

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

O.S.A Nos.220, 221 and 222 of 2023
and
CMP. Nos. 26154, 26160 and 26163 of 2023

O. Paneerselvam

.. Appellant in all the
Appeals

Versus

Edappadi K. Palaniswami
General Secretary
All India Anna Dravidar Munnetra Kazhagam
226/275, Avvai Shanmugam Salai
Royapettah, Chennai - 600 014

.. Respondent in all
the appeals

O.S.A. No. 220 of 2023:- Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 07.11.2023 passed in O.A. No. 787 of 2023 in Civil Suit No. 181 of 2023 on the file of this Court.

O.S.A. No. 221 of 2023:- Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 07.11.2023 passed in O.A. No. 788 of 2023 in Civil Suit No. 181 of 2023 on the file of this Court.

O.S.A. No. 222 of 2023:- Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 07.11.2023 passed in O.A. No. 789 of 2023 in Civil Suit No. 181 of 2023 on the file of this Court.

For Appellant : Mr. P.H. Aravind Pandian, Senior Advocate
for Mrs. P. Rajalakshmi
in OSA Nos. 220 and 221 of 2023

Mr. Abdul Saleem, Senior Advocate
for Mrs. P. Rajalakshmi
in OSA No. 222 of 2023

For Respondent : Mr. Vijay Narayan, Senior Advocate
for Mr. K. Gowtham Kumar
& Mr. E. Balamurugan

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J

These three appeals are preferred by the appellant aggrieved by the common order dated 07.11.2023 passed by the learned Judge in O.A. Nos. 787, 788 and 789 of 2023 respectively in Civil Suit No. 181 of 2023.

2. The respondent herein is the plaintiff in the aforesaid civil suit and the appellant is the defendant therein. The averments made in the suit are briefly set out hereunder:

(i) The respondent is the General Secretary of the All India Anna Dravida Munnetra Kazhagam (in short, "the AIADMK") and also the former Chief Minister of the State of Tamil Nadu. Further, he is presently, the Leader of the Opposition in the Tamil Nadu Legislative Assembly. The defendant was previously a Member and an office bearer of the AIADMK.

(ii) Tracing the history of the party in the plaint, it is stated that the AIADMK is a recognised political party in the State of Tamil Nadu and Union Territory of Puducherry and it was registered with the Election Commission of India. The party was founded by Puratchi Thalaivar Dr. M.G. Ramachandran and after his demise, it was spearheaded by Dr. J. Jayalalithaa. On 05.12.2016, Dr. Jayalalithaa died upon which there was a split in the leadership within the party. The party was thereafter led by the plaintiff and the defendant jointly which was also recognised by the Election Commission of India by order dated 23.11.2017. The Plaintiff and the defendant continued to function as the Co-ordinator and Joint Co-ordinator from 2017 till 2021. On 01.12.2021, the plaintiff and defendant nominated Dr. A. Tamil Magan Hussain as the Interim Presidium Chairman. On the same day, the Executive Committee passed special resolutions and introduced certain amendments to the bye-laws and prominent among them are (i) the Co-ordinator and Joint Co-ordinator shall be elected by the primary members instead of the General Council; and (ii) they shall be elected jointly by a single vote i.e., they would contest under a single ticket. The Executive Council also resolved that the amendments made in the meeting shall be placed in the ensuing General Council for approval inasmuch as General Council alone had the power to amend the bye-laws. In the subsequent meeting, an election to the posts of Co-ordinator and Joint

Co-ordinator was announced and the plaintiff and defendant were chosen unopposed. However, in the General Council meeting held on 23.06.2022, the members of the party echoed in one voice for the party to be spearheaded by a single leadership. On coming to know the desire of the party cadre, the defendant started creating unnecessary rift within the party. The defendant also indulged in anti-party activities which had brought disrepute to the party. In fact, at the instance of the defendant, one of the supporter by name M. Shanmugam filed Civil Suit No. 111 of 2022 for stay of the ensuing meeting to be held on 23.06.2022. This Court refused to grant an order of interim stay, which resulted in filing of O.S.A. No. 160 of 2022. When the appeal was listed for hearing on 23.06.2022, on which date, the meeting was proposed to be held, this Court observed that the meeting could proceed, but no decision thereof.

