was no right in the Appellant trust to claim for any relief, much less, the relief of injunction as prayed for in the suit as well as in the application. According to the learned senior counsel, since Thanthai Periyar expired on 24.12.1973, going by the proviso to Section 5(2) of the 1914 Act, after 25 years of his death, i.e., after 24.12.1998, the literary works of Thanthai Periyar came into public domain and the Appellant trust can have no claim in the literary works of Thanthai Periyar. Learned senior counsel further contended that even going by the Copyright Act, 1957, having regard to Section 52(1)(m) of the said Act, a mere reproduction of an article published in the newspaper magazine or other periodicals, will not amount to infringement of copyright, unless the author of such Article expressly reserved to himself such right of reproduction. Learned senior counsel therefore, contended that in the absence of any such reservation placed to the satisfaction of this Court, no injunction could have been granted and at any rate at the instance of the Appellant trust.

16. Mr. S. Doraisamy, learned Counsel appearing for the first Respondent submitted that the claim of the Appellant that they constituted a Committee to collect the literary works of Thanthai Periyar and compiled them was not true. On the other hand, the followers of Thanthai Periyar joined together and collected the materials from the original text of Kudiyarasu published from the year 1925 onwards. According to the learned Counsel, it was therefore not the collection of the Appellant. He also placed reliance upon certain documents placed before the Court, such as xerox copies of the original publication of Kudiyarasu dated 02.05.1925, 19.01.1930 and 12.11.1933 and contended that while the Respondents had possession of the originals of such publication of the newspaper, the Appellant did not even have the originals. The learned Counsel referred to an advertisement made on behalf of the Appellant dated 20.12.2008, in which the Appellant issued a general notice asking any one who is in possession of Kudiyarasu Weekly of the years from 1925 to 1928 and 1946 to 1949 to produce to enable them to make a compilation from the said Weekly as well as another Journal called "Viduthalai". The learned Counsel would therefore contend that so far the Respondents have published one set of collection of literary works of Thanthai Periyar of the year 1925 in November 2003 and

another set of publication in September 2005, which contained the literary works of Thanthai Periyar published in the year 1926. He would contend that the present proposed publication of the Respondents in the year 2008 is going to be their next edition while the Appellant brought the first edition of their publication only in the year 2009. Learned Counsel also pointed out by referring to the names of the persons, who made the compilations by referring to the Editors Report in the first edition published in November 2003. The learned Counsel therefore contended that the claim of the Appellant that it was the reproduction of the compilation made by the Appellant is not true. Learned Counsel made a specific reference to Thanthai Periyar's statement itself, as published in one of the publications of Viduthalai dated 31.01.1951, which was to the following effect:

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17. By referring to the above statement of Thanthai Periyar himself, learned Counsel contended that the first Respondent in his counter affidavit has also pointed out that the ideologies of Thanthai Periyar were to educate the people in order to bring out a caste less society and thereby maintain equality among the human kind and that he wanted his writings and ideologies to be propagated to the entire mass and was never intended to be kept as a secret or to be retained by any particular group for their personal gain. The learned Counsel further contended that in paragraph 22 of the counter affidavit, the first Respondent has furnished the various sources, numbering 31, from whom the parts of Kudiyarasu issues were collected by the first Respondent and that the purpose of such collection and present publication of the collected literary works of Thanthai Periyar were solely with a view to propagate the ideologies of Thanthai Periyar and not to make any monetary gain. The learned Counsel would therefore contend that the contention of the Appellant that the Respondents attempted to steal the Appellant's compilation for making the intended publication on 17.09.2008 was not correct and therefore the rejection of the Appellant's injunction application was justified.

18. The learned Counsel relied upon the decisions reported in AIR 1966 Madras 175 (Susiah v. Muniswamy), AIR 1992 Kar 1 : 1992 (12) PTC 55 (Kar) (DB) (K.A. Venugopala Setty v. Suryakantha U. Kamath) and Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association and Others, in support of his submission that under the provisions of the Copyright Act, 1957, without any written assignment by Thanthai Periyar himself in favour of the Appellant, there was no right in the Appellant to seek for any prohibitory order against the Respondents.

