IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.08.2022

DELIVERED ON : 02.09.2022

CORAM:

THE HON'BLE MR. JUSTICE M. DURAISWAMY

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN,

O.S.A.Nos.227, 231 & 232 of 2022

and C.M.P. Nos.13833,13853 and 13855 of 2022

Thiru. K.Palaniswamy,
Joint Co-Ordinator/ Party Head Quarter's Secretary, AIADMK,
Having Office at No.226,
Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014

..... Appellant in all OSAs

v.

1. Thiru O. Panneerselvam,
   Co- Ordinator/Treasurer, AIADMK,
   Having Office at
   No.226/275 Avvai Shanmugam Salai,
   Royapettah, Chennai – 600 014.

2. All India Anna Dravida Munnetra Kazhagam,
   Rep. by its Co- Ordinator and Joint Co-Ordinator,
   Having Office at
   No.226/275 Avvai Shanmugam Salai,
   Royapettah, Chennai – 600 014.

3. The General Council of the Central Organization,
All India Anna Dravida Munnetra Kazhagam,
Rep. by its Co- Ordinator and Joint Co-Ordinator,
Having Office at
No.226/275 Avvai Shanmugam Salai,
Royapettah,
Chennai – 600 014.

4. The Central Executive Committee,
All India Anna Dravida Munnetra Kazhagam,
Rep. by its Co- Ordinator and Joint Co-Ordinator,
Having Office at
No.226/275 Avvai Shanmugam Salai,
Royapettah,
Chennai – 600 014.

5. A.Thamizh Magan Hussain,
Temporary Presidium Chairman,
The General Council,
All India Anna Dravida Munnetra Kazhagam,
Having Office at
No.226/275 Avvai Shanmugam Salai,
Royapettah,
Chennai – 600 014.

6. The Office Bearers of the Party Head Quarters,
Represented by Head Quarter's Secretary, AIADMK,
Thiru.E.Palaniswami,
Having Office at
No.226/275 Avvai Shanmugam Salai,
Royapettah,
Chennai – 600 014.

... Respondents in OSA No.227/2022

1. P.Vairamuthu (s) Amman P. Vairamuthu
   S/o. Late S.Pitchai,
   C9/8, 1st Cross Street,
   Hindu Colony, Nanganallur,
   Chennai – 600 061.

2. All India Anna Dravida Munnetra Kazhagam,
   Rep. by its Co- Ordinator and Joint Co-Ordinator,
   Thiru O.Panneerselvam and Thiru K.Palaniswamy,
   Having Office at
   No.226/275 Avvai Shanmugam Salai,
   Royapettah, Chennai – 600 014.

3. The General Council of the Central Organization,
   All India Anna Dravida Munnetra Kazhagam,
   Rep. by its Co- Ordinator and Joint Co-Ordinator,
   Thiru O.Panneerselvamand Thiru K.Palaniswamy,
   Having Office at
   No.226/275 Avvai Shanmugam Salai,
   Royapettah, Chennai – 600 014.

4. Thiru. O. Panneerselvam,
   Co- Ordinator, AIADMK,
   Having Office at
   No.226/275 Avvai Shanmugam Salai,
   Royapettah, Chennai – 600 014.

5. The Office Bearers of the Party Head Quarters,
   Represented by Head Quarter's Secretary, AIADMK,
   Thiru.E.Palaniswami,
   Having Office at
   No.226/275 Avvai Shanmugam Salai,
   Royapettah, Chennai – 600 014.

... Respondents in OSA Nos.231 & 232/2022

O.S.A.No 227 of 2022 : Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letter Patent Appeal to set aside the impugned order dated 17.08.2022 passed in O.A.No.368 of 2022 in C.S.No.118 of 2022.

O.S.A.No 231 of 2022 : Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letter Patent Appeal to set aside the impugned order dated 17.08.2022 passed in O.A.No.370 of 2022 in C.S.No.119 of 2022.

O.S.A.No 232 of 2022 : Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letter Patent Appeal to set aside the impugned order dated 17.08.2022 passed in O.A.No.379 of 2022 in C.S.No.119 of 2022.

For Appellant (in all OSAs)	Mr.C.S.Vaidyanathan,Senior Counsel, Mr.C.AryamaSundaram,Senior Counsel, Mr.Vijay Narayan, Senior Counsel, for Mr.K.Gowtham Kumar, Mr.E.Balamurugan, Mr.N.S. Amogh Sinha Mr.P.Manoj Kumar
Respondents (in O.S.A.No.227/2022)	Mr.R.Gurukrishna Kumar, Senior Counsel for Mrs.P.Rajalakshmi. - R1
	Mr.Balaji Srinivasan for Mr.M.Jothi Kumar, Mr.M.D.Ilayaraja and Mr.M.Tamilarasan – R5
	Mr.S.R.Rajagopal and Mrs. Narmadha Sampath for Mr.C.Vigneshwaran – R6
Respondents (in O.S.A.Nos.231 and 232 of 2022)	Mr.A.K. Sriram for Mr.N.Pasupathi – R1
	Mr.P.H. Arvind Pandian, Senior Counsel, For Mr.C.Thirumaran and Mr.R.V. Babu – R4
	Mr.S.R.Rajagopal and Mrs. Narmadha Sampath for Mr.C.Vigneshwaran – R5

COMMON JUDGMENT

M. DURAISWAMY, J.

O.S.A.No 227 of 2022 has been filed by the 5th defendant in C.S.No.118 of 2022, challenging the fair and decreetal order passed by the learned Single Judge in O.A.No.368 of 2022 in C.S.No.118 of 2022.

2. O.S.A.No 231 of 2022 has been filed by the 4th defendant in C.S.No.119 of 2022, challenging the common order passed by the learned Single Judge in O.A.No.370 of 2022 in C.S.No.119 of 2022

3. O.S.A.No 232 of 2022 has been filed by the 4th defendant in C.S.No.119 of 2022, challenging the common order passed by the learned Single Judge in O.A.No.379 of 2022 in C.S.No.119 of 2022.

4. Since all the above Original Side Appeals are filed against the common order passed by the learned Single Judge in O.A.No.368 of 2022 in C.S.No.118 of 2022 and O.A.Nos.370 and 379 of 2022 in

C.S.No.119 of 2022, by consent of all the learned Senior Counsel on either side, they are disposed of by this Common Judgment.

5. C.S.No.118 of 2022 has been filed by the 1st respondent in O.S.A.No.227 of 2022 for the following reliefs:-

a) For a Declaration that convening the General Council Meeting on 11.07.2022 or on any other date, without the joint authorization of both Co-Ordinator and Joint Co-Ordinator is illegal, and in contravention to the Bye-Laws of the 1st Defendant Party, more particularly, Rule 20A(iv) and 20A(v) of the rules and regulations of AIADMK Party.

b) For a Permanent Injunction restraining the Defendants from convening the General Council Meeting on 11.07.2022 or on any other date without the express authorization of both the Co-Ordinator and Joint Co-Ordinator

c) the Costs; and

d) And to pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

6. C.S.No.119 of 2022 has been filed by the 1st respondent in O.S.A.Nos.231 and 232 of 2022 for the following reliefs:-

a) For a Permanent Injunction restraining the defendants from convening the General Council Meeting on 11.07.2022 or on any other date, without the express authorization of both Co-Ordinator and Joint Co-Ordinator.

b) For a Permanent Injunction restraining the Defendants or any other office bearer of the Party to convene the General Council Meeting on 11.07.2022 or on any other dated without giving its Members, a 15 days' notice in advance as contemplated in the rules of the 1st defendant party

c) the costs; and

d) And to pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

7. In C.S.No.118 of 2022, the 1st respondent in O.S.A.No.227 of 2022 filed an Application in O.A.No.368 of 2022 seeking for an order of interim injunction restraining the appellants and the respondents 2 to 6 from convening a General Council Meeting on 11.07.2022 or on any

other date without the express authorization of both the Co-Ordinator and Joint Co-Ordinator of the 2nd respondent party, pending disposal of the suit.

