
(2010) 09 KL CK 0100

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 23185 and 24440 of 2010

Kerala Hindi Prachar Sabha

APPELLANT

Vs

Joseph

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 1 Rule 8(1), Order 1 Rule 8(2), Order 1 Rule 8(4), Order 23 Rule 3
Companies Act, 1956 — Section 235
Limitation Act, 1963 — Section 6
Motor Vehicles Act, 1939 — Section 110A
Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 — Section 25, 9

Citation : (2010) 4 ILR (Ker) 490 : (2010) 4 KLT 584

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : N. Subramanian, M.S. Narayanan and J. Harikumar, for the Appellant; Pirappancode V.S. Sudhir, R.T. Pradeep and V. Vijulal, for the Respondent

Final Decision : Allowed

Judgement

Thomas P. Joseph, J.—These Writ Petitions arise from O.P. No. 477 of 2005 of the court of learned Additional District Judge-I, Thiruvananthapuram. For the sake of convenience parties are referred to as Petitioners and Respondents as in O.P. No. 477 of 2005.

2. Respondent No. 1 is the Kerala Hindi Prachar Sabha (for short, "the Sabha"). Respondent Nos. 2 to 4 are the Secretary, President and Treasurer, respectively of that Sabha. Respondent Nos. 5 to 7 are the said office bearers but, impleaded in their personal capacity. Original Petition was filed by 14 members of the Sabha u/s 25 of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (for short, "the Act") seeking removal of the existing Governing Body of the Sabha, appointing a fresh Governing Body, framing a

scheme for management of the Sabha, settlement of accounts and for other reliefs. Petitioners alleged in the Original Petition that there was mismanagement of affairs of the Sabha and that there was no conduct of elections as prescribed by the bye-law. Petitioner Nos. 15 to 22, also members of the Sabha got impleaded in the Original Petition. Respondent No. 6 by then vacated his office in the Sabha. When the matter was pending before learned Additional District Judge there was a settlement of disputes between Petitioners and Respondent Nos. 1, 5 and 7. As per that agreement a bye-law making certain modifications to the existing bye-law was drafted and it was agreed that elections be held to the various bodies of the Sabha. Accordingly they filed I.A. Nos. 1832 and 1833 of 2009. I.A. No. 1832 of 2009 was to appoint a receiver to conduct fresh election as per the new bye-law agreed to between Petitioners and Respondent Nos. 1 to 5 and 7 and I.A. No. 1833 of 2009 was to record settlement. The modified bye-law was appended to I.A. No. 1833 of 2009. Learned Additional District Judge passed a common order dated 01-08-2009 on the said applications. The applications were allowed and Sri. K. Viswanathan (a retired District Judge) was appointed as receiver to conduct the election. The modified bye-law was accepted and order was passed in terms of the compromise. While so, additional Respondent Nos. 8 to 37 sought their impleadment in the original petition vide I.A. No. 2208 of 2009 and filed I.A. No. 2379 of 2009 for review of common order dated 1.8.2009 on various grounds including that there was no publication as required under O.I Rule 8(4) of the CPC (for short, "the Code"). Learned Additional District Judge reviewed the common order dated 1.8.2009 vide order dated 21.1.2010 (on I.A. No. 2379 of 2009). Learned Additional District Judge observed that though no such publication (under O.I Rule 8(4) of the Code) is necessary when the matter is settled between the original parties to the proceeding settling a scheme and it is accepted, being a public matter it is within the power of court to direct publication about the settlement in appropriate cases and accordingly directed the parties to the Original Petition to effect necessary publication regarding the settlement vide I.A. Nos. 1832 and 1833 of 2009. That publication was made. In the meantime additional Respondent Nos. 8 to 37 filed W.P.C. No. 7009 of 2010 in this Court challenging the common order dated 1.8.2009 on I.A. Nos. 1832 and 1833 of 2009 and the order dated 21.1.2010 on I.A. No. 2379 of 2009. Contention raised was that original Petitioners and Respondent Nos. 1 to 5 and 7 had colluded among themselves and settled the matter in a manner detrimental to the interest of the Sabha and hence the compromise is not binding on the Sabha. This Court disposed of the Writ Petition by judgment dated 31.3.2010. The common order dated 1.8.2009 on I.A. Nos. 1832 and 1833 of 2009 and the order dated 21.1.2010 on I.A. No. 2379 of 2009 were set aside and learned Additional District Judge was directed to reconsider the matter afresh as per law after hearing both sides. In the meantime there was I.A. No. 2208 of 2010 to set aside the common order dated 1.8.2009 (that application was allowed on 25.1.2010). Additional Respondent Nos. 8 to 37 were impleaded in the Original Petition as per order dated 21.5.2010 on I.A. No. 2240 of 2009 (additional Respondent Nos. 8 to 21 and 23 to 37 are the Petitioners in

W.P.C. No. 24440 of 2010).