(iii) It is further stated in the plaint that pursuant to the order of this Court dated 23.06.2022, the members of the General Council wanted to discuss and decide on the issue of single leadership before taking up any other items for consideration. According to the plaintiff, majority of the members supported the single party leadership in writing and they were handed over to the Presidium Chairman of the party, who had announced that the next General Council meeting will be held on 11.07.2022. In the meeting dated 23.06.2022,

the defendant was also present and after such announcement was made to consider the plea of single party leadership in the next meeting, the defendant left the meeting hall. The defendant is also fully aware of the overwhelming desire of the party cadres in the meeting held on 23.06.2022 to ensure that the party is presided by a single leadership and to abolish the existing Co-ordinator and Joint Co-ordinator system.

(iv) When the agenda for the next meeting to be held on 11.07.2022 was circulated to the members, including the defendant, he filed C.S. No. 118 of 2022. Similarly, yet another suit in C.S. No. 119 of 2022 was filed by another member. In the meantime, the appeal filed by the plaintiff in S.L.P. No. 11237 of 2022 against the order dated 23.06.2022 of the Division Bench of this Court in O.S.A. No. 160 of 2022, came up for hearing and the Honourable Supreme Court has granted an order of stay on 06.07.2022.

(v) Subsequently, the suits in C.S. Nos. 118 and 119 of 2022 were taken up for consideration and the interim applications seeking to restrain the plaintiff from conducting the General Council meeting on 11.07.2022, were dismissed on 11.07.2022 and the General Council meeting was convened as per the schedule on 11.07.2022, in which, several important resolutions were passed. One of the resolutions is the abolition of the post of Co-ordinator and Joint Co-ordinator and the appointment of the plaintiff as Interim General

Secretary of the party. As per the resolution passed, the General Secretary of the party shall be appointed within a period of four months and until then, the Interim General Secretary shall administer the party and the cadres. Immediately, the Election Commission of India was intimated about the appointment of the respondent as Interim General Secretary of the party as per Section 29A (9) of the Representation of People's Act, 1951.

(vi) While so, immediately after the conclusion of the meeting on 11.07.2022, at the instigation of the defendant, his supporters attacked the party office, broke open the door with arms and damaged the properties. The supporters of the defendant also ransacked the party office and stole several vital documents, such as, official records, title documents, bank records, documents relating to General Council Meetings etc. In view of the commotion and disturbance caused by the supporters of the defendant, the party office was locked and sealed by the District Collector to prevent further disturbance. Subsequently, at the instance of the plaintiff, this Court, by order dated 20.07.2022 passed in CrI.OP Nos. 16343, 16485 and 16695 of 2022 directed the revenue authorities to remove the seal and hand over the party headquarters to the plaintiff. This order was also put to challenge by the defendant before the Honourable Supreme Court in SLP (CrI) Nos. 7119 to 7121 of 2022 and the same were dismissed on 12.09.2022. In fact, in

connection with the incident that had taken place on 11.07.2022, the CB CID Police has registered a case in Crime No. 2 of 2022 on 01.09.2022 for the offences punishable under Sections 147, 148, 454, 380, 409, 427 and 506 (ii) IPC in which the defendant was shown as one of the accused and the investigation is pending.

(vii) The plaintiff also submitted that the election and the resolutions passed on 11.07.2022 were challenged by the appellant before the Honourable Supreme Court and the matter was remanded back to the learned Judge for re-consideration with a direction to maintain *status quo*. After remand, by order dated 17.08.2022, this Court allowed the applications filed by the appellant and others, in C.S. No. 119 of 2022 and restored status-quo ante as on 23.06.2022. Challenging the same, the plaintiff filed O.S.A. Nos. 227, 231 and 232 of 2022 before the Division Bench of this Court and the same were allowed on 02.09.2022. The appellant challenged the order dated 02.09.2022 before the Supreme Court and they were disposed of on 23.02.2023 by holding that the order of the learned Judge dated 17.08.2022 was perverse and as such, the order of the Division Bench dated 02.09.2022 setting aside the order dated 17.08.2022 was affirmed and consequently, the interim applications stood rejected. Thus, the election of the plaintiff as Interim General Secretary was upheld by the Honourable Supreme Court.