19. Having heard the learned senior counsel for the Appellant and the learned Counsel for the Respondents and having perused the various materials placed before us, as well as the order of the learned single Judge impugned in this appeal, in order to consider the Appellant's prayer for injunction as against the Respondents, based on the provisions of the Copyright Act, 1957, first and

foremost we wanted to ascertain with respect to which copyright, the Appellant seeks for an injunction.

20. When we peruse the claim of the Appellant in the plaint filed in C.S. No. 814 of 2008 and the prayer made in paragraph 23, the Appellant seeks for the following relief;

(i) for a permanent injunction restraining the Defendants, their men, agents, assignees or any other person or persons claiming through them from in any manner infringing the copyrights of the Plaintiff relating to the Kudiয়ারasu and other scripts, books, publications, etc.,

(ii) Award damages of Rs. 15,00,000/-,

(iii) ...and

(iv)

In the application, the prayer of the Appellant is as follows;

for an ad-interim injunction restraining the Respondents, their men, agents, assignees or any other person or persons claiming through them from in any manner infringing the copy rights of the Plaintiff relating to the Kudiয়ারasu and other scripts, books, publications, pending disposal of the above suit.

21. A reading of the above prayers shows that the relief is in respect of the copy rights of the Appellant relating to the publication Kudiয়ারasu and other scripts, books, publications, etc. Though such a claim is made with particular reference to the publication Kudiয়ারasu in the prayer, in the body of the plaint as well as in the affidavit filed in support of the interlocutory application, it is stated that there was a compilation of the literary works of late Thanthai Periyar from 1925 onwards in chronological order year-wise and subject-wise by the Appellant by nominating a team on 02.05.1983, that the said team was headed by one Thiru.Ko.Imayavaramban at the Periyar Centenary Educational Institution Campus at Trichy and that the said compilation was stealthily removed by the Respondents, who have now made arrangements to publish those collections in the printed form on 17.09.2008. It therefore shows that the Appellant has not come forward with any definite claim of copy right on any particular material of its own while seeking for a prayer against the Respondents.

22. In order to lay a claim of copy right and seek for any order of restraint against any person under the provisions of the Copyright Act, in particular, Section 17 of the Act, it is stated that the Author of a work shall be the first owner of the copyright therein. Under proviso (a) to Section 17, it is however stated that in the case of literary works made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodicals under a contract of service, the said proprietor in the absence of any agreement to the contrary will be the first owner of the copyright in the work insofar as the copyright relates to the publication of the work in such a newspaper, magazine or

similar periodicals. u/s 18 of the Act, it is stipulated that the owner of the copyright in an existing work may assign to any person such copyright either wholly or partially or subject to any limitation. Reading Sections 17 and 18 together, one who claims any copyright of a literary work by an author has to establish such conditions contained in the above said provisions, such as the employment of the author in a newspaper publication under a contract of service and assignment of the ownership of such literary work and its copyright in favour of any other person.

23. Keeping the above legal position in mind, when we examine the claim of the Appellant, as we have noted earlier, in no part of the plaint or the affidavit filled in support of the interim application, the Appellant claims any ownership of copyright in the compilations made by it. In fact, there was no submission to make such a claim as the compilations were not the original literary works of the Appellant. Admittedly, the compilations were the collection of the literary works of Thanthai Periyar published from the year 1925 onwards in a Weekly called Kudiyaarasu. If the compilations were not the original works of the Appellant, it cannot claim any ownership of copy right in such compilations while seeking for a restraint against the Respondents. In fact, a reading of the prayer also does not show that the Appellant claims any such right in respect of the said compilations of the literary works of Thanthai Periyar. If going by the averments contained in the plaint as well as the affidavit filed in support of the interim application, the claim of the Appellant is in regard to the literary works of Thanthai Periyar himself published in the Weekly Kudiyaarasu of the year 1925 onwards, it can be safely held that the ownership of such copy right in regard to those materials, namely, the literary works belonged to Thanthai Periyar himself. There can be no two opinions for reaching such a conclusion based on Sections 16, 17 and 18 of the Copyright Act, 1957. If once such a definite conclusion can be arrived at with regard to the ownership of the literary works, which vest with Thanthai Periyar, inasmuch as the Appellant as well as the Respondents indisputably stated that what was being published by them by way of compilations from the Weekly Kudiyaarasu, which were published from the year 1925 onwards, which were the literary works of Thanthai Periyar.