3. In the light of the judgment of this Court in W.P.(C). No. 7009 of 2010 learned Additional District Judge took up I.A. Nos. 1832 and 1833 of 2009 for consideration. Original Petitioners filed I.A. No. 1453 of 2010 suggesting certain changes to the agreed, modified bye-law produced along with I.A. No. 1833 of 2010. Learned Additional District Judge heard counsel for all the parties and passed order on 3.6.2010 whereby certain clauses in the modified bye-law were further modified and accepted. The Original Petition was disposed of directing the receiver to conduct election as per the bye-law as further modified. The receiver was also directed to take charge of entire affairs of the Sabha. Certain directions were also issued in the matter of conduct of election. Learned Additional District Judge stated in the order dated 3.6.2010 that modification made to the bye-law agreed to between Petitioners and Respondent Nos. 1 to 5 and 7 and produced along with I.A. No. 1833 of 2009 was assented to by counsel for all the parties before learned Additional District Judge. Applications were disposed of accordingly. Aggrieved by the order dated 3.6.2010 additional Respondent Nos. 8 to 21 and 23 to 37 filed M.F.A. No. 104 of 2010 while Respondent Nos. 1 to 5 and 7 filed M.F.A. No. 105 of 2010 in this Court. In those appeals it was contended on behalf of Appellants-Respondent Nos. 1 to 5 and 7 and additional Respondent Nos. 8 to 21 and 23 to 37 that themselves or counsel had not consented to the modification brought to the bye-law agreed to between original Petitioners and Respondent Nos. 1 to 5 and 7 and appended to I.A. No. 1833 of 2009. In the light of that contention, this Court disposed of M.F.A. Nos. 104 and 105 of 2010 observing that the proper remedy available to the Appellants-Respondent Nos. 1 to 5 and 7 and additional Respondent Nos. 8 to 21 and 23 to 37 was to move the learned Additional District Judge by way of review as the order under challenge was stated to be passed on consent of counsel. Accordingly Respondent Nos. 1 to 5 and 7 filed I.A. No. 1884 of 2010 while additional Respondent Nos. 8 to 37 filed I.A. No. 1864 of 2010. Those petitions were dismissed by the learned Additional District Judge as per order dated 19.7.2010. That common order is under challenge in this Writ Petitions. Respondent Nos. 1 to 5 and 7 filed W.P.C. No. 23185 of 2010 while additional Respondent Nos. 8 to 21 and 23 to 37 have filed W.P.C. No. 24440 of 2010.

4. Challenge is to the common order dated 19.7.2010 on I.A. Nos. 1864 of 2010 and 1884 of 2010 whereby challenge to the common order dated 3.6.2010 has been rejected. Respondent Nos. 1 to 5 and 7 mainly contended that learned Additional District Judge was not correct in effecting further modifications to the bye law agreed to between Petitioners and themselves and produced along with I.A. No. 1833 of 2009. Neither themselves nor their counsel had consented to any such modification as stated in the orders dated 3.6.2010 and 19.7.2010. It was, at any rate illegal to make variations to the bye-law agreed to in writing by Petitioners and Respondent Nos. 1 to 5 and 7 without parties agreeing to such further modifications in writing and signed by them as required under Rule 3 of Order XXIII of the Code. Any such variation even if made by the parties in

writing and signed, required notice to all persons interested in the Sabha as required under Rule 3B(2) of Order XXIII of the Code. The above mandatory requirements having not been complied, orders dated 3.6.2010 and 19.7.2010 cannot stand. There was no occasion or necessity to direct the Receiver to take charge of administration of the Sabha. Supplementing the above arguments learned Counsel for Respondent Nos. 8 to 21 and 23 to 37 contend that even the order dated 1.8.2009 accepting the modified bye-law as agreed to between Petitioners and Respondent Nos. 1 to 5 and 7 and allowing I.A. Nos. 1832 and 1833 of 2009 cannot stand as the entire proceeding before the learned Additional District Judge is vitiated for want of publication under O.I Rule 8(2) of the Code. At any rate, without additional Respondent Nos. 8 to 21 and 23 to 37 signing the compromise vide I.A. Nos. 1832 and 1833 of 2009, it could not have been accepted.