(viii) The Plaintiff also referred to various other cases filed by the appellant as well as the respondent before this Court as well as the Honourable Supreme Court and submitted that as on date, the plaintiff is holding the post of General Secretary of the party. It is further stated that notwithstanding the expulsion from the primary membership of the party, the appellant/ defendant continues to portray himself as the Co-ordinator of the AIADMK Party, when no such post even exists as on date. The appellant has been wilfully damaging the reputation of the party by misusing the official letter heads and misleading the public to believe that he is still continuing as Co-ordinator of the party. The appellant/defendant also made several illegal appointments of the persons of his choice and removed some persons from the post held by them by asserting that he is the Co-ordinator of the AIADMK party. This is also reflected in X (formerly Twitter) handle of the appellant which describes him as Co-ordinator of AIADMK. Such an act perpetrated by the appellant/defendant is illegal, thereby causing huge loss of reputation to the party. The repeated use of the party post, flag and letter head by the appellant/defendant without any authority after his expulsion is causing chaos in the midst of the cadres of the party. Therefore, the plaintiff has filed the present suit praying to grant the following reliefs:

"(a) Permanent injunction restraining the defendant, his men and any other person claiming under him from interfering with the functioning of the plaintiff as the General Secretary of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party;

(b) Permanent injunction restraining the defendant, his men and any other person claiming under him from holding out or claiming as the "Co-ordinator" or as a primary member of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party;

(c) Permanent injunction restraining the defendant, his men and any other person claiming under him from using the Official letter head, reserved symbol "two leaves" and the official flag of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party;

(d) To pay the cost of the suit."

3. Pending suit, the respondent/plaintiff has filed Original Application Nos. 787 to 789 of 2023 in Civil Suit No. 181 of 2023 praying the following reliefs:

"(i) interim injunction restraining the appellant/defendant, his men and any other person claiming under him, from interfering with the functioning of the plaintiff as General Secretary of All India Anna Dravida Munnetra Kazhagam (AIADMK) Party pending disposal of the suit;

(ii) interim injunction restraining the appellant / defendant, his men and any other person claiming under him, from holding out or claiming as the "Co-ordinator" or as a primary member of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party pending disposal of the suit;

and

(iii) interim injunction restraining the appellant / defendant, his men and any other person claiming under him, from using the official letter head, reserved symbol "two-leaves" and the official flag of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party, pending disposal of the suit."

4. When the Original Applications were taken up for consideration on 21.09.2023, it was observed by the learned Judge (R.N.Manjula, J.) that though the plaintiff has made out a *prima facie* case, in view of the earlier orders passed in various proceedings between the plaintiff and the defendant

and others, when the matter was moved today, Ms.P.Rajalakshmi, learned counsel has taken notice for the defendant and requested short time for filing vakalat and counter. Acceding to the said request, the learned Judge directed the Original Applications to be listed on 06.10.2023.

5. On 07.11.2023, when the aforesaid Original Applications were listed for hearing, the learned Judge (N.Sathish Kumar, J) has granted an order of interim injunction till 30.11.2023. For better appreciation, the said order dated 07.11.2023, is extracted below:

"When the matter came up before this Court on 21.09.2023, only on the request made by the learned counsel appearing for the respondent/defendant, this Court has not passed any interim order, though in fact, the plaintiff has made out a prima facie case, in view of the earlier orders passed in various proceedings between the plaintiff and the defendant and adjourned the matter for filing counter. However, no counter has been filed.

2. *Even today, when the matter is posted for final arguments, no counter has been filed. The only contention put forth before this Court is that SLP has been filed against the order passed by the Division Bench of this Court in O.S.A. Nos. 68 to 78 of 2023. Hence, the learned counsel appearing for the respondent/defendant opposed for grant of interim order.*

3. *The very relief sought for in these applications are (a) to restrain the respondent/defendant from interfering with the functioning of the plaintiff as the General Secretary of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party; (b) to restrain the respondent/defendant, his men and any other person claiming under him from holding out or claiming as the "Coordinator" or as a primary Member of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party; and (c) to restrain the respondent/defendant, his men and any other person claiming under him from using the official letter head, reserved symbol "two leaves" and the official flag of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party pending disposal of the suit.*

4. *It is to be noted that the respondent/defendant was expelled from the primary Membership of the Party as per the Resolution passed on 11.07.2022 and the said Resolution was the subject matter of the Suits*

before this Court in C.S. No. 62 of 2023 and C.S. Nos. 47, 55 and 56 of 2023. However, a learned single Judge of this Court dismissed the interim applications on 28.03.2023. Challenging the said order, appeals have been filed before the Division Bench of this Court in O.S.A. Nos. 68, 69 and 70 of 2023. A Division Bench of this Court has also confirmed the Resolution passed expelling the respondent/defendant from the primary Membership.