8. In C.S.No.119 of 2022, the 1st respondent in O.S.A.Nos. 231 and 232 of 2022, filed an Original Application in O.A.No.370 of 2022, seeking for an order of interim injunction restraining the appellant, respondents 2, 3 and 5 from convening the General Council Meeting of the 2nd respondent party scheduled to be held on 11.07.2022 based on an unsigned notice dated 01.07.2022 issued without giving 15 days notice in advance of the date of meeting and in violation of the Bye-Laws of the party pending disposal of the suit. Similarly, the 1st respondent had also filed another Original Application in O.A.No.379 of 2022, seeking for an order of interim injunction restraining the appellant, respondents 2, 3 and 5 from passing any resolution relating to the abolition of the post of Co-Ordinator and Joint Co-Ordinator as they were elected by the Primary Members of the Party for the term of 5 years as per the Bye-Law 20(A)(ii) and 20A(iii) and consequentially direct the appellant, respondents 2, 3 and 5 from not implementing the resolutions/decisions

relating to item Nos.3 to 7 mentioned in the alleged notice dated 01.07.2022 in the General Council Meeting scheduled to be held on 11.07.2022, pending disposal of the suit.

9. The brief case of the 1st respondent-plaintiff is as follows:-

(i) According to the 1st respondent, the 2nd respondent Political Party, viz., All India Anna Dravida Munnetra Kazhagam (in short "AIADMK") is a recognized Political Party of the Election Commission of India, formed in 1972 by late Mr.M.G.Ramachandran and it is governed by its Bye-Laws. The 2nd respondent Organization is in consonance with the Representation of the People Act, 1951 and the Rules of Election Commission of India. The Rules of Election Commission of India and the Representation of the People Act, 1951 provides that the organizational structure of the Political Party should follow the democratic process. The 2nd respondent Political Party has a Central Executive Committee (Thalamai Kazhaga Seiyarkulu) consisting of various Members including Co- Ordinator and Joint Co-Ordinator.

(ii) According to the 1st respondent, based on the instructions of the Co- Ordinator and the Joint Co-Ordinator, the Executive Committee takes periodical decisions/resolutions for the smooth administration of the Party and for executing the Agenda of the 2nd respondent Political Party for the decisions/resolutions taken by Central Executive Committee which will be placed before the General Council of the Central Organization (Thalamai Kazhaga Seiyarkulu) of the 2nd respondent.

(iii) The General Council of the Central Organization consist of the Chairman, Co-Ordinator, Joint Co-Ordinator, Deputy Co-Ordinators, Treasurer, Headquarters, Secretaries of the Party, the Members of the General Council elected from the Districts and other States, the Members of the Audit Committee, Property Protection Committee and the Parliamentary Board. The General Council of the Central Organization always approves the decisions/resolutions taken by the leader of the Party and those that are passed by the Central Executive Committee and all such decisions/resolutions are implemented thereafter by the 2nd respondent Political Party. The General Body of the 2nd respondent Political Party was not convened for a long period of time and

functioning of the 2nd respondent Party is being done only by the decisions/resolutions taken and approved by the Central Executive Committee. All the Agendas and decisions have always been deliberated in the Central Executive Committee with the approval of the Party leadership and later placed before the General Council of the Central Organization, which automatically would approve the resolutions/decisions of the Central Executive Committee. After the death of the then General Secretary of the Party, Selvi J.Jayalalithaa on 05.12.2016, the post of General Secretary was abolished and the posts of Co-Ordinator and Joint Co-Ordinator were created, which were given absolute power jointly, as per Rule 20(A) of the 2nd respondent Bye-Laws and the same was passed by the General Council Meeting held on 12.09.2017.

(iv) According to the 1st respondent, as per Rule 45 of the Bye-Laws, the Co-Ordinator and Joint Co-Ordinator are fully authorized to relax or make alterations to any of the aforesaid Rules and Regulations of the Party. The tenure was also fixed as 5 years in Rule 20A(iii). Amendments were brought to the Bye-Laws of the 2nd respondent on

12.09.2017 and the Co-Ordinator and Joint Co-Ordinator of the Party were entrusted with the powers of General Secretary and the said powers were acted upon by all the parties to the Appeals. Based on the request of Primary Members of the Party and taking into consideration of the observations made by this Court in W.P.Nos.10725 of 2017 and 10726 of 2018, the Executive Committee had passed a special resolution for amending Rule 20(A) Part-ii, Rule 43 and Rule 45 of the Bye-Laws, on 01.12.2021.

(v) On 05.12.2021, a detailed communication was sent to the Election Commission of India with regard to the amendments carried out in the Executive Committee Meeting. On 02.12.2021, the Election for the posts of Co-Ordinator and Joint Co-Ordinator were notified and for that purpose two Election Commissioners were appointed by the Party. The date of Election was fixed as 07.12.2021 and for counting of votes and declaration of result was fixed on 08.12.2021. On 06.12.2021, after completion of the Election process, the Election Commissioners declared the result of the Election to the posts of Co-Ordinator and Joint Co-Ordinator, since the 1st respondent and the appellant in O.S.A.No.227 of

2022 were elected as unopposed and necessary certificates were also issued to the Co-Ordinator and Joint Co-Ordinator, the same has been communicated to the Election Commission of India on 29.04.2022 in compliance of Section 29(A) (ix) of the Representation of the People Act, 1951.

(vi) According to the 1st respondent, by a notice of invitation dated 02.06.2022, a General Council Meeting was scheduled to be held on 23.06.2022. In the meeting of District Secretaries held on 14.06.2022 at the 2nd respondent Party Headquarters, a few Members of the General Council made a demand for Single Leadership and such a demand created turmoil in the Party. According to the 1st respondent, the appellant and the other respondents unilaterally intended to introduce an Agenda in the General Council Meeting on 23.06.2022 for the Election of a Single Leader.

(vii) The 1st respondent has also stated that he came to know that certain Members were planning to introduce a resolution at the General Council of the Central Organization to that effect. In such circumstances,

a Member of the 2nd respondent Political Party one Mr.Shanmugam (one of the General Council Members) filed a Civil Suit in C.S.No.111 of 2022 before this Court along with Applications in O.A.Nos.327 and 328 of 2022 for an order of interim injunction restraining the respondents therein from placing any Agenda in the Meeting of the General Council of Central Organization to be held on 23.06.2022 or any other date with respect to the amendment of Rule 20A(i) to (xiii) of the Political Party. By order dated 22.06.2022, the learned Single Judge rejected the relief prayed for by the plaintiff and decided not to interfere with the proceedings of the Political Party and also permitted the 2nd respondent to conduct the General Council Meeting on 23.06.2022. Challenging the order passed, Mr.Shanmugam preferred an appeal in O.S.A.No160 of 2022 on the same day, i.e. 22.06.2022.

(viii) The 1st respondent has stated that a Draft Resolution containing 23 items has been sent to the 1st respondent Party Headquarters for the approval and after perusing the Draft Resolutions, the 1st respondent in O.S.A.No.227 of 2022 gave consent and approval to those 23 resolutions to be placed at the General Council Meeting.