24. Then, the next question would be whether, as claimed by the Appellant, it had acquired the ownership rights of Thanthai Periyar, vis-a-vis the literary works by way of assignment, as stipulated either u/s 17 or 18 of the Act. It is not the case of the Appellant that Thanthai Periyar was in the employment of Kudiyaarasu under a contract of service and that Kudiyaarasu became the owner by virtue of any such arrangement as between the publication Kudiyaarasu and Thanthai Periyar in their fiducial relationship as employer-employee, much less, under any contract of service. In fact, there was not even an iota of material placed before the Court in support of such a claim. There was not even a pleading to that effect either in the plaint or in the affidavit filed in support of the interlocutory application. Therefore, any right based on proviso (a) to Section 17 of the Copyright Act, 1957, was either claimed or proved even prima facie before the

learned single Judge.

25. The only other provision to ascertain the right of the Appellant would therefore fall u/s 18 of the Act. As stated earlier, the right u/s 18 of the Act, can be by way of assignment of the literary work by its owner in favour (Sic)any other person. As far as the said aspect is concerned, Mr. A. Thiagarajan, learned senior counsel appearing for the Appellant would strenuously contend that (Sic)uch an assignment should be inferred based on the provisions contained in the Memorandum and Articles of Association of the Appellant-Institution and its Rules and Regulations. As far as the said materials are concerned, Clause 2 of the Memorandum of Association contains the objects of the Appellant-Institution. In Clause 2(b)(v), it is stated that the publication of books and pamphlets and other similar constructive work to be done to help the activities of the Institution and to provide for its income, a Press will be established for publishing and selling books relating to the aims and principles of the Institution. Thanthai Periyar himself was one of the signatories to the said Memorandum of Association. The said clause 2(b)(v) does not make any specific reference to either Kudiয়ারasu or any other literary works of Thanthai Periyar. The said Memorandum of Association came into being only in the year 1952, as the Appellant-Institution based on such Memorandum of Association and Rules and Regulations came to be registered as a Society under the provisions of Societies Registration Act, (XXI of 1860) on 21.10.1952. It is relevant to keep in mind that the alleged reproduction of the literary works of Thanthai Periyar, were all the publications made by him in the Weekly Kudiয়ারasu prior to the year 1952 i.e. between 1925 and 1949. Therefore, in the absence of any specific reference to the articles of Thanthai Periyar by way of published materials in the Kudiয়ারasu and in particular, such reference in writing to the effect that it was by way of transfer of ownership in favour of the Appellant-Institution, there was no scope to state based on any clause contained in the Memorandum of Association that such literary works of Thanthai Periyar were owned by the Appellant-Society.

26. As far as the Rules and Regulations of the Appellant-Society are concerned, here again, in none of the Rules and Regulations, there is any reference to either Kudiয়ারasu or any of the published materials or other literary works of Thanthai Periyar. The learned senior counsel appearing for the Appellant by referring to Rule 22 of the Rules and Regulations wanted to contend that the said Rule impliedly created a right of ownership of the literary works of Thanthai Periyar in favour of the Appellant-Society. The said Rule 22 is to the following effect:

22. The Life-members of the Executive Committee alone shall be the trustees of the properties already purchased by Periyar E.V. Ramasamy, President of the Self-Respect Association and in his name as President of the Self-Respect Association and in his personal name, for the Self-Respect Association out of its funds and also the properties already purchased by Life-members of the Executive Committee of the Institution (1) Mrs. E.V.R. Mani, (2) Mr. T.P. Vedachalam, (3) Mr. A.N. Narasimhan and (4) Mr. E. Thirunavukarasu on behalf of the Dravida Self

Respect Institution and the properties to be acquired hereafter for the Institution.