5. *Now it is stated by the learned counsel for the respondent/defendant that the said orders have been challenged before the Hon'ble Supreme Court in SLP No. 024812 of 2023. However, it is not brought to the notice of this Court that stay has been granted. The order of the Division Bench approving the resolution has not been stayed. Such being the current state of affairs and that when the respondent/defendant at this stage is not a Member of the party as per the Resolution and has not chosen to file counter and hence, he is restrained by way of interim order as sought in these applications till 30.11.2023.*

6. *Let the counter be filed on 30.11.2023.*

7. *Post the matter on 30.11.2023 finally. Interim order passed above shall continue till 30.11.2023."*

Assailing the aforesaid common order dated 07.11.2023 passed in the applications, the present appeals are filed by the appellant / defendant.

6. (i) Mr. P.H. Aravind Pandian, learned Senior Counsel appearing for the appellant in O.S.A. Nos. 220 and 221 of 2023 submitted that while granting an order of interim injunction, the learned Judge ought not to have placed reliance on the order dated 21.09.2023 passed by the predecessor Judge, and this stands testimony to the fact that the learned Judge has not satisfied himself as to the *prima facie* case, if any, made out by the respondent to get an order of interim injunction. Adding further, the learned senior counsel submitted that the learned Judge has not independently assessed the claim of the plaintiff / respondent herein, while granting an order of interim

injunction, but has merely relied on the order passed by the predecessor Judge on the previous occasion i.e., on 21.09.2023, and it was observed in the first paragraph of the order impugned herein that on 21.09.2023, only on the request made by the learned counsel for the plaintiff, no interim order was granted, though the plaintiff/respondent has made out a *prima facie* case in view of the earlier orders passed in various proceedings between the parties, and the matter stood adjourned for filing vakalat and counter, however, no counter has been filed. Thus, the learned Judge, while granting interim injunction on 07.11.2023, ought not to have placed reliance on the order dated 21.09.2023 passed by the predecessor Judge, without independently making any assessment and examining as to whether the plaintiff/respondent is eligible for grant of an order of interim injunction. In other words, it is his submission that an interim order cannot be passed on the basis of the observation passed by the predecessor Judge on previous occasion, while adjourning the hearing of the applications seeking interim injunction.

(ii) According to the learned Senior counsel appearing for the appellant, while granting interim injunction, the learned Judge had traversed beyond the nature of reliefs sought in such applications and made certain observations touching the merits of the suit. In effect, for granting interim injunction, the learned Judge placed reliance on the judgment of this Court in

O.S.A Nos. 68 to 78 of 2023 filed by the appellant. The nature and scope of the decision made in the appeals are different and they have got nothing to do with the grant of interim injunction. The learned Judge was carried away by the dismissal of the appeals in O.S.A Nos. 68 to 78 of 2023 without taking note of the fact that special leave petitions have been filed as against the said judgment of the Division Bench. While so, there is no necessity for the learned Judge to make a reference about the Judgment in O.S.A. Nos. 68 to 78 of 2023 while granting interim injunction at the behest of the respondent-plaintiff. Further, the learned Judge did not take note of the fact that the reliefs sought for in the applications seeking interim injunction and in the suit are identical and similar. Thus, the grant of interim injunction would tantamount to allowing the suit, which is legally impermissible at this stage.