5. I have heard counsel on both sides. The following questions arise for a decision:

- (i) Whether in the absence of publication under O.I Rule 8(2) of the Code the proceeding initiated before the learned Additional District Judge is vitiated?
- (ii) Whether Respondent Nos. 8 to 37 are necessary parties to the compromise entered between the original Petitioners and Respondent Nos. 1 to 5 and 7 ?
- (iii) Whether variation or modification made to the bye-law agreed to between original Petitioners and Respondent Nos. 1 to 5 and 7 was required to be made in writing and signed by them and/or counsel?

6. Point No. I: Learned Counsel for Respondent Nos. 8 to 21 and 23 to 37 (Petitioners in W.P.(C). No. 24440 of 2010) has contended that though provisions of the Act applied to the Sabha and hence it was within the right of Petitioners to bring an Original Petition of this nature before learned Additional District Judge u/s 25 of the said Act, that provision has to be distinguished from a proceeding Section 9 of the Act. According to the learned Counsel Section 9 of the Act related to personal claims while Section 25 related to claims involving public interest, i.e. affecting members of the Sabha at large and hence any proceeding u/s 25 of the Act could and should only be in compliance with the provisions of O.I Rule 8 of the Code. According to the learned Counsel, a petition under Section. 25 of the Act is equivalent to a suit u/s 92 of the Code. It is argued, no publication as required under O.I Rule 8(2) of the Code was made and hence the entire proceeding taken is illegal. Reliance is placed on the decisions in The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy, , Sree Narayana Dharma Samajam v. Mohandas 2005 (3) KLT 438 and Vidyodaya Trust v. Mohan Prasad 2007 (1) KLT 538. In response, it is contended by learned Counsel for original Petitioners that Section 9 and 25 of the Act cannot be read disjunctively Section 9 of the Act states about binding nature of a decision rendered by the court when the suit or other proceeding is instituted by or against a society represented by its Secretary while Section 25 of the Act confers

power on the District Judge to grant reliefs mentioned therein on a petition filed by the required number of members of the society. According to the learned Counsel, a society registered under the Act being a legal entity by itself, any decision made against the society will bind all its members. What is required is only that the society has to sue or be sued through its Secretary except in the case covered by the proviso to Section 9 of the Act. Since the Act itself provides for a binding effect on all members of the society, a publication under O.I Rule 8(2) of the Code is not required. Nor could a petition u/s 25 of the Act be equated to a suit u/s 92 of the Code. Reliance is placed on the decisions in *Sreekumaran v. Ardhanareeswara Devaswom and Ors.* 1989 (1) KarLJ 163 and *Abhaya Vs. Raheem*, .

7. Section 9 of the Act says that a society may sue or be sued in the name of the Secretary and the proviso to Section. 9 states about a situation where on the application made by the party concerned any person other than the Secretary is stated to be the person to represent the society. Section 25 of the Act deals with the power of the District Judge in a proceeding filed under that provision (the present Original Petition is filed under the said provision). I am unable to understand Sections. 9 and 25 of the Act as relating to different sets of proceedings, Section 9 dealing with claims of individual members and Section. 25 dealing with the claims by or against the society affecting members of the society at large, as learned Counsel for additional Respondent Nos. 8 to 21 and 23 to 37 argued. As rightly pointed out by learned Counsel for Petitioners, Section 9 only says about the legal character of a society registered with the Registrar as a legal entity by itself apart from the members who constitute it and the binding nature of judgment/order obtained by or against such a society on its members (*Sreekumaran v. Ardhanareeswara Devaswom and Ors.* (supra)). O.I Rule 8 of the Code relates to a situation where there are numerous persons having community of interest in the subject matter of the case and it is impractical to implead all of them as parties to the suit and one or more of such numerous persons sue or is sued. In such cases the decision to bind all persons having community of interest with the person/persons suing or sued, leave of the court to sue or be sued in a representative capacity and a publication as provided under Sub-rule (1) and (2) of Rule 8 of O.I of the Code is required. The said provision has no application to a case where a special statute prescribes a special procedure for binding nature of the decision (as in Section 9 of the Act). The decisions in *Sreekumaran v. Ardhanareeswara Devaswom and Ors.* (supra) and *Ulahannan Kurian v. Markose* 2000 (2) KLT 880 and *Sree Narayana Dharma Samajam v. Mohandas* (supra) have taken the view that when a society registered under the Act is suing or is sued, compliance with O.I Rule 8 of the Code is not required. I do not find reason to disagree with that view.