According to the 1st respondent, the Draft Resolution was not provided to any of the Members of the General Council and they were kept in the dark about other Agendas/Resolutions that were going to be placed before the General Council on 23.06.2022.

(ix) The Division Bench of this Court, by order dated 23.06.2022, permitted the respondents 4 and 5 therein to convene the General Council Meeting at 10.00 a.m. on 23.06.2022 and also permitted the General Council to discuss and take any decision as per the Rules and Bye-Laws with regard to the 23 items mentioned in the Draft Resolution and also made it clear that the respondents therein shall not take any decision other than the 23 items mentioned in the Draft Resolution. Further, the Division Bench gave liberty to the Members of the General Council to discuss any other matter, however, no decision be taken in the General Council Meeting with regard to the same.

(x) In violation of the order passed by the Division bench, in the General Council Meeting held on 23.06.2022, the 23 items mentioned in

the Draft Resolution were mischievously altered and rejected by the General Council and introduced a New Resolution bereft of the authorization of Co-Ordinator and Joint Co-Ordinator of the Party, appointing the 5th respondent in O.S.A.No.227 of 222 as a Permanent Presidium Chairman. Without the consent of the Co-Ordinator and Joint Co-Ordinator, the 5th respondent was unlawfully appointed as the Presidium Chairman. Further, it was orally announced that the General Council Meeting will be held on 11.07.2022, which is against Rule 20A(v) of the Bye-Laws of the Party. The very calling of another General Council Meeting on 11.07.2022 is to circumvent the order of the Division Bench and to clandestinely and undemocratically take decisions to alter the structure of the Party.

(xi) The 1st respondent further stated that without the consent of the Co-Ordinator and Joint Co-Ordinator, a notice was circulated on 26.06.2022 allegedly issued by the Party Headquarters Secretary, stating that as per the request of the Headquarters' Office Bearers, there will be a Meeting on 27.06.2022 at 10 a.m. in the M.G.R. Maaligai, Head Office and all are requested to participate. As per Rule 20A(v) of the Bye-Laws

of the AIADMK Party, the Co-Ordinator and Joint Co-Ordinator shall be responsible for the entire administration of the Party. Therefore, only with the consent of the Co-Ordinator and the Joint Co-Ordinator of the Party, any Meeting can be convened. Notice of invitation dated 26.06.2022 to attend the meeting on 27.06.2022 was neither signed nor authorised by both the Co-Ordinator and Joint Co-Ordinator and it is against the Rule 20A(v) of the Bye-Laws of the Party. The 1st respondent issued a statement raising his objections to the aforesaid meeting and notified that no Members are bound to act upon the decisions taken at the unlawful meeting held on 27.06.2022. As per Rule 26 of the Bye-Laws of the Party, the Party Headquarters' Secretary has no power to convene any meeting. The respondents have been deliberately attempting to convene the illegal meeting on 11.07.2022 to alter the Bye-Laws of the 2nd respondent. The 1st respondent further contended that the Co-Ordinator and Joint Co-Ordinator alone are authorized to convene the meeting of the General Council and Executive Council. However, if 1/5th of the Members of the General Council request the Co-Ordinator and Joint Co-Ordinator to convene the Special Meeting, it is obligatory on the part of the Co-Ordinator and Joint Co-

Ordinator to do so within 30 days of the receipt of such a requisition. No other Office Bearer or Member of the General Council is vested with the power to convene the meeting even in the absence of the Co-Ordinator and Joint Co-Ordinator.

(xii) On 04.07.2022, the 1st respondent in O.S.A.No.227 of 2022, was served with a notice dated 01.07.2022. Further, in the notice it has been stated that the amendment made to the Party Bye-Laws on 01.12.2021 were not approved by the Co-Ordinator and Joint Co-Ordinator in the General Council Meeting held on 23.06.2022, therefore, the Co-Ordinator and Joint Co-Ordinator cannot function forthwith and that the 6th respondent now assumes power by virtue of Rule 20A(vii) of the Party Bye-Laws. According to the 1st respondent, the 23 Resolutions, which were to be placed before the General Council, served on him on the date of General Council Meeting i.e. 23.06.2022, did not even include a Resolution to approve the amendments to the Bye-Laws passed in the Executive Committee Meeting dated 01.12.2021. Even assuming without admitting that the Co-Ordinator and Joint Co-Ordinator cannot function forthwith as alleged, the 6th respondent, by

virtue of Rule 20A(vii), is only permitted to hold office and continue to function till the new Co-Ordinator and Joint Co-Ordinator are elected and assume office. The notice issued by the 6th respondent is illegal. As per Rule 19(vii), it is only the Co-Ordinator and Joint Co-Ordinator, who are vested with the power to convene the Special Meeting based on requisition. Neither under Rule 19 nor under Rule 20A, there is any provision to convene the meeting by any person other than the Co-Ordinator and Joint Co-Ordinator of the Party. Even in the absence of the Co-Ordinator and Joint Co-Ordinator, no other Office Bearer or Member of the General Council is vested with the power to convene the Meeting.

(xii) The convening of the General Council Meeting on 11.07.2022 is ultra vires the Bye-Laws of the 2nd respondent Party. Therefore, there is *prima facie* case in favour of the 1st respondent and if the said meeting is convened on 11.07.2022, the appellant and the other respondents can very well disrupt the very basic structure of the Political Party that has been functioning over several decades. In the event of such illegal and undemocratic amendments taking place, irreparable loss shall

occur and the same can never be compensated in terms of money. If the said General Council meeting is allowed to be conducted on 11.07.2022, no prejudice shall be caused to the other parties, since it is not as if the 1st respondent is seeking for an abolishment of the General Council. Therefore, according to the 1st respondent, balance of convenience is very well in his favour, hence, sought for the prayers as mentioned above.

10. The brief case of the appellant is as follows:-

(i) According to the appellant, he was elected as Interim General Secretary of the AIADMK at its General Council Meeting held on 11.07.2022. Selvi J.Jayalalithaa was elected as General Secretary of the 2nd respondent Party on 31.12.2015 and prior to that the Office Bearers of the Party Headquarters were appointed by Selvi J.Jayalalithaa on 05.12.2015 for a period of five years, which was due to expire on 02.12.2019. Due to the death of the then General Secretary on 05.12.2016, Mrs.V.K.Sasikala was appointed as the Interim General Secretary at the General Council Meeting that was convened by the Office Bearers of the Headquarters under Rule 20(v) of the Rules and Regulations of the Party on 29.12.2016 till the General Secretary is

elected in accordance with the Bye-Laws of the Party. Thereafter, there was a split in the AIADMK Party, wherein several disputes as to the allotment of the reserved symbol of "Two Leaves" arose and in the light of the same, necessary proceedings under paragraph 15 of the Election Symbol (Reservation and Allotment) Order, 1968 was filed before the Election Commission of India on 16.03.2017 by Mr.E.Madhusudanan (since deceased), Mr.S.Semmalai and the 1st respondent in O.S.A.No.227 of 2022. The Election Commission of India, by order dated 21.03.2017, freezed the symbol and thename of the Party, directing the groups to choose other symbols for the ensuring by-elections to the Dr.Radhakrishnan Nagar Assembly Constituency. Accordingly, it was solely for the purpose of contesting elections, the two groups came to be identified as AIADMK (Amma) and AIADMK (Puratchi Thalaivi Amma).