(iii) The learned Senior counsel for the appellant also submitted that he is not inclined to advance his arguments on merits or otherwise of the applications filed by the respondent/plaintiff seeking interim reliefs. It is his contention that for grant of interim injunction, the provisions contained under Order 39 Rule 1 of the Code of Civil Procedure are required to be satisfied. The test required to be satisfied by the respondent/plaintiff to obtain an order of interim injunction is to make out a *prima facie* case, balance of convenience, irreparable loss and injury which have not been satisfied in this

case. Further, the issue relating to the usage of the party name, letter head, party flag by the appellant, has a direct bearing on the validity of the order of expulsion passed against him by the party, which is the subject matter of the pending suits in C.S. Nos. 47, 55, 56 and 62 of 2023 filed by the appellant and others. While so, seeking interim injunction to restrain the appellant from using the party flag, letter head or party name, the respondent/plaintiff has to participate in the trial in the suits referred to above and establish that there is an legal embargo for the appellant to use the name of the party or the flag of the party. Before commencement of trial in the suits, the relief of interim injunction granted by the learned Judge is unjust, arbitrary and has caused acute prejudice to the appellant. It is also submitted that the appellant was also the General Secretary of AIADMK Party and had held the post of Chief Minister of the State thrice in the years 2001, 2014 and 2016, Leader of Opposition during the year 2006, Finance Minister during the year 2017 etc. As such, the grant of interim injunction had in fact caused irreparable injury to the appellant, which was not taken note of by the learned Judge, at the time of passing the order impugned in these appeals. Therefore, it is submitted by the learned Senior counsel that the grant of interim injunction by the learned Judge is unwarranted in the given peculiar facts and circumstances of the case and the same will have to be set aside.

(iv) In support of his contentions, the learned Senior counsel appearing for the appellant in O.S.A. Nos. 220 and 221 of 2023 placed reliance on the decision of the Honourable Supreme Court in ***Dalpat Kumar and another vs. Prahlad Singh and others [(1992) 1 Supreme Court Cases 719]*** wherein it was held that the burden is always on the plaintiff to prove by evidence that there is a *prima facie* case in his favour, which needs adjudication in the trial. The existence of *prima facie* right and infraction of the enjoyment of his property or the right is a condition for the grant of interim injunction. *Prima facie* case is not to be confused with *prima facie* title, which has to be established on evidence during trial. Only *prima facie* case is a substantial question raised, *bona fide*, which needs investigation and a decision on merits.

(v) The learned Senior counsel also relied on the decision of the Honourable Supreme Court in ***D.R. Chawla and others vs. Municipal Corporation of Delhi [(1993) 3 Supreme Court Cases 161]*** wherein it was held thus:

"It has come to our notice that in spite of the aforesaid statutory requirement the courts have been passing orders of injunction before issuance of notices or hearing the parties against whom such orders are to operate without recording the reasons for passing such orders. It is said that if the reasons for grant of injunction are mentioned, a grievance can be made by the other side that court has prejudged the issues involved in the suit. According to us, this is a misconception about the nature and the scope of interim orders. It need not be pointed out that any opinion expressed in connection with an interlocutory application has no bearing and shall not affect any party, at the stage of the final adjudication. Apart from that now in

view of the proviso to Rule 3 aforesaid, there is no scope for any argument. When the statute itself requires reasons to be recorded, the court cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing any opinion in favour of the plaintiff before hearing the defendant."

With these submissions and case laws, the learned senior counsel sought to allow these appeals by setting aside the order impugned herein.

7(i) Mr. Abdul Saleem, learned Senior counsel appearing for the appellant in O.S.A. No. 222 of 2023 submitted that the respondent/plaintiff claimed himself to be the General Secretary of the AIADMK Party, however, such claim is the subject matter of the suits pending before this Court. The respondent has no proprietary right to assert that he is the General Secretary of the party before the adjudication of the suits pending before this Court. As such, the proprietary right to institute the suit as against the appellant is only with the AIADMK Party and the respondent has no exclusive right to institute the present suit. Therefore, it is submitted that the suit filed by the respondent in such capacity, is not maintainable and it is liable to be rejected at the threshold.

(ii) As regards the relief of interim injunction restraining the appellant from using the party flag, letter head etc., it is not maintainable especially when there was no reference to the description of the flag. The party uses three

different types of flag. It is not clear as to which is the flag being used by the appellant and the one which is sought to be restrained from being used. There was no document placed by the respondent along with the suit or the application for interim injunction. Similarly, there was no description about the letter pad or it was not filed as a document in the suit and it causes a reasonable confusion in the mind of the appellant as to the usage of the flag as well as the letter head. The prayer for grant of interim injunction has not been properly made, because there are plenty of followers, who support the appellant and they were not expelled from the party and are continuing to be the members of the party. Therefore, such a blanket relief to restrain the appellant as well his followers, who still remain in the party and who support the appellant, is not maintainable. It is also submitted that the learned Judge placed reliance on the judgment of the Division Bench of this Court while granting interim relief, without regard to the fact that the Division Bench has clearly stated that the issues raised therein are left open to be decided during the course of trial. Therefore, before commencement of trial, the relief sought by the respondent cannot be granted and hence, the order impugned in these appeals has to be set aside.