8. The decisions relied on by learned Counsel for additional Respondent Nos. 8 to 21 and 23 to 37 have no application to the facts of the case. *Chairman, Tamil Nadu Housing Board v. T.N. Ganapathy* (supra) was a representative suit and concerned allotment of building with lands by the Housing Board. *Sree Narayana*

Dharma Samajam v. Mohandas (supra) does not in any way support the argument of learned Counsel. There, it was held that Section. 25 of the Act confers power on the District Judge for removal of the Governing Body of the society... etc. Vidyodaya Trust v. Mohan Prasad (supra) related to Section 92 of the Code. In a suit u/s 92 of the Code it was held publication under O.I Rule 8 of the Code is required if the decision in the suit where to bind all other persons interested in the subject matter of the suit. But, a suit u/s 92 of the Code is different from a proceeding under Section. 25 of the Act. Abhaya v. Raheem (supra) has taken the view that a society registered under the Act does not come under the purview of Section 92 of the Code. I do agree with that view. Hence the analogy in Section 92 of the Code cannot be drawn to a proceeding u/s 25 of the Act. I therefore hold that in a proceeding u/s 25 of the Act a publication under O.I Rule 8(2) of the Code is nor required. The contention that in the absence of compliance with the said provision proceeding in the present case before the learned Additional District Judge was vitiated, has to fail.

9. Point No. II: Then the next question is whether the intervenors (meaning, additional Respondent Nos. 8 to 37 who appeared pursuant to the publication made as per order dated 21.1.2010 of learned Additional District Judge concerning the settlement reached between Petitioners and Respondent Nos. 1 to 5 and 7) are necessary parties to the settlement arrived at between Petitioners and Respondent Nos. 1 to 5 and 7? I stated that there was a settlement between Petitioners and Respondent Nos. 1 to 5 and 7 as per which certain modifications were made to the existing bye-law and which led to I.A. Nos. 1832 and 1833 of 2009. That compromise was signed by Petitioners and Respondent Nos. 1 to 5 and 7 (Respondent N6.6 - Treasurer of the Sabha - by then had vacated his office). It is argued by learned Counsel for additional Respondent Nos. 8 to 21 and 23 to 37 that since additional Respondent Nos. 8 to 37 were impleaded in the Original Petition as per order dated 21.5.2010 on I.A. No. 2240 of 2009 they were also required to be parties to the compromise, otherwise the compromise is not in compliance of Rule 3 of Order XXIII of the Code and hence is not valid and could not be accepted or acted upon. Reliance is placed on the decision in Sneh Gupta v. Devi Samp (2009 (2) KLT 58 (C. No. 63) (SC) to contend that a compromise or satisfaction not complying with Rule 3 of Order XXIII of the Code is not binding on the parties who have not joined the compromise. In defense, it is argued by learned Counsel for Petitioners that going by the scheme of Rule 3 of Order XXIII of the Code, when a compromise is entered between parties to the proceedings what is required is to give publication of that compromise and when persons who are interested in the matter appear (in court) pursuant to that publication they are not required to be impleaded in the suit or other proceeding and even if impleaded, their junction is not required for the compromise already reached between the original parties to the proceeding. Their role is only to say whether the compromise is lawful and it is beneficial to the interest of the persons whom it is to bind, or not. Learned Counsel points out that if a contra view is taken, there could never be a compromise in a suit or proceeding of a

representative nature for, it may not be that all the intervenors agreed to the settlement already reached and in respect of which publication was made under Rule 3B(2) of Order XXIII of the Code and if one of the intervenors opposed, the compromise would fall to the ground even if it was beneficial to the interest of all the persons concerned.