(ii) In the mean time, on 14.12.2017, the then Interim General Secretary was convicted in a criminal case and had to undergo imprisonment, as a result of which, there was an inability on the part of

the Interim General Secretary to perform her functioning of the administration of the Party. Thereafter, two groups, one led by the 1st respondent and the other led by the appellant decided to unite until and the two groups came together to conduct the General Council Meeting of the Party. The notice dated 29.08.2017 was issued by the Office Bearers of the Headquarters of the AIADMK, inviting the Members for a General Council Meeting to be held on 12.09.2017. Even though the notice was shown to be issued by the two groups, there was no doubt that the meeting was that of the AIADMK Party inasmuch as it happened as per the Bye-Laws of the Party as per the requisition received from over 1/5th of the Members under Rule 19(vii) of the Bye-Laws. The General Council Meeting of the Party was conducted with the Members, who were in the General Council as on 05.12.2016. The Meeting was called for by the Office Bearers of the Party, as there was a situation where the then Interim General Secretary could not function. At the Meeting, several resolutions were passed including the post of General Secretary was abolished and the posts of Co-Ordinator and Joint Co-Ordinator were created and the 1st respondent and the appellant were appointed as Co-Ordinator and Joint Co-Ordinator respectively. As per

the resolution, the Co-Ordinator and Joint Co-Ordinator were to be elected by the General Council.

(iii) On 23.11.2017, the Election Commission of India passed final orders holding that the groups led by the 1st respondent and the appellant are the real AIADMK Party and held that they are entitled to the reserved "Two Leaves Symbol". On 28.02.2019, the Delhi High Court, dismissed the Writ Petitions challenging the said order. On 26.03.2019, the Supreme Court dismissed the appeals filed against the order of the Delhi High Court and on 23.04.2020, the Review Petition field in the said Special Leave Petition was also dismissed, thereby rendering a finality to the order of the Election Commission of India. Based on the test of majority, the Intra Party Elections to the various posts including the post of Co-Ordinator and Joint Co-Ordinator had to be conducted before 2019 at the end of tenure of five years from the Election of earlier Office Bearers in 2014-2019. The Party addressed several communications to the Election Commission of India between 2019 and 2021 seeking for extensions to conduct Intra party Elections. The Election Commission of India fixed a deadline on 31.12.2021 to conduct Intra Party Elections,

the Executive Council of the Party, which does not have any power of amendment of Bye-Laws, a power which is only with the General Council as per Rule 43, proceeded to pass certain amendments on 01.12.2021 to the Bye-Laws to the effect that the Co-Ordinator and Joint Co-Ordinator would be elected on a Single Vote jointly by the Primary Members of the Party. Since it was only the General Council that had the powers to amend the Bye-Laws as per Rule 43, the Executive Council had specifically resolved to place the amendments before the General Council for its approval. Even on these amendments on 01.12.2021, the elections to the posts of Co-Ordinator and Joint Co-Ordinator were announced and the appellant and the 1st respondent were elected unanimously on 06.12.2021. By March 2022, all the elections to the Intra Party Posts were concluded and as a result of the said elections, the Members of the General Council were elected and a General Council was formed. The elections to the other posts in the General Council were conducted as per the original Bye-Laws and the persons were elected as provided under Rules 6 to 14 of the Bye-Laws. However, the election to the post of Co-Ordinator and Joint Co-Ordinator is subject to the approval of the amendment to the Bye-laws by the General Council.

(iv) The General Council Meeting of the Party was called for on 23.06.2022 by issuing a notice dated 02.06.2022 jointly issued by the appellant and the 1st respondent without specifying any Agenda, as has always been the practice of the Party. In view of the scheduled General Council Meeting, the District Secretaries of the Party met on 14.06.2022 at the Party Headquarters to discuss various issues that would be taken up at the General Council Meeting on 23.06.2022, including the issue of unitary/single leadership by abolishing the dual posts of Co-Ordinator and Joint Co-Ordinator. The dispute between the 1st respondent and the appellant started on 19.06.2022 when the 1st respondent addressed a letter to the appellant suggesting to postpone the General Council Meeting, to which, the appellant, by letter dated 20.06.2022, refused to agree to the suggestion of the 1st respondent. Since the Party had decided to proceed with the General Council Meeting on 23.06.2022, the Party sought for a police protection at the venue of the General Council Meeting and accordingly, this Court directed to grant Police Protection to the General Council Meeting. The 1st respondent wrote to the Commissioner of Police, Avadi, seeking for cancellation of the Meeting on 23.06.2022

and the same was rejected.

(v) Since the efforts of the 1st respondent to thwart the General Council Meeting went in vain, the 1st respondent, through another Member of the General Council, filed a Civil Suit in C.S.No.111 of 2022 before this Court on 22.06.2022 and sought for an interim injunction against the conduct of the Meeting on 23.06.2022. The learned Single Judge of this Court refused to grant any injunction in favour of the plaintiff therein and the plaintiff therein filed an Original Side Appeal on 22.06.2022 and invited an order from the Division Bench on 23.06.2022, by which, the Division Bench granted an order of injunction as against taking decision on any resolution apart from the alleged 23 Draft Resolutions approved by the Co-Ordinator, but permitted the meeting to go ahead and also specifically held that there could be any discussion but no decision taken. The 23 Resolutions that were placed were rejected and in any case, the amendments that were made on 01.12.2021 were not approved by the General Council. Thus, the amendment to the Bye-Laws made on 01.12.2021 stood lapsed and thereby the Co-Ordinator and Joint Co-Ordinator, who were elected based

on the amendment also could not continue to act.

(vi) During the General Council Meeting on 23.06.2022, 2190 Members out of the total 2665 Members of the General Council gave a written requisition for a General Meeting to discuss and pass Resolutions on the Single Leadership and requested a date for General Council Meeting to be fixed. The requisition letter dated 23.06.2022 was addressed to the Presidium Chairman, the appellant and the 1st respondent, on the floor of the General Council and thus, everybody had valid notice and knowledge regarding the Meeting to be held on 11.07.2022. The date of the next General Council Meeting was fixed on 11.07.2022 at 9.15 a.m. and the same was announced at the Meeting by the Presidium Chairman. Thereafter, on 24.06.2022, 2432 General Council Members circulated the Agenda for the meeting to be held on 11.07.2022, which included the issue of introducing Single Leadership by abolishing the posts of Co-Ordinator and Joint Co-Ordinator . Based on the Draft Agenda proposed by the 2432 General Council Members, an invitation dated 01.07.2022 for the Meeting on 11.07.2022 was issued by the Office Bearers in the same manner as the meeting on 12.09.2017.

The invitation was sent to all the Members, who attended the meeting on 23.06.2022.

(vii) The appellant further stated that the Hon'ble Supreme Court vide its order dated 06.07.2022, in S.L.P.(C) No.11237 of 2022, stayed the operation of the order of the Division Bench of this Court made in C.M.P. No.9962 of 2022 in O.S.A.No.160 of 2022, dated 23.06.2022. The Hon'ble Supreme Court has stayed that the order of the Division Bench that had placed restrictions on the Agenda to be discussed in the General Council Meeting on 23.06.2022. Further the Hon'ble Supreme court also permitted the General Council Meeting on 11.07.2022 to proceed in accordance with law.