The said Rule only refers to the status of the trustees, who became the trustees of the properties of the Appellant-Society, which were purchased by Thanthai Periyar as President of the Institution in his personal name as well as those properties purchased by other life members on behalf of the Dravida Self-Respect Institution. By any amount of strenuous effort, we were not in a position to discern creation of any right in favour of the Appellant-Society over the literary works of Thanthai Periyar, which were published in the Weekly Kudiyarasu between the years 1925 and 1949. Therefore, neither the (Sic)emorandum of Association nor the Rules and Regulations of the Appellant-Society were of any assistance to the Appellant to support its claim of ownership over the literary works of Thanthai Periyar.

27. The question, whether the properties of Thanthai Periyar, as mentioned in Rule 22, would include his literary works published in Kudiyarasu, is concerned, we will deal with the same when we refer to Section 51 of the Copyright Act, 1957, as well as the rights that were available to Thanthai Periyar himself based on the relevant provisions contained in the Indian Copyright Act, 1914, which was in force at the time when the publication of his articles were made in the Weekly Kudiyarasu between 1925 and 1949. In fact, when we refer to the Foreword of one Thiru. Aanaimuthu in one of his publications called "Periyar E.V. Ra Chinthanaihal", (bgupahu; /bt/uh/rpejidsf;) wherein he has made a reference to the compilations made by him of Thanthai Periyar's speeches and writings. The said part of his report reads as under:

VERNACULAR (TAMIL) PORTION DELETED

28. The above material was placed before the Court at the instance of the Appellant. At best, going by the above extracted part of the Foreword of Aanaimuthu, the conclusion that can be reached would be that Thanthai Periyar appeared to have called upon Thiru. Aanaimuthu to make a compilation of his speeches and writings in the year 1972 and that he also personally approved of such compilations ultimately made by him. The said instance would only show that such a job of compilation of his own speeches and writings was entrusted with an individual Thiru. V. Aanaimuthu. No such material either exist or produced by the Appellant to show that such an entrustment was made by Thanthai Periyar with the Appellant to make any compilation of either his speeches or writings. When Thanthai Periyar himself had, at some point of time, any idea of making a compilation of his own speeches and writings and had chosen to entrust the same to one particular individual, when the Appellant claims a similar right it is for the Appellant to produce such an entrustment made by Thanthai Periyar himself in writing as provided u/s 18 of the Copyright Act, 1957. We therefore do not find any legal support for the claim of the Appellant when it seeks for an injunction as against the Respondents for enforcement of its right as a copyright holder. Therefore, the said material also does not support the claim of the Appellant.

29. De hors the above materials, the Appellant would place reliance upon the publications made by the Respondents of its earlier editions made in November 2003 (Sic)n the digest of the books, which were published in November 2003, a reference (Sic) been made to a Committee, which was constituted in the year 1983, which Committee is said to have made a compilation of Thanthai Periyar"s speeches and (Sic)icles published in Kudiyarasu and which were handed over to the leader of a (Sic)vida Kazhagam. It is also stated therein that those compilations came into the (Sic)ssession of the Respondents and that such compilations were as they are being (Sic)ished without any addition or deletion. The report also contained three (Sic)nexures. In Annexure-I, the names of those persons, who constituted the committee headed by Thiru. Ko. Imayavaramban have been mentioned. In (Sic)nexure-II, it is mentioned that the Committee commenced its work on 02.05.1983 (Sic) the Periyar Centenary Educational Institution Campus at Trichy and the name of the publisher has been mentioned as Thiru. K. Veeramani, the Secretary of the Appellant-Society.

30. From the above materials, it was contended on behalf of the Appellant that (Sic)e Respondents themselves have admitted that the ownership of the compilations were that of the Appellant and therefore, the right of the Appellant as copyright owner stood established. It was therefore contended that the injunction restraining the Respondents from publishing such compilations should be granted. As stated by us earlier, the compilations by themselves were not the work of the Appellant. In other words, the compilations are not the original creation of the Appellant in order to state that the Appellant had acquired any copyright in the compilations. Admittedly, the compilations contain the speeches and the writings of Thanthai Periyar published in the Weekly Kudiyarasu between 1925 and 1949. Therefore, when the material contained in the compilations with reference to which the ownership of copyright has to be determined and when the Appellant admits that the material contained in the compilations were the literary works of Thanthai Periyar and not of the Appellant, there was no copyright ownership available in respect of those materials with the Appellant. The available material on record and such other materials relied upon by the Appellant does not in any way confirm the rights of the Appellants, much less, ownership right in respect of the literary works of Thanthai Periyar published in Kudiyarasu between 1925 and 1949 in order to affirm its claim. Consequently, there is no scope for granting the interim relief as prayed for.