10. No doubt, under Order XXIII Rule 3 of the Code, and as binding decisions on the point say (See *Sneh Gupta v. Devi Sarup* (supra), *Som Dev and Others Vs. Rati Ram and Another*, the compromise in view of amendment to Rule 3 of Order XXIII of the Code with effect from 01-02-1977 has to be in writing and signed by the parties. What then is meant by the expression "parties" occurring in Rule 3 of Order XXIII of the Code? Does it mean parties to the proceeding or does it take in those who appear (in court) pursuant to a publication made under Rule 3B(2) of Order XXIII of the Code as well?

11. There could be no doubt that in a representative suit, if a settlement is reached between parties to that suit such settlement to be valid has to be with the leave of the court expressly recorded in the proceeding. And before granting such leave the court has to give notice in such manner as it may think fit to such persons as may appear to the court to be interested in the suit. Rule 3B of Order XXIII of the Code states that. Does the said provision apply to a proceeding u/s 25 of the Act notwithstanding that Rule 8 of O.I of the Code has no application to such proceeding? I am inclined to answer the question in the affirmative. Reason is that the explanation to Sub-rule (2) of Rule 3B of Order XXIII explains what all proceedings come under the expression "representative suit" and Clause (d) states:

any other suit in which the decree passed may, by virtue of the provisions of his Code or of any other law for the time being in force, bind any person who is not named a party to the suit

(Emphasis supplied)

"suit" means a proceeding for the enforcement of a civil right or obligation. In *Musthafali v. Subar* 1991 (2) KLT 593, Section 6 of the Limitation Act relating to "suit" was found to be applicable to an application under Section. 110A of the Motor Vehicles Act, 1939. Reference was made to Webster's New 20th Century Dictionary, 2nd Edition where the word was given the meaning "as act or an instance of suing or seeking by entreaty: solicitation: a petition: as to make suit to the king" (emphasis supplied) and to Shorter Oxford English Dictionary where the word is given the meaning, "the action of suing in a court of law, legal prosecution: a process instituted in a court of justice for the recovery or protection of a right, the enforcement of a claim or the redress of a wrong". The Bombay High Court in *Vadilal Chatrabhuj Gandhi Vs. Thakorelal Chimanlal Munshaw and Others*, said that Order XXIII, Rule 3 of the Code applied to proceedings u/s 235 (presently, Section 543) of the Companies Act as a proceeding under that section is very similar to a proceeding in the nature of a

suit. A proceeding u/s 25 of the Act is a proceeding in the nature of a "suit" as it is a process thought instituted in the form of a petition for protection of rights of the society or its members, enforcement of a claim or the redress of a wrong. The process of adjudication of a claim u/s 25 of the Act and the nature of relief provided therein indicate that there is no difference in substance of a suit. By virtue of Section 9 of the Act any order that may be passed in a proceeding u/s 25 of the Act is to bind all members of the society though they are not named as parties in the proceeding. Hence Rule 3B of Order XXIII of the Code must apply to a proceeding u/s 25 of the Act. Learned Additional District Judge was not correct in holding in the order dated 21.1.2010 that no notice of the proposed settlement was required to be given under law, to all persons interested in the matter. Pursuant to the settlement between Petitioners and Respondent Nos. 1 to 5 and 7, publication was however, made in the present case and additional Respondent Nos. 8 to 37 appeared. True, they got impleaded as parties in the Original Petition as per order dated 21.5.2010 on I.A. No. 2240 of 2009. But does it make them "parties" to the proceeding as understood in Rule 3 of Order XXIII of the Code?