(viii) The appellant stated that the 1st respondent filed the present suit seeking for an order of injunction against the Meeting on 11.07.2022. By order dated 11.07.2022, the learned Single Judge, dismissed the applications. On 11.07.2022 at about 09.15 a.m., the 1st respondent attacked the Party Headquarters with his men and broke open the door, robbed vital documents from the Headquarters and ransacked

the entire premises. The Revenue Authorities initiated procedure under Sections 145 & 146 of the CrPC. This Court quashed the proceedings under Sections 145 and 146 vide order dated 21.07.2022 and handed over the possession of the Party Headquarters to the appellant. On 11.07.2022 at the General Council Meeting, which was attended by 2460 Members, it was resolved to abolish the Dual Leadership and Single Leadership under General Secretary was introduced and post of Interim General Secretary was created. The appellant was elected as the Interim General Secretary. The election for the post of General Secretary would be conducted within a month and the Election Officers were appointed. The 1st respondent/plaintiff was removed from all Party posts and Primary Membership of the Party and a new Treasurer was appointed in the Meeting. The Resolutions passed in the meeting was implemented with the banks recognizing the Treasurer and the Resolutions being intimated to the Election Commission of India. Out of the 2665 Members of the General Council, 2539 Members supported the Resolutions passed at the General Council. The Members, who attended the General Council Meeting and other Members, who supported all the Resolutions at the General Council Meeting, filed affidavits before the

Election Commission of India in support of their statements.

(ix) As against the order passed by the learned Single Judge in O.A.Nos. 368, 370 and 379 of 2022, the 1st respondent in O.S.A.No.227 of 2022 and the 1st respondent in O.S.A.Nos. 231 and 232 of 2022, preferred a Special Leave Petition before the Hon'ble Supreme Court The Apex Court, by its order dated 29.07.2022, directed this Court to reconsider the matter afresh without being influenced by the Orders of the Hon'ble Supreme Court dated 06.07.2022 and 29.07.2022 and remitted the applications to the learned Single Judge for reconsideration.

11. After remand, the learned Single Judge, taking into consideration the case of both the parties disposed of the Original Applications in O.A.Nos. 368, 370 and 379 of 2022 with the following directions:-

(i)There shall be an order of *status quo ante* as on 23.06.2022.

(ii)There shall be no Executive Council meeting or General Council meeting without

joint consent of the Co-ordinator Thiru.O.Panneerselvam and Joint Co-ordinator Thiru.Edappadi K.Palaniswami.

(iii)There shall be no impediment for the Co-ordinator and the Joint Co-ordinator on their own to convene the General Council Meeting jointly to decide the affairs of the party including amendment of the party constitution restoring Single leadership.

(iv)If a proper representation from not less than 1/5th members of the total members of the General Council is received, the Co-ordinator and the Joint Co-ordinator shall not refuse to convene the General Council meeting.

(v)The General Council meeting, on such requisition shall be convened within 30 days from the date of receipt of the requisition and it shall be held after 15 days advance Notice given in writing.

(vi)In case, the Co-ordinator and the Joint Co-ordinator are of the opinion that, for any reason further direction is required for

conducting the General Council meeting or need assistance of Commissioner for conducting the meeting, it is open for them to approach this Court and seek necessary relief.

12. Heard Mr.C.S.Vaidyanathan, Mr.C.Aryama Sundaram and Mr.Vijay Narayan, learned Senior Counsels appearing for the appellant in all the Original Side Appeals, Mr.Guru Krishna Kumar, learned Senior Counsel appearing for the 1st respondent in O.S.A.No.227 of 2022, Mr. A.K.Sriram, learned counsel appearing for the 1st respondent in O.S.A.Nos.231 & 232 of 2022, Mr.P.H.Arvind Pandian, learned Senior Counsel appearing for the 4th respondent in O.S.A.Nos. 231 and 232 of 2022, Mr. Balaji Srinivasan, learned counsel appearing for the 5th respondent in O.S.A.No.227 of 2022 and Mr.S.R.Rajagopal & Mrs.Narmadha Sampath, learned counsels appearing for the respondents 6 in O.S.A.No.227 of 2022 and 5 in O.S.A.Nos. 231 and 232 of 2022.

13.1 The learned Senior Counsels appearing for the appellant made the following submissions:-

(i) The suit filed by the 1st respondent in O.S.A.No.227 of 2022

ought to have been dismissed by the learned Single Judge for the sole reason that the plaint suffered from the vice of non-joinder and mis-joinder of the necessary parties. When the 1st respondent had claimed to have filed the suit in his capacity as Co-ordinator/Treasurer of the AIADMK Party, yet to avoid proper representation for the defendants he has arrayed the AIADMK Party, its General Council and its Executive Council all being represented by Co-Ordinator and Joint Co-Ordinator. Therefore, the 1st respondent could not have sued and be sued in the very same suit.

(ii) As per rule 43 of the Bye-Laws of the Party, the amendments to the Rules and Regulations can be carried out only by the General Council of the Party. Thus, the Party Constitution clearly stipulates that the General council is the supreme body of the Party.

1. On 01.12.2021, the amendments to manner of election of Co-Ordinator and Joint Co-Ordinator were proposed by the Executive Council and the amendment specifically stated that the election to the post of Co-Ordinator and Joint Co-Ordinator would be done

"Jointly" on "Single Vote" by the "Primary Members". Further, it was specifically resolved at the Executive Committee Meeting that these Resolutions will be placed for approval at the next General Council Meeting. The elections that happened to the posts thereafter was also based on this proposed amendment. The next immediate General Council Meeting that was called for after the 01.12.2021 Executive Committee Meeting was on 23.06.2022, which should have approved the amendments of the Executive Council and the election to the post of Co-Ordinator and Joint Co-Ordinator. However, at the meeting on 23.06.2022, the amendments were not ratified, hence, the amendments have lapsed. Since the Executive Committee had no jurisdiction to amend the Bye-Laws, the non-ratification of election to the posts of Co-Ordinator and Joint Co-Ordinator have become lapsed.

2.

(iv) The order of the learned Single Judge is perverse for the reason that the learned Single Judge has ignored the submissions put-forth on behalf of the appellant that the General Council alone has the power to

amend the Bye-Laws as per Rule 43.

(v) As per Rule 20A(vii), when the position of the Co-Ordinator and Joint Co-Ordinator falls vacant, until there is election to the said posts, the Office Bearers appointed by the previous Co-Ordinator and Joint Co-Ordinator shall carry forward the activities of the Party. Therefore, there is no vaccum for the manner of functioning of the Party.

(vi) The finding of the learned Single Judge that the notice for the General Council Meeting scheduled to be held on 11.07.2022 did not conform to the Bye-Laws of the Party and that there was no advance notice of 15 days as contemplated under the Bye-Laws is not correct for the reason that the learned Single Judge has misconstrued the invitation issued on 01.07.2022 by the Office Bearers of the Headquarters as a "notice" for convening the General Council Meeting and has proceeded to hold that the said notice was issued within 15 days from the meeting. As per Rule 19(vii) of the Bye-Laws, the requirement of 15 days of advance notice is only for a regular General Council Meeting, that is annually convened from time to time, by the Co-Ordinator and Joint Co-Ordinator.

Whereas, the present meeting on 11.07.2022, was a Special General Council Meeting, based on the requisition of more than 1/5th of the Members of the General Council. Rule 19(vii) does not require an advance notice of 15 days, much less a written notice for the convening of the meeting. Rule 19(vii) contains two parts, clearly demarcating between a regular General Council Meeting convened by Co-Ordinator and Joint Co-Ordinator and a Special General Council Meeting based on requisition of 1/5th of Members. The learned Single Judge has proceeded to construe the entire Rule 19(vii) as one single Bye-Law and applied the requirements under the first part in relation to the requirement of 15 days notice, to the second part as well. The Bye-Laws does not require a written notice of 15 days. In the absence of any specific procedure, even a public advertisement is sufficient to be a valid notice.