8. (i) Opposing the submissions made by the learned Senior counsel appearing for the appellant, Mr. Vijay Narayan, learned Senior counsel for the respondent/plaintiff would question the maintainability of the appeals filed by the appellant. It is vehemently contended that the order, which is impugned in these appeals, is interim in nature. By virtue of the interim order, the learned Judge has not finally decided the *lis* between the parties. In such circumstances, the present appeals invoking Clause 15 of Letters Patent are not maintainable and they are liable to be dismissed at the threshold.

(ii) In this context, the learned Senior counsel for the respondent placed reliance on several decisions, one of which was passed by the Division Bench of this Court in ***R. Kannan and others vs. Indchem Electronics Ltd., [AIR 1990 Madras 62]*** wherein it was held that the orders, which are interim in nature and which do not attain a finality determining the rights and liabilities of the parties, cannot fall within the meaning and expression of 'judgment' occurring in Clause 15 of Letters Patent of this Court and therefore such appeals are not maintainable.

(iii) In yet another decision of the Division Bench of this Court in ***The Special Tahsildar No.III, Land Acquisition, Lignite Projects, Neyveli-2 vs. V. Rangasamy Reddiar [1988-1-Law Weekly 149]*** it was reiterated that

interim orders are not judgments within the meaning of Clause 15 of Letters Patent and an appeal filed thereagainst is not maintainable.

(iv) The learned Senior counsel for the respondent also referred to the decision in *Shyam Sel and Power Limited and another vs. Shyam Steel Industries Limited [(2023) 1 Supreme Court Cases 634]* and submitted that in identical circumstances, the Hon'ble Supreme Court held in para No.26 as follows:

"26. It is thus clear that there was no adjudication with regard to the rights of the respondent-plaintiff to get an ad interim injunction during the pendency of the suit. Though by postponement of the issue with regard to grant of ad-interim injunction, the order might have caused some inconvenience and may be, to some extent, prejudice to the respondent-plaintiff; the same could not be treated as a 'judgment' inasmuch as there was no conclusive finding as to whether the respondent-plaintiff was entitled for grant of ad-interim injunction or not. As such, the order passed by the learned Single Judge did not contain the traits and trappings of finality. If it is held otherwise, this will open a floodgate of appeals for parties who may even challenge the order of adjournment or grant of time to the other side to file affidavit-in-reply. We are therefore of the considered view that the order dated 02-04-2019 (Shyam Steel Industries Ltd., vs. Shyam Sel & Power Limited., 2019 SCC Online Cal 9130 cannot be construed to be a 'judgment' within the meaning of Clause 15 of the Letters Patent and as such, the appeal to the Division Bench of the High Court was not tenable."

(v) In the present case, the learned Judge has granted interim injunction and posted the matter for further hearing on 30.11.2023. While so, the impulsive haste shown by the appellant in filing the present appeals and assailing the validity of the order so passed by the learned Judge, is liable to be rejected.

(vi) With respect to the merits of the case, it is submitted by the learned Senior counsel for the respondent that on 11.07.2022, a special resolution was passed expelling the appellant from the party. The appellant has unsuccessfully challenged such expulsion before the Division Bench of this Court and suffered an order dated 25.08.2023 in OSA Nos.68 to 78 of 2023. Further, the appellant, inspite of the order of dismissal dated 25.08.2023, continues to make a statement before the press and media and asserting himself to be the General Secretary of the party inspite of his expulsion, which has caused chaos within the party and among the cadres of the party. The X (formerly Twitter) handle of the appellant still reflects that he is a Co-ordinator of the AIADMK party. The appellant also indulges in removing the members from his party by asserting himself as the Co-ordinator of AIADMK Party and appoints his sympathisers as District Secretary, Deputy Co-ordinator and Joint Co-ordinator. For such purpose, the appellant unlawfully uses the party flag, party letter head etc., without any authority to do so. It is in those circumstances, the respondent has filed the suit for the relief of permanent injunction with applications for interim reliefs. Taking note of the above facts, the learned Judge, in his own discretion has granted interim injunction to restrain the appellant, an expelled member of the party, from using the party flag, letter pad etc. Such interim order was granted only till 30.11.2023 and the

learned Judge would take up the matter again for further hearing on that date. The appellant, instead of filing an application for vacating the said interim order, has rushed to this Court with these appeals invoking Clause 15 of the Letters Patent and hence, they are not maintainable.