12. As per the scheme of Rr.3 and 3B of Order XXIII of the Code, notice (of the Compromise) to persons who are not parties to the suit and who appear to the court to be interested in the suit is required when the "parties" to the suit have adjusted the suit wholly or in part by any lawful agreement or compromise in writing and signed by the "parties". Certainly "parties" referred to in Rule 3 does not taken in persons to whom notice of the compromise is (to be) given. It is relevant to note similar provisions in Rule 8 of Order 1 of the Code. Sub-rule (2) of Rule 8 of the Order 1 of the Code deals with giving of notice of institution of the suit to all persons interested in the suit. Sub-rule (3) of Rule 8 enables any person on whose behalf or for whose benefit the suit is instituted or is defended, to apply to the court to be made a party to such suit. Sub-rule (4) of Rule 8 requires the court to give notice of any agreement, compromise or satisfaction in such suit to all persons interested in the suit. Unlike Sub-rule (3), there is no provision to implead any person interested in the suit and appearing pursuant to a publication under Sub-rule (4) as a party to the suit. Persons who respond to the notice under Sub-rule (4) of Rule 8 is to be heard on the question of agreement, compromise or satisfaction in the suit concerning which notice has been given.

13. Similarly Rule 3B of Order XXIII of the Code also does not require that a person who responds to a notice of agreement or compromise (here, in a proceeding u/s 25 of the Act) is required to be made a "party" to the proceedings. They are to be heard on the acceptability or otherwise of the agreement or compromise arrived at by the parties to the proceeding u/s 25 of the Act. For, to bind the society with such agreement or compromise it is sufficient that the society is represented by its Secretary or other person competent and as stated in Section 9 of the Act. If that be so, the intervenors who appeared in court pursuant to the publication on the compromise (additional

Respondent Nos. 8 to 37) reached between Petitioners and Respondent Nos. 1 to 5 and 7 are not required to be "parties" to the compromise - their role, notwithstanding that they are impleaded in the proceeding is only to say whether the compromise is acceptable or not. Any view to the contrary would only defeat the object of Rr.3 and 3B of Order XXIII of the Code. For any one person, notwithstanding that all others agree, can defeat a settlement or compromise which is otherwise beneficial to the interest of the society and its members by refusing to be a party to the settlement or compromise. Surely, that was not the intent of legislature by enacting Sub-rule (2) in Rule 3B of Order XXIII of the Code. I am unable to accept the argument that additional Respondent Nos. 8 to 37 were required to be parties to the compromise vide I.A. Nos. 1832 and 1833 of 2009. The argument of learned Counsel for additional Respondent Nos. 8 to 21 and 23 to 37 to the contra has to be rejected and I do so.

14. Point No. III: What then remains is whether the modification made by learned Additional District Judge to the bye-law as agreed between original Petitioners and Respondent Nos. 1 to 5 and 7 and produced along with I.A. Nos. 1832 and 1833 of 2009 was required to be reduced to writing and signed by the parties as provided under Rule 3 of Order XXIII of the Code?.

15. Learned Counsel for Respondent Nos. 1 to 5 and 7 contend that the said modification is also subject to Rule 3 of Order XXIII of the Code and in the absence of an agreement in writing and signed by Petitioners and Respondent Nos. 1 to 5 and 7 regarding the modification effected by the learned Additional District Judge, such modification cannot form the basis of a compromise decree or order. Learned Counsel for original Petitioners contends that a subsequent signed agreement between Petitioners and Respondent Nos. 1 to 5 and 7 is not required since on the agreed bye-law produced along with I.A. Nos. 1832 and 1833 of 2009 publication as provided under Rule 3B(2) of Order XXIII of the Code has been made and it was well within the power of learned Additional District Judge to hear the parties on the settlement already reached between Petitioners and Respondent Nos. 1 to 5 and 7 vide I.A. Nos. 1832 and 1833 of 2009 and pass appropriate orders. It is also submitted by learned Counsel that a reading of the impugned order would show that it was with the consent of counsel for all parties, even additional Respondent Nos. 8 to 21 and 23 to 37 that the impugned orders were passed. Learned Counsel would contend that when the order of the court below states that all the counsel had consented to the modification and learned Additional District Judge has asserted that in the common order under challenge, that need to be accepted.

16. In the impugned order learned Additional District Judge has asserted that counsel for all the parties including additional Respondent Nos. 8 to 37 consented to the modifications to the bye-law (agreed to between original Petitioners and Respondent Nos. 1 to 7 and produced along with I.A. No. 1833 of 2009). There is no reason why I should discard that statement of learned Additional District Judge.