31. None of the instances claimed and stated in paragraph 10 of the judgment can be relied upon to accept the claim of the Appellant that it owns copyright in respect of the literary works of Thanthai Periyar. The instance, namely, the editorial of Thanthai Periyar in the newspaper "Viduthalai" dated 02.10.1952, wherein it is stated that the Appellant"s properties included rights in books cannot be taken to mean that such rights are referable to the literary works of Thanthai Periyar unless there is a specific reference to the speeches and articles of Thanthai Periyar as forming part of the properties of the Appellant by way of legally acceptable material evidence. Merely based on such remote references,

there is no scope to accept the plea of the Appellant. Similarly, the reference to the compilation work published on 02.05.1983 or the news item in the newspaper "Viduthalai" dated 22.11.2000 cannot be taken as a valid material to acknowledge the claim of the copyright ownership of the Appellant. The announcement of the second Respondent in "Kumudham Reporter" dated 21.08.2008 does not in any way acknowledge or recognise the copyright ownership of the Appellant as regards the literary work of Thanthai Periyar. Even the said statement is with reference to the failure of the Appellant to come forward with the publication of the speeches of Thanthai Periyar. Therefore, the said instance also does not support the claim of the Appellant.

32. The claim of the Appellant when examined based on Section 52(1)(m) of the Copyright Act, 1957, then again the alleged infringement cannot be accepted. Section 52(1)(m) of the Act, reads as under:

52. Certain acts not to be infringement of copyright

(1) The following acts shall not constitute an infringement of copyright, namely,

(a) to (l) ...

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction.

33. Statutorily, in the absence of right of reservation of the author himself prohibiting any reproduction, no infringement of copyright in respect of reproduction of an article in a newspaper can be made. First of all, there is no right of reservation made by Thanthai Periyar himself prohibiting reproduction of any of his speeches published in the newspaper Kudiyaarasu.

34. We have already dealt with the claim of the Appellant to enforce such right of reservation of Thanthai Periyar based on the Memorandum of Association and Rules and Regulations of the Appellant-Society. Therefore, there being no other document or legally acceptable material to show that Thanthai Periyar reserved his right of reproduction of any of his articles published in the newspaper or in the Weekly Magazine Kudiyaarasu, no fault can be found with the Respondents when they want to publish the collection of the speeches and articles of Thanthai Periyar published in the Weekly Kudiyaarasu. Section 52(1)(m) therefore protects the action of the Respondents when they want to publish the compilation of the literary works of Thanthai Periyar stated to have been published in the Weekly Kudiyaarasu between the years 1925 and 1949. In fact, as claimed by the Respondents, there were two earlier publications, one in respect of the literary works of Thanthai Periyar published in the Kudiyaarasu of the year 1925 published in November 2003 and another publication of his literary works published in the Kudiyaarasu of the year 1926 published in September 2005. The Appellant has not taken any exception to the copies of those publications. Therefore, applying Section 52(1)(m) of the Act, also, as held by the learned Judge, we do not find any

legal impediment for the Respondents (Sic) effect the publications, as announced by it to be published on 17.09.2008.

35. One other legal submission made on behalf of the second Respondent was (Sic)ased on the proviso to Sub-section (2) to Section (5) of the Indian Copyright Act, 1914, which is to the following effect:

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to be disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

Section 79(5) of the Copyright Act, 1957, reads as under:

(5) Except as otherwise provided in this Act, where any person is entitled immediately before commencement of this Act, to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force.