(vii) As per Rule 19(vii) the requisition had to be made only by 1/5th of the Members i..e 533 Members. Whereas, in the meeting held on 23.06.2022, 2190 Members have requested to conduct the General Council Meeting on 11.07.2022. Though some of the signatures in the 2190 requisition are dated as 20.06.2022, the fact remains that the

requisition letter of 2190 members were submitted on 23.06.2022 and as such, the requisition for General Council Meeting is valid. The date mentioned along with the signatures will not gain much significance when the requisition is made and the same is submitted on the floor of the General Council on 23.06.2022. Not even a single person had claimed that no such requisition was made. Even the 1st respondent do not claim that there was no requisition. The requisition was followed by agenda that was circulated by 2432 members. Thereafter, in the General Council Meeting on 11.07.2022, 2460 Members attended the meeting and subsequently over 2539 persons have signed and filed affidavits in the Election Commission of India that they are in favour of the resolutions at the General Council. When the 1st respondent himself has not pleaded about the hand written portion of the letter submitted on behalf of the 2190 members, the learned Single Judge ought not have given a finding with regard to the same at the interlocutory stage. Since the then General Secretary Selvi J Jayalaithaa had expired on 05.12.2016 and the Interim General Secretary was in incarceration, the General Council Meeting could not be conducted in the year 2017. In these circumstances, the Office Bearers issued invitation for conducting the General Council

Meeting on 12.09.2017. In the present situation, the Co-Ordinator and Joint Co-Ordinator are unable to convene the meeting jointly, hence, calling for meeting by the Party Office Bearers is proper.

(viii) Since the Bye-Laws nowhere contemplate a written notice, the requisition placed by 82% of the General Council Members under Rule 19(vii) of the Rules and Regulations of the Party on 23.06.2022 itself would be sufficient notice for the General Council Meeting on 11.07.2022 and as such, the 1st respondent was well aware of the same. The 1st respondent, who was present in the meeting in 23.06.2022, had notice and knowledge of the General Council Meeting proposed to be held on 11.07.2022, hence, he could not have complained of lack of proper notice whatsoever. The 1st respondent had sufficient knowledge regarding the General Council Meeting to be held on 11.07.2022 and had also admitted in the cause of action paragraph in the plaint at paragraph 40. The 1st respodnent had constructive notice of the General Council Meeting on 11.07.2022 even as early as on 23.06.2022 when the previous General Council Meeting was convened.

(ix) At the interlocutory stage, the impugned order has been rendered with conclusive findings as though a full-fledged trial has been conducted and deposition of the witnesses have been recorded. The impugned order is beyond the scope of the Original Application and has granted several reliefs in favour of the 1st respondent in the absence of any specific pleading on the part of the 1st respondent. Hence, the order is perverse and unsustainable.

(x) The impugned order is unsustainable in law inasmuch as it has passed an order against the conduct of General Council Meeting dated 11.07.2022 when the same has already taken place. The learned Single Judge could not have granted an order of status quo ante in the present application, when the relief itself was only limited to a temporary injunction restraining the respondents from conducting a General Council Meeting on 11.07.2022. By granting an order of staus quo ante as on 23.06.2022, the impugned order has virtually interfered with the decisions taken in the General Council Meetings on 23.06.2022 and 11.07.2022 and the same is directly in contravention of the order of the Hon'ble Supreme Court dated 06.07.2022 in S.L.P.(C) No.11237 of

2022, granting an order of stay in respect of the order of the Division Bench of this Court made in C.M.P No.9962 of 2022 in O.S.A.No.160 of 2022, dated 23.06.2022. The impugned order has completely disregarded the order of the Hon'ble Supreme Court dated 06.07.2022, which has passed an order in respect of the General Council Meeting dated 23.06.2022 and has proceeded to grant an order of status quo ante as on 23.06.2022. The relief sought for in the Original Application has already become infructuous as on the date of the hearing of the application and that the 1st respondent had not sought for any amendment of any relief or had filed a fresh Application.

(xi) The order of status quo ante as on 23.06.2022 by holding that there shall be no Executive or General Council Meeting without joint consent of the appellant and the 1st respondent is liable to be set side, since it traverse beyond the scope of the Original Application as well as the main suit and as such the same is unsustainable in law. The Resolution passed at the meeting on 11.07.2022, have been fully acted upon and at an interim stage, there was absolutely no material on record to arrive at such findings. When the order itself recognizes that the

appellant and the 1st respondent could not work together and having held so, to hold at an interim stage that they have to jointly call for the meeting, would result in stifling the activities of the Party. There is no *prima facie* case, balance of convenience and irreparable injury in favour of the 1st respondent for granting an order in his favour.

13.2 The learned Senior Counsels appearing for the appellant, in support of their contentions, has relied upon the following judgments:-

(i) **(1990) 2 SCC 117 [*Dorab Cawasji Warden v. Coomi Sorab Warden*,** wherein the Hon'ble Supreme Court held as follows:-

> **" .....** 19. In order to attract the second paragraph of this section the subject matter of the transfer has to be a dwelling house belonging to an undivided family and the transfer is a share in the same to a person who is not a member of the family. Therefore, in order to satisfy the first ingredient of clear existence of the right and its infringement, the plaintiff will have to show a probable case that the suit property is a dwelling house and it belonged to an undivided family. In other words, on the facts before the court there is a strong probability of the plaintiff getting the relief prayed for by him in the suit. On the second and third ingredients having regard to the restriction on the rights of a transferee for joint possession and the dominant purpose of the second paragraph of

Section 44 of the Act, there is danger of an injury or violation of the corresponding rights of the other members of the family and an irreparable harm to the plaintiff and the court's interference is necessary to protect the interest of the plaintiff. Since the relief of an interim injunction is all the same an equitable relief the court shall also consider whether the comparative mischief or inconvenience which is likely to ensue from withholding the injunction will be greater than that which is likely to arise from granting it, which means that the balance of convenience is in favour of the plaintiff.

20. The first point that has to be considered, therefore, is whether one can have a reasonably certain view at this stage before the actual trial that the suit property is a 'dwelling house belonging to an undivided family' within the meaning of Section 44 of the Act. As to what is the meaning of these words in the section, the leading case is the one decided by the Full Bench of the Allahabad High Court in *Sultan Begam* v. *Debi Prasad* [1908 ILR 30 All 324: 5 ALJ 352: 1 MLT 38] . That was concerned with the meaning of the phrase "dwelling house belonging to an undivided family" in Section 4 of the Partition Act, 1893. That section provides that where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family, being a shareholder shall undertake to buy the share of such transferee make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder. The argument was that the words 'undivided family' as used in the section mean a joint family and are confined to Hindus or to Muhammadans, who have adopted the Hindu rule as to joint family property. The counter-argument was that the expression is of general application and means a family whether Hindu,

Muhammadan, Christian etc. possessed of a dwelling house which has not been divided or partitioned among the members of the family. The case itself related to a Muslim family to whom the house belonged. The Full Bench observed:

> "...in it (Section 4 of the Partition Act) we find nothing to indicate that it was intended to apply to any limited class of the community. The words 'undivided family' as used in this section appear to be borrowed from Section 44 of the Transfer of Property Act. The last clause of that section prescribes that where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the dwelling house. This provision of the statute is clearly of general application, and the effect of it is to compel the transferee of a dwelling house belonging to an undivided family, who is a stranger to the family, to enforce his rights in regard to such share by partition. There appears to me to be no reason why the words 'undivided family' as used in Section 4 of the Partition Act, should have a narrower meaning that they have in Section 44 of the Transfer of Property Act. If the legislature intended that Section 4 should have limited operation, we should expect to find some indication of this in the language of the section. For example, instead of the words 'undivided family' the expression 'undivided Hindu family' or 'joint family' might have been used."