17. Assuming so, question is whether so far as modifications made by learned Additional District Judge and referred to in the impugned common order is not made in writing and signed by the parties (Petitioners and Respondent Nos. 1 to 5 and 7) it could stand the requirements of Rule 3 of Order XXIII of the Code. The Supreme Court in *Som Dev and Ors. v. Rati Ram and Anr.* (supra) has held that on and from 1.2.1977 (when the Rule was amended) any agreement or compromise must be in writing and signed by the parties. In *Sneh Gupta Vs. Devi Sarup and Others*, the Supreme Court referring to Rule 3 of Order XXIII of the Code has stated that if the compromise is to be held to be binding, it must be in writing and signed either by the parties or by their counsel failing which Rule 3 of Order XXIII of the Code would not be applicable. Thus, decision is clear that any agreement or compromise to be binding on the parties must be in writing and signed by the parties and as the decision in *Sneh Gupta v. Devi Sarup and Ors.* (supra) says atleast by the counsel concerned on behalf of the parties. It is not sufficient that while hearing objection of parties to the proceeding, learned Additional District Judge has recorded that counsel (for Petitioners and Respondent Nos. 1 to 5 and 7) have agreed to the modification to the bye-law agreed to by Petitioners and Respondent Nos. 1 to 5 and 7. That modification being a variation from the settlement entered into between Petitioners and Respondent Nos. 1 to 5 and 7, had to be in compliance with Rule 3 of Order XXIII of the Code. Admittedly modifications made to the bye law agreed between Petitioners and Respondent Nos. 1 to 5 and 7 (appended to I.A. No. 1832 and 1833 of 2009) was not made in writing and signed by Petitioners and Respondent Nos. 1 to 5 and 7. Hence the modifications made by learned Additional District Judge cannot stand and is liable to set aside.

18. The above discussion leads me to the following conclusions:

(i) In respect of a proceeding initiated u/s 25 of the Act, a publication under O.I Rule 8(2) of the Code was not required. But, in view of Order XXIII Rule 3B(2)(d) of the Code it was necessary that the agreement or compromise between Petitioners and Respondent Nos. 1 to 5 and 7 was given publication as required under Order XXIII Rule 3B(2) of the Code before leave was granted for such agreement or compromise.

(ii) Additional Respondent Nos. 8 to 37 being intervenors (Petitioners in W.P.(C). No. 24440 of 2010) who appeared pursuant to the publication under Rule 3B(2) of Order XXIII of the Code were not required to be parties to the settlement or compromise reached between Petitioners and Respondent Nos. 1 to 5 and 7.

(hi) In so far as departing from the bye-law agreed to between Petitioners and Respondent Nos. 1 to 5 and 7 and appended to I.A. Nos. 1832 and 1833 of 2009 learned Additional District Judge has made modifications taking into account the suggestions made by Petitioners in I.A. No. 1453 of 2010 also, such modifications or variations were required to be in writing and signed by the Petitioners and Respondent Nos. 1 to 5 and 7. It was sufficient that the settlement or compromise was signed by Petitioners and atleast Respondent No.

2, Secretary of the Sabha who could bind the Sabha and its members by such settlement or compromise.

19. It follows from my above conclusions that common order passed by the learned Additional District Judge on 3.6.2010 (Exts.P3 in W.P.(C). No. 23185 of 2010) and the common order dated 19.7.2010 (Ext.P6 in W.P.(C) No. 231 of 2010) cannot stand and are liable to be set aside. I do so.

20. That brings the case back to the order dated 01-08-2009 on I.A. Nos. 1832 and 1833 of 2009. The said applications are signed by Petitioners and Respondent Nos. 1 to 5 and 7 and counsel appearing for them. Learned Counsel for Petitioners and Respondent Nos. 1 to 5 and 7 submit that Petitioners and Respondent Nos. 1 to 5 and 7 are agreeable to that compromise and stand by it. The submission is accepted and recorded. Requirements of Rule 3 of Order XXIII of the Code is satisfied so far as that compromise is concerned.