(vii) The learned Senior counsel for the respondent/plaintiff also submitted that the learned Judge has merely referred to the order passed by the predecessor Judge on 21.09.2023 while granting interim injunction. The order dated 21.09.2023 is not the basis for the learned Judge to pass the order dated 07.11.2023, which is impugned in these appeals. On the other hand, the learned Judge independently considered the case put forth by the respondent in the light of the fact that the appellant could not succeed in the earlier rounds of litigation before this Court as well as the Honourable Supreme Court and granted the interim order for a limited period. Such order, will not partake a final order or it has finally decided the *lis* between the parties. While so, the present appeals filed by the appellant invoking Clause 15 of Letters Patent against the interim order so granted by the learned Judge are liable to be dismissed.

(viii) The learned Senior counsel for the respondent/plaintiff also submitted that the Election Commission of India has recognised the respondent/plaintiff as the General Secretary of AIADMK Party. The

challenge made to such decision of the Election Commission of India, by the appellant, was rejected. Thus, the respondent has made out a *prima facie* case for grant of interim injunction and the balance of convenience is also in his favour. Even if it is the assertion of the appellant that the respondent has not made out a *prima facie* case or the balance of convenience is not in favour of the respondent/plaintiff, the remedy open for the appellant is to plead his case before the learned Judge when the applications will be taken up for further hearing on 30.11.2023. Therefore, the learned Senior counsel prayed for dismissal of these appeals so as to enable the learned Judge to continue to hear the case on its own merits.

9. By way of reply, Mr. Aravind Pandian, learned Senior counsel appearing for the appellant in O.S.A. Nos. 220 and 221 of 2023 submitted that while passing the order of interim injunction, the learned Judge has not satisfied himself as to the existence of the triple test namely *prima facie* case, balance of convenience and irreparable injury. The learned Judge has not dealt with the aforesaid three significant parameters required to be satisfied before granting interim order. As far as the submission that the Election Commission of India has recognised the respondent as the General Secretary of the AIADMK Party, it is submitted that the Election Commission of India in its communication has made it clear that apart from the original bye-law on

record, the amended bye-law was also taken into record and there are two bye-laws of the AIADMK Party on record with the Commission, which could be evident from the official website of the Election Commission of India. Therefore, it cannot be said that the respondent was recognised as the General Secretary of the party, but it is subject to the litigations pending before this Court.

10. Mr. Abdul Saleem, learned Senior counsel appearing for the appellant in O.S.A. No. 222 of 2023 submitted that the party building belongs to the Trust and it is meant for use of the administrative office of the party. Therefore, the respondent has no *locus standi* to question the use of the party office or seek any relief thereof. The suit as well as the interim applications have been filed by asserting that the respondent is the General Secretary of the party and that the appellant has been expelled. However, the post of General Secretary held by the respondent as well as the expulsion of the appellant and others are the subject matter of the suits pending before this Court, while so, the present suit as well as the applications seeking interim injunction are not maintainable, which was not taken note of by the learned Judge, while granting interim injunction.

11. We have heard Mr. P.H. Aravind Pandian, learned Senior counsel for the appellant in O.S.A. No. 220 and 221, Mr. Abdul Saleem, learned Senior

counsel for the appellant in O.S.A. No. 222 of 2023 and Mr. Vijay Narayan, learned Senior counsel for the respondent and also perused the materials placed on record, including case laws relied on them.

12. At the outset, it must be stated that we are not oblivious of the fact that the instant appeals are filed as against the interim injunction granted by the learned Judge. The learned Judge, while granting such order, restricted its operation until 30.11.2023 and posted the applications for further hearing on that day i.e., on 30.11.2023. However, questioning the legality of such order passed by the learned Judge, the appellant has filed these three appeals before us.