With reference to the object and purpose of such a provision the Full Bench further observed:

> "...as was pointed out by Mr Wells, Judicial Commissioner, in the case of *Kalka Parshad* v. *Bankey Lall* [(1906) 9 Oudh Cases 158]

> is to prevent a transferee of a member of a family who is an outsider from forcing his way into a dwelling house in which other members of his transferor's family have a right to live, and that the words 'undivided family' must be taken to mean 'undivided qua the dwelling house in question, and to be a family which owns the house but has not divided it'."

21. Again in construing the words "family" and 'undivided family' a Division Bench of the Calcutta High Court in *Khirode Chandra Ghoshal* v. *Saroda Prosad Mitra* [(1910) 7 IC 436: 9 MLT 117] , observed:

> "The word 'family', as used in the Partition Act, ought to be given a liberal and comprehensive meaning, and it does include a group of persons related in blood, who live in one house or under one head or management. There is nothing in the Partition Act to support the suggestion that the term 'family' was intended to be used in a very narrow and restricted sense, namely, a body of persons who can trace their descent from a common ancestor."

22. The decision in *Nil Kamal Bhattacharjya* v. *Kamakshya Charan Bhatta- charjya* [AIR 1928 Cal 539: 109 IC 67] , related to a case of a group of persons who were not the male descendants of the common ancestor to whom the property in the suit originally belonged but were respectively the sons of the daughter of a grandson of the common ancestor and the sons of a daughter of a son of the said common ancestor. The learned Judge applied the principle enunciated in *Sultan Begam* v. *Debi Prasad* [1908 ILR 30 All 324: 5 ALJ 352: 1 MLT 38] to this family and held that it was an undivided family since the house had not been divided by

metes and bounds among themselves. The Madras High Court also followed and applied the ratio of this judgment in the decision in *Sivaramayya* v. *Venkata Subbamma* [AIR 1930 Mad 561: 58 MLJ 341: 126 IC 593] . The next decision to be noted is the one reported in *Bhim Singh* v. *Ratnakar Singh* [AIR 1971 Ori 198: (1970) 1 Cut WR 183] . In that case the undivided family consisted of the plaintiff and the defendants 1 and 2 therein. Defendant 1 had alienated 1/3 of his half share in the house property in favour of defendants 7 and 10 who were the appellants before the High Court. The suit was filed for a permanent injunction restraining defendants 7 and 10 from jointly possessing the disputed house along with the plaintiff and defendant 2. The facts as found by the courts were that by an amicable arrangement among plaintiff and defendants 1 and 2 they were living separately for a long time, had separated their residences and were living in different houses unconnected with each other but all situate in one homestead and that after defendant 1 had alienated his separate interest as well as his separate house in favour of the alienees and in pursuance thereof the alienees were put in possession. After referring to the judgments we have quoted above and following the principles therein, Ranganath Misra, J. as he then was held: (AIR p. 201, para 21)

> "If in this state of things, a member of the family transfers his share in the dwelling house to a stranger paragraph 2 of Section 44 of the Transfer of Property Act comes into play and the transferee does not become entitled to joint possession or any joint enjoyment of the dwelling house although he would have the right to enforce a partition of his share. The object of the provision in Section 44 is to prevent the intrusion of the strangers into the family residence which is allowed to be possessed and enjoyed by the members of the family alone in spite of the transfer of

> a share therein in favour of a stranger. The factual position as has been determined is that the property is still an undivided dwelling house, possession and enjoyment whereof are confined to the members of the family. The stranger-transferees being debarred by law from exercising right of joint possession which is one of the main incidences of co-ownership of the property should be kept out."

On the question whether the enjoyment of ascertained separate portions of the common dwelling house and the alienee taking possession made any difference the learned Judge quoted the following passage from *Udayanath Sahu* v. *Ratnakar Bej* [AIR 1967 Ori 139: 33 Cut LT 1163] , with approval:

> "If the transferee (stranger) get into possession of a share in the dwelling house, the possession becomes a joint possession and is illegal. Courts cannot countenance or foster illegal possession. The possession of the defendant-transferee in such a case becomes illegal. Plaintiff's co-owners are entitled to get a decree for eviction or even for injunction where the transferee threatens to get possession by force. If there had been a finding that there was severance of joint status but no partition by metes and bounds, defendant 1 was liable to be evicted from the residential houses and Bari under Section 44 of the T.P. Act."

The learned Judge further held: (AIR p. 202, para 23)

"The last contention of Mr Pal is that the plaintiff sued for injunction only. The learned trial Judge, however, has decreed ejectment of the transferee defendants and that decree has been upheld. Once it is held that the plaintiff is entitled to protection under the second part of Section 44 of the Transfer of Property Act and the stranger purchasers are liable to be restrained, it would follow that even if the defendants have been put in possession or have come

jointly to possess they can be kept out by injunction. The effect of that injunction would necessarily mean ejectment. In that sense and to the said extent, the decree of the trial court upheld by the lower appellate court must be taken to be sustainable. The remedy of the stranger purchaser is actually one of partition. Until then, he is obliged to keep out from asserting joint possession."

23. We may respectfully state that this is a correct statement of the law. There could be no doubt that the ratio of the decisions rendered under Section 4 of the Partition Act equally apply to the interpretation of the second paragraph of Section 44 as the provisions are complementary to each other and the terms "undivided family" and "dwelling house" have the same meaning in both the sections. ....."

(ii) **(2018) 17 SCC 203 [*Samir Narain Bhojwani v. Aurora Properties & Investments*,]**wherein the Hon'ble Supreme Court held as follows:-

".....24**.** That apart, the learned Single Judge as well as the Division Bench have committed fundamental error in applying the principle of moulding of relief which could at best be resorted to at the time of consideration of final relief in the main suit and not at an interlocutory stage. The nature of order passed against the appellant is undeniably a mandatory order at an interlocutory stage. There is marked distinction between moulding of relief and granting mandatory relief at an interlocutory stage. As regards the latter, that can be granted only to restore the status quo and not to establish a new set of things differing from the state which existed at the date when the suit was instituted. This Court in *Dorab Cawasji Warden* v. *Coomi*

Sorab Warden [*Dorab Cawasji Warden* v. *Coomi Sorab Warden*, (1990) 2 SCC 117] , has had occasion to consider the circumstances warranting grant of interlocutory mandatory injunction. In paras 16 & 17, after analysing the legal precedents on the point as noticed in paras 11-15, the Court went on to observe as follows: (SCC pp. 126-27)

> "*16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining*. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:
>
> (*1*) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
>
> (*2*) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
>
> (*3*) The balance of convenience is in favour of the one seeking such relief.
>
> *17*. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above

guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

(emphasis supplied)

.....

26. The principle expounded in this decision has been consistently followed by this Court. It is well established that an interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. [See *Metro Marins* v. *Bonus Watch Co. (P) Ltd.* [*Metro Marins* v. *Bonus Watch Co. (P) Ltd.*, (2004) 7 SCC 478] , *Kishore Kumar Khaitan* v. *Praveen Kumar Singh* [*Kishore Kumar Khaitan* v. *Praveen Kumar Singh*, (2006) 3 SCC 312] and *Purshottam Vishandas Raheja* v. *Shrichand Vishandas Raheja* [*Purshottam Vishandas Raheja* v. *Shrichand Vishandas Raheja*, (2011) 6 SCC 73 : (2011) 3 SCC (Civ) 204] .]

.....