36. Reading of Section 79(5) of the 1957 Act and the proviso to Section 5(2) of the 1914 Act together, it transpires that the right of the first owner of the copyright will subsist only for a period of 25 years from the date of death of the author, in the absence of compliance of any of the other stipulations contained in the proviso to Section 5(2) of the 1914 Act. In the case on hand, the right of Thanthai Periyar over his literary works would have existed for a period of twenty five years from the date of his death. Thanthai Periyar died on 24.12.1973. The period of twenty five years expired on 24.12.1998. Therefore, even applying the prescribed statutory limit of restriction of the copyright of Thanthai Periyar himself, there was no impediment for the Respondents to reproduce his articles after 1998. Admittedly, the first publication of the literary works of Thanthai Periyar were stated to have been made by the Respondents only in November 2003. Therefore, when after 24.12.1998, the literary works of Thanthai Periyar have come into public domain, even if there were any restrictions, the same would have ceased to operate after 24.12.1998. Therefore, on that ground also, there was no right in the Appellant to seek for any restraint on the Respondents from making any publication of the literary works of Thanthai Periyar.

37. As regards the applicability of 1914 Act, by virtue of the provision contain in Section 79(5) of the 1957 Act, a Division Bench of the Allahabad High Court the

decision reported in Newspapers Ltd. Vs. Ratna Shankar Prasad, has held as under:

21. The arguments though alluring cannot bear the scrutiny. The who(Sic) question hinges upon whether the new Act of 195(Sic) would govern the rights (Sic) the parties or that old Act of 1914. The saving Section 79 Sub-section (5) of the Act of leaves no room for doubt that the rights of the parties would be governed by the old Act and if that be so, the position under the old Act is quite clear. The legal term on the date of agreement in view of the provisions of Section 5 of the Act of 1914 was only twenty-five years.

22. There is yet another hurdle in the way of the Appellant. The author could not have entered into any agreement with the publisher which would have affected the reversionary right of his son Ratna Shanker Prasad as provided by proviso to Sub-section (2) of Section 5 of the Act of 1914, as quoted above. The agreement, to the extent it affects reversionary interest in the copyright except on the termination of that period, is null and void and cannot be given effect to. Considered from any aspect, the Appellant's case cannot succeed.

The above decisions relied upon by the first Respondent fully support their stand.

38. When we refer to the various decisions relied upon on behalf of the Appellant, the first decision is reported in V. Govindan Vs. E.M. Gopalakrishna Kone and Another, . The said decision was concerned with a lis between the owner of original of English-English-Tamil dictionary published in 1947 and another publisher of a similar dictionary. In fact, a single Judge of this Court in the said decision has noted the competence of the Plaintiff and the alleged infringer in paragraph 8, which is to the following effect:

8. The next contention was that Ex. A.2 was an independent and original production by the second Defendant, a well known Philologist and a person whose knowledge of the Tamil language was so great that the Education Minister of the day, Mr. Avanasilingam Chettiar, asked him in 1947 to reform the Tamil script itself, and that EX. A.2 was produced by D.W. 1 by using his own brains, skill and labour, and was in no way an imitation or copying of EX. A.1, whose compiler was not better qualified than D.W. 1, and that the lower Court took a wrong view. I cannot agree. Subbier, the compiler of Ex. A.1, was an M.A.L.T. and a District Educational Officer with a very considerable experience in teaching school boys for whom the dictionary Ex. A.1 was intended. A perusal of Ex. A.1 has convinced me that he had good qualifications for compiling such a dictionary and had spent much skill and labour in compiling that dictionary.

The 2nd Defendant, on the other hand, was a failed Intermediate with no experience whatever of schools or teaching. Whatever his qualifications for reforming the Tamil script, he had little qualification for compiling such a school dictionary himself. He could not give the Tamil meanings of simple English words found in Ex. A.2, when he was questioned in Court as D.W. 1, and he admitted that the Tamil meanings of those words given in his own dictionary, Ex. A.2, were

exactly the same as the meanings given in Ex. A.1, even though he could not give the Tamil meanings in Court. He added that he published his book "in haste". I have little doubt that he was able to compile Ex. A.2 with such haste because he copied most of it from Ex. A.1 as the lower Court has found. I am convinced of it after comparing Exs. A.1 and A.2, like the lower Court. No doubt, there are a few differences here and there, and some words in Ex. A.1 are not found in Ex. A.2, and some words in Ex. A.2. are not found in Ex. A.1 and a stray meaning here and there is given differently in Ex. A.2, obviously in order to cover up the copying.