13. On behalf of the appellant, it is vehemently canvassed that the expulsion of the appellant from the party is not valid and such expulsion is the subject matter of suits filed by him and others. It is also contended that while granting interim injunction, the learned Judge was carried away by the observations made by the predecessor Judge in her order dated 21.09.2023 and the earlier orders passed by this Court as well as the Honourable Supreme Court, without making an independent assesment of the right or otherwise of the respondent to get an order of interim injunction. It is further stated that the

appellant was not granted sufficient and adequate opportunity to file his counter before granting interim injunction and therefore, the order so passed by the learned Judge on 07.11.2023 cannot be sustained.

14. On the other hand, it is submitted on behalf of the respondent that the appellant was expelled from the primary membership of the party in the General Council meeting held on 11.07.2022 and therefore, an expelled member cannot be permitted to use the party flag, letter head and reserved symbol. It is also the contention raised on the side of the respondent that the challenge made by the appellant as against his expulsion has been negated by this Court as well as the Honourable Supreme Court in series of litigations, while so, the appellant is not entitled to do any act which may bring disrepute and chaos in the organisational structure. In such circumstances, till the disposal of the suit filed by the respondent, an order of interim injunction is essential. The learned Judge, on appreciation of the facts, has granted interim injunction till 30.11.2023 only. Therefore, at this stage, the claim of the appellant need not be considered.

15. We refrain from dealing with the merits or otherwise of the contentions raised on the side of the appellant as well as the respondent. By

the order dated 07.11.2023, which is impugned in these writ appeals, interim injunction was granted by the learned Judge till 30.11.2023. In the ordinary course, the said applications would have been listed again on 30.11.2023 for further consideration. If the appellant is in any manner aggrieved by the interim order, it is very well open to him to file application(s) to vacate the same, and without doing so, the present appeals have been filed before this Court invoking Clause 15 of the Letters Patent.

16. The law is well settled that when no final orders have been passed by the learned Judge determining any right or liability affecting the merits of the disputes as between the parties, no appeal would lie under clause 15 of the Letters Patent. In *Midnapore Peoples Co-op. Bank Ltd and others v. Chunilal Nanda and others in Civil Appeal No.1727 of 2002 dated 25.05.2006*, after referring to various decisions, more particularly, three Judge Bench in *Shah Babulal Khimji v. Jayaben D. Kania [(1981) 4 SCC 8]*, the Hon'ble Supreme Court held as follows:

“16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent."

Admittedly, in the instant case, the learned Judge has not passed any final order, but only granted interim injunction, that too, for a limited period till 30.11.2023, which in no way, affects the valuable right / claim of the appellant to be agitated in the case pending before the learned Judge. Hence, the order impugned in these appeals filed by the appellant does not fall within the scope and ambit of "Judgment" in clause 15 of the Letters Patent.

17. That apart, it is to be noted that the order dated 07.11.2023 passed by the learned Judge, as an interim measure, is based on a sound discretion vested on him, in the interest of justice. Such discretion exercised by the learned Judge cannot be normally interfered with by the appellate forum unless it is pointed out that the order was passed on the basis of irrelevant materials or on improper appreciation of facts of the case. Such aspects are conspicuously absent in the present case. Furthermore, the learned Judge has granted the interim injunction till 30.11.2023 purportedly with an intention to

grant opportunity to the appellant to defend his case and to pass appropriate orders thereafter. As such, the averments raised in the present appeals that the learned Judge did not grant sufficient opportunity to the appellant to put forth his submissions, cannot be countenanced. It is always open to the appellant to file his counter statement to the applications filed by the respondent seeking interim reliefs. If any such counter statement is filed, the same will also be taken into account by the learned Judge while dealing with the applications and appropriate orders will be passed on merits. Therefore, we do not find any infirmity or irregularity in the grant of interim injunction, that too for a limited period.

18. Accordingly, all the Original Side Appeals are dismissed. However, liberty is granted to the appellant to approach the learned Judge by filing necessary application seeking to vacate the order, if any, passed against him. On filing of such application, the learned Judge shall consider and pass appropriate orders, on its own merits and in accordance with law. No costs. Consequently, connected miscellaneous petitioners are closed.

(R.M.D., J) **(M.S.Q., J)**

11.01.2024

Index : Yes / No
Internet : Yes / No

OSA Nos. 220,221 and 222 of 2023

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

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OSA Nos. 220, 221 & 222 of 2023

11.01.2024