29. Resultantly, the invocation of principle of moulding of reliefs so also the exercise of power to grant mandatory order at an interlocutory stage, is manifestly wrong. To put it differently, while analysing the merits of the contentions the High Court was swayed away by the consent agreement between the respondents inter partes to which the appellant was not a party. Thus, he could not be bound by the arrangement agreed upon between the respondents

inter se. The appellant would be bound only by the Agreement entered with Respondent 2 dated 10-3-2003 and at best the Tripartite Agreement dated 11-9-2009. Respondent 2 having failed to discharge its obligation under the stated Agreement dated 10-3-2003, cannot be permitted to take advantage of its own wrong in reference to the arrangement agreed upon by it with Respondent 1-plaintiff and including to defeat the claim of the appellant in the arbitration proceedings. ....."

(iii) **2022 SCC Online SC 928 [Akella Lalitha vs Konda Hanumantha Rao],** wherein the Hon'ble Supreme Court held as follows:-

" .....16. Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/ son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

17.. In the case of Messrs. Trojan & Co. Ltd. Vs. Rm.N.N. Nagappa Chettiar2, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:-

"It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and

no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."
2 AIR 1953 SC 235

18. In the case of Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors.3 held:

"Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

19. In this case while directing for change of surname of the child, the High Court has traversed beyond pleadings and such directions are liable to be set aside on this ground....."

(iv) **(2004) 4 SCC 697 [*Deoraj v. State of Maharashtra*,]**

wherein the Hon'ble Supreme Court held as follows:-

" **.....**11. The courts and tribunals seized of the proceedings within their jurisdiction take a reasonable time in disposing of the same. This is on account of fair-procedure requirement which involves delay intervening between the previous and the next procedural steps leading towards preparation of case for hearing. Then, the courts are also overburdened and their hands are full. As the conclusion of hearing on merits is likely to take some time, the parties press for interim relief being granted in the interregnum. An order of interim relief may or may not be a reasoned one but the factors of prima facie case, irreparable injury and balance of convenience do work at the back of the mind of the one who passes an order of interim nature. Ordinarily, the court is inclined to maintain

status quo as obtaining on the date of the commencement of the proceedings. However, there are a few cases which call for the court's leaning not in favour of maintaining the status quo and still lesser in percentage are the cases when an order tantamounting to a mandamus is required to be issued even at an interim stage. There are matters of significance and of moment posing themselves as moment of truth. Such cases do cause dilemma and put the wits of any judge to test.

12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent. .....”

(v) **2013) 9 SCC 221 [*Mohd. Mehtab Khan v. Khushnuma***

***Ibrahim Khan*,** wherein the Hon'ble Supreme Court held as follows:-

> " .....17**.** While the bar under Section 6(3) of the SR Act may not apply to the instant case in view of the initial forum in which the suit was filed and the appeal arising from the interim order being under the letters patent issued to the Bombay High Court, as held by a Constitution Bench of this Court in *P.S. Sathappan* v. *Andhra Bank Ltd.* [(2004) 11 SCC 672] , what is ironical is that the correctness of the order passed in respect of the interim entitlement of the parties has reached this Court under Article 136 of the Constitution. Ordinarily and in the normal course, by this time, the suit itself should have been disposed of. Tragically, the logical conclusion to the suit is nowhere in sight and it is on account of the proverbial delays that have plagued the system that interim matters are being contested to the last court with the greatest of vehemence and fervour. Given the ground realities of the situation it is neither feasible nor practical to take the view that interim matters, even though they may be inextricably connected with the merits of the main suit, should always be answered by maintaining a strict neutrality, namely, by a refusal to adjudicate. Such a stance by the courts is neither feasible nor practicable. Courts, therefore, will have to venture to decide interim matters on consideration of issues that are best left for adjudication in the full trial of the suit. In view of the inherent risk in performing such an exercise which is bound to become delicate in most cases the principles that the courts must follow in this regard are required to be stated in some detail though it must be made clear that such principles cannot be entrapped within any straitjacket formula or any precise laid down norms. The

courts must endeavour to find out if interim relief can be granted on consideration of issues other than those involved in the main suit and also whether partial interim relief would satisfy the ends of justice till final disposal of the matter. The consequences of grant of injunction on the defendant if the plaintiff is to lose the suit along with the consequences on the plaintiff where injunction is refused but eventually the suit is decreed has to be carefully weighed and balanced by the court in every given case. Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. Though experience has shown that observations and clarifications to the effect that the findings recorded are prima facie and tentative, meant or intended only for deciding the interim entitlement of the parties have not worked well and interim findings on issues concerning the main suit has had a telling effect in the process of final adjudication it is here that strict exercise of judicial discipline will be of considerable help and assistance. The power of self-correction and comprehension of the orders of superior forums in the proper perspective will go a long way in resolving the dangers inherent in deciding an interim matter on issues that may have a close connection with those arising in the main suit. ....."

(vi) **(2017) 11 SCC 437 [International Confederation of Societies of Authors and Composers (ICSAC) v. Aditya Pandey,,]** wherein the Hon'ble Supreme Court held as follows:-

" ..... 26. The present appeals being against an interim order, naturally, strong and compulsive reasons exist for exercise of judicial restraint in the manner and extent of exercise of jurisdiction. Though it is too

elementary, it must be said that the Court must refrain from expressing any opinion, whatsoever, touching upon the merits of the controversy, lest, the same may prejudice either of the parties in the suit. While there can be no doubt that an order, even interim, sans any reasons, would not be judicially acceptable, the precise exercise that a court would be required to undertake at the interim stage must be left to the wise discretion of the court concerned itself. It is not only difficult but also undesirable to lay down the parameters and contours of the exercise of judicial power at the interim stage by expressly laying conditions which would be binding under Article 141 of the Constitution. But it needs to be reminded that an elaborate reasoning with the "footnote" that the same are prima facie or tentative is hardly an effective remedy to prevent the imprint of such observations on the human mind that mans the court at different levels. This is what appears to have happened in the present case.

(vii) **Manu/TN/6738/2020 [Cherian Abraham v,Babu Daniel]**

wherein the Hon'ble Supreme Court held as follows:-

".....17. Secondly, any findings on the legality of the inclusion of proxy vote in the proposed EGM would tantamount to deciding the main relief in the suit itself. The suit has been filed challenging OSA.No.238 of 2019 validity of the notice issued by a suspended member, in which, one among the issues of inclusion of proxy votes as a mode of voting, has been challenged. When the legality of the notice itself is under challenge, consideration for conducting the EGM by proxy votes, by this Court, will effectively decide the main relief claimed in the suit, without subjecting the parties to a proper trial and framing of the relevant issues, which exercise, could be

impermissible. If this Court is to render its findings on the permissibility of proxy votes and consequently declare the outcome of the EGM, there would be no issues pending for adjudication in the main suit and the relief claimed therein may become infructuous. ....."

(viii) **(2006) 8 SCC 367 [*M. Gurudas v. Rasaranjan*,]** wherein the Hon'ble Supreme Court held as follows:-

" ....19.A finding on "prima facie case" would be a finding of fact. However, while arriving at such a finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhavan that the decision of the House of Lords in *American Cyanamid Co.* v. *Ethicon Ltd.* [(1975) 1 All ER 504 : 1975 AC 396 : (1975) 2 WLR 316 (HL)] would have no application in a case of this nature as was opined by this Court in *Colgate Palmolive (India) Ltd.* v. *Hindustan Lever Ltd.* [(1999) 7 SCC 1] and *S.M. Dyechem Ltd.* v. *Cadbury (India) Ltd.* [(2000) 5 SCC 573] but we are not persuaded to delve thereinto.

.....

38. But, then conduct of the plaintiffs would also be relevant. The court while granting an order of injunction, therefore, would take into consideration as to whether the plaintiffs have prevaricated their