

(1997) 10 MAD CK 0052
In the Madras High Court
Case No : L.P.A. No. 194 of 1996

Swadharma Swarajya Sangha

APPELLANT

Vs

Indian Commerce and Industries Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 21-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, 21

Citation : (1999) 98 CompCas 151 : (1998) 1 MLJ 724

Hon'ble Judges : M.S. Liberhan, C.J.;Raju, J

Bench : Division Bench

Advocate : K. Mani, for the Appellant; A.K. Mysami, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Liberhan, C.J.—The only contention raised in this appeal is that the director was competent to file the suit as authorised by the articles

of association. It would be expedient to reproduce the relevant portion of Article 104 of the memorandum and articles of association :

Without prejudice to the general powers conferred by the last preceding articles and the other powers conferred by those presents it is hereby

expressly declared that the directors shall have the following powers, that is to say, power . . .

(b) to institute, conduct, defend compromise or abandon any legal proceedings by or against the Sangha or its officers, or otherwise concerning the

affairs of the Sangha and also to compound and allow time for payment of or satisfaction of any debts due and of any claims or demands by or

against the Sangha . . .

2. A reading of the above article leads to an inference that it is the directors who should jointly authorise to decide to institute or institute a suit.

Concedingly, the directors have passed no resolution deciding to institute a suit binding the institution with the result of the suit. The suit having been filed without there being any resolution and as the corporation can only file a suit if there is a resolution for the same, the suit was not filed by an authorised person under Order 29, Rule 1 of the Code of Civil Procedure. The suit as such is not maintainable.

3. Consequently, the letters patent appeal is dismissed.