39. Reliance was also placed upon paragraphs 10 and 11 of the said decision to show that even if common source was relied upon by the parties, it is for the party, who relied upon the common source, to show that he went to the common source, from which he borrowed and by employing his skill, labour and brain even while relying upon the common source and that he did not merely copy away the work of another person, whose work was also based on the same common source. The said decision having referred to the facts involved therein, is clearly distinguishable when compared to the facts involved in the case on hand. As has been noted by the learned Judge, while preparing an English-English-Tamil dictionary, though reliance was placed upon other common source, there was some original work done by the Plaintiff in that case while preparing the dictionary while the same was simply copied by the Defendant therein without demonstrating any independent application of mind while doing its work. In fact, the learned Judge has noted the total incapacity of the alleged infringer in that case having regard to the material evidence both oral and documentary placed before the Court, which persuaded the learned Judge to affirm the allegation of infringement alleged. The said decision has no application at all to the facts of this case.

40. The Appellant then relied upon the decision reported in AIR 1961 Madras 114 (Associated Publishers (Madras) Ltd. v. K. Bashyam). Reliance was placed upon to the passage at page 118, which is to the following effect:

... We think that the Plaintiff himself drew his picture M.O.3 copying the head from M.O.17 and the body from M.O.20 (M.O.21).

The result of the combination was certainly in one sense new because there was no exact prototype of M.O.3. The Plaintiffs skill and ingenuity lay in making the combination Though the case related to a literary publication, the principles laid down by their Lordships of the Judicial Committee would govern the case of an original artistic work.

It was ruled that reprint of selected passages from an original work may be an original literary work within the meaning of the Copyright Act, if there has been expended upon it sufficient knowledge, labour, judgment or literary tas(Sic) to give it some quality or character which the complete work did not possess an(Sic) which differentiates it therefrom. ...

41. The above details noted by a Division Bench of this Court amply demonstrated that the said facts are not comparable at all to the facts on hand. In the case on hand, what was done was a mere reproduction of the literary works of Thanthai Periyar, which were earlier published in a Weekly Magazine Kudiyarasu in the years between 1925 and 1949. There was no independent diction or original work added to the said literary works of Thanthai Periyar. Therefore, whatever stated in the said decision can have no application to the facts of the present case.

42. In the decision reported in Eastern Book Company and Others Vs. D.B. Modak and Another, , at page 96 in paragraph 32, as regards copying of compilation, it has been held as under:

32. The work "original" does not mean that the work must be the expression of original or inventive thought. The Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and in the case of literary work, with the expression of thought in print or writing. ...and as regards compilation, originality is a matter of degree depending on the amount of skill, judgment or labour that has been involved in making the compilation. ... The word "Original" does not demand original or inventive thought, but only that the work should not be copied but should originate from the author. In deciding, therefore, whether a work in the nature of a compilation is original, it is wrong to consider individual parts of it apart from the whole. ... In such cases the Courts have looked to see whether the compilation of the unoriginal material called for work or skill or expense. If it did, it is entitled to be considered original and to be protected against those who wish to steal the fruits of the work or skill or expense by copying it without taking the trouble to compile it themselves. ...

43. The above statement of law in regard to a compilation when applied to the facts of this case, in the first place, prima facie while dealing with an application for an interim injunction, we do not find any legally acceptable material to hold that there was any original work involved in making the compilation. In fact, there is sufficient contra evidence in the form of the printed publications of the years 1925, 1926 and 1930 placed before us on behalf of the Respondents to show that there were variations as between the Appellant's compilation and the Respondents' publications. Therefore, there being no prima facie strong case made out on behalf of the Appellant in claiming originality in the compilation of the literary works of Thanthai Periyar, it is not safe for this Court to merely rely upon the claim made based on the alleged compilation made in the year 1983 and hold that any copyright ownership was existing in favour of the Appellant in order to grant an order of interim injunction. More over, having regard to the statutory stipulation contained (Sic) Sections 17, 18 and 52(1)(m) of the Copyright Act, 1957, it will not be appropriate (Sic) grant any interim injunction in favour of the Appellant at this stage. It may be that the Appellant will have to establish such a claim, even if it exists, at the time of trial of the suit and work out its remedy. Therefore, based on the said decision, we do not find any scope

to grant the relief as prayed for.