21. Then, I have to hear the objections raised by additional Respondent Nos. 8 to 37 who appeared in court pursuant to the publication under Rule 3B(2) of Order XXIII of the Code on the agreement/compromise reached between Petitioners and Respondent Nos. 1 to 5 and 7 and as revealed by I.A. Nos. 1832 and 1833 of 2009. Of course they have some objection to certain clauses in the bye-law as amended by agreement between Petitioners and Respondent Nos. 1 to 5 and 7. I have heard learned Counsel for additional Respondent Nos. 8 to 21 and 23 to 37 in that regard and gone through the bye-law produced along with I.A. Nos. 1832 and 1833 of 2009. On hearing learned Counsel I am satisfied that objection raised are not valid. I am also not convinced that the bye-law as amended by agreement between original Petitioners and Respondent Nos. 1 to 5 and 7 and produced along with I.A. Nos. 1832 and 1833 of 2009 in any way affected interest of the Sabha and its members adversely. There is no reason to depart from the amended bye-law as agreed to between Petitioners and Respondent Nos. 1 to 5 and 7 and produced along with I.A. Nos. 1832 and 1833 of 2009. Petitioners and Respondent Nos. 1 to 5 and 7 in the circumstances, are granted leave to settle the dispute as stated in I.A. Nos. 1832 and 1833 of 2009 based on the amended bye-law of the Sabha produced along with the said applications.

22. As suggested and agreed by counsel for all parties in the Writ Petitions, Sri. Chandradasan Nadar, retired District Judge, Thiruvananthapuram is appointed as Returning Officer to conduct the election in accordance with the terms of the amended bye-law agreed to between Petitioners and Respondent Nos. 1 to 5 and 7 and produced along with I.A. Nos. 1832 and 1833 of 2009. The Returning Officer could approach the learned Additional District Judge for any direction in the matter of enrollment of members or conduct of the election.

In the result Writ Petitions are disposed of in the following lines:

A. W.P.C. No. 23185 of 2010

The Writ Petition is allowed in the following lines:

(i) Exts. P3 and P6, common orders dated 3.6.2010 and 19.7.2010 respectively, in O.P. No. 477 of 2005 of the court of learned Additional District Judge-I, Thiruvananthapuram are set aside. I.A. No. 1884 of 2010 will stand allowed.

(ii) Petitioners and Respondent Nos. 1 to 5 and 7 in I.A. Nos. 1832 and 1833 of 2009 in O.P. No. 477 of 2005 of the court of learned Additional District Judge, Thiruvananthapuram are granted leave to settle the case and accordingly, I.A. Nos. 1832 and 1833 of 2009 are allowed and the amended bye-law produced along with I.A. No. 1833 of 2009 is accepted.

(iii) Election to the Governing Body of Respondent No. 1 in O.P. No. 477 of 2005, the Kerala Hindi Prachar Sabha shall be conducted in accordance with the amended bye-law stated above within a period of three months from this day.

(v) Sri. Chandradasan Nadar, retired District Judge, Thiruvananthapuram is appointed as returning officer to conduct the election. Enrolment of members and conduct of the election shall be in accordance with the stipulations in the amended bye-law and approved hereby (appended to I.A. No. 1833 of 2009 in O.P. No. 477 of 2005). The Returning Officer shall assume charge as such within a week of receipt of a copy of this judgment and submit a report to that effect to the learned Additional District Judge-I, Thiruvananthapuram within a week of assumption of charge.

(vi) The present office bearers of Respondent No. 1 in O.P. No. 477 of 2005 shall hand over all records relating to the membership of Respondent No. 1 (as it may be necessary for enrolment of members for the conduct of election) to the Returning Officer within a week from his assuming charge.

(vii) The Returning Officer shall after conduct of the election submit a full report to the learned Additional District Judge-I, Thiruvananthapuram as to the admission of members (if any) and the conduct of the election along with the result of the election.

(viii) The remuneration payable to the Returning Officer is fixed initially at Rs. 25,000/- (Rupees Twenty Five Thousand Only). Further remuneration if any payable shall be decided by the learned Additional District Judge-I, Thiruvananthapuram considering the work done by the Returning Officer.

(ix) Any further direction in the matter of admission of members and/or (complying with the stipulations in the bye-law approved as stated above) conduct of the election shall be sought by the Returning Officer from the learned Additional District Judge-I Thiruvananthapuram.

B. W.P. (C). No. 24440 of 2010

The Writ Petition is closed in the light of the decision in W.P. (C). No. 23185 of 2010. I.A. No. 1864 of 2010 in O.P. No. 477 of 2005 will also stand closed for the said reason.

Registry shall send a copy of this judgment to Sri. Chandradasan Nadar, retired

District Judge, Thiruvananthapuram for compliance.