44. In this context it will be worthwhile to refer to what has been stated in the glossary of Legal and Technical Terms" in the text book of a well known author Mr. J.A.L. Sterling called "World Copyright Law" Second Edition at page 985, where at pages 991 and 992 the meaning of the expressions "compilation" and "collective work" has been set out which is as follows:

Compilation: In general, the term refers to a collection of items which may itself enjoy protection by virtue of the creative activity in putting the material together.... The US 1976 Act (Section 101) defines a compilation as a work formed by the collection and assembling of pre-existing materials or of data that are selected, co-ordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.

Collective Work:...Collective work is included in the term compilation. Under the French Code, a collective work is a work created on the initiative of a natural or legal person who edits it, publishes it and discloses it under his name, in which the personal contributions of the participating authors are merged in the whole work, without it being possible to attribute to each author a separate right in the work as created; the collective work is the property, unless proved otherwise, of the person under whose name it has been disclosed, and the author's right vests in such person (Articles L. 113-3, 5). (Emphasis added)

Therefore, either as a collective work or a compilation, there should exist something new of the collected literary work which was already existing. In other words, while either collecting the set of literary works by the author or compiling the same, either there should be some special role played by the participants of the collective works or the compiler by way of editing or some other creativity in it. Therefore, a mere compilation of existing literary works will not by itself cloth the person who claims to have compiled or collected it, with any right, much less copyright other than what was existing with the author of the literary work who as its owner is protected with such rights at the time when such literary work came to be introduced by the Act of 1914, or after the emergence of Copyright Act, 1957, the various rights which were provided under various provisions of the said Act in particular Sections 16, 17, 18, 19, 21 and 22 of the Act.

45. The learned Counsel for the first Respondent relied upon the decision reported in AIR 1966 Madras 175 (Susiah v. Muniswamy). A learned Judge of this Court in the said decision in paragraph 4 has held as under:

4. ...Section 17 of the Act declares the author of a work as the first owner of the copyright therein; and Section 18 deals with the assignment of copyright. The mode of such assignment as laid down by Section 19 should be in writing signed (Sic) the assignor or by his duly authorised agent and unless this was done, (Sic) assignment of the copyright in any work shall be valid.

46. Reliance was also placed upon the decision reported in AIR 199 (Sic) Kar 1 : 1992 (12) PTC 55 (Kar) (DB) (K.A. Venugopala Setty v. D(Sic) Suryakantha U. Kamath). A Division Bench of the Karnataka High Court ha(sic) held as under:

9. Thus from the aforesaid provisions contained in Section 19 of the Act, it is clear that assignment of the copyright must be in writing and signed by the assign(Sic) or his duly authorised agent. In addition to this, the assignment must in clear terms state the rights proposed to be assigned and the size of the work. No other mode of assignment is valid inasmuch as when the statute specifically provided that assignment of the copyright must be in writing and signed by the assign(Sic) no other mode of assignment such as oral assignment (sic) is neither permissible nor it is valid. In fact Sub-section (1) of Section 19 of the Act in categorical terms states that no assignment of the copyright in any work shall be valid unless it is in writing and signed by the assignor or his duly authorised agent. (Emphasis added)

47. Reliance was also placed upon the decision of the Hon"ble Supreme Court reported in Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association and Others, . While interpreting Section 18 of the Copyright Act, the Hon"ble Supreme Court has held as under:

8. ...the first part of the question should be answered in the affirmative. It is accordingly held that an existing and future right of music composer and lyricist in their respective "works" as defined in the Act is capable of assignment subject to the conditions mentioned in Section 18 of the Act, as also in Section 19 of the Act, which requires an assignment to be in writing, signed by the assignor or by his duly authorised agent. (Emphasis added)

48. For all the above stated reasons, we do not find any scope to interfere with the order of the learned single Judge. The interim order of status-quo granted while entertaining the O.S.A. therefore stands dismissed. The appeals fail and the same are dismissed.

49. In the result, O.S.A. Nos. 232 of 2009 and 23 of 2010 fail and the same are dismissed. The interim order stands vacated. Connected miscellaneous petitions are closed. There will be no order as to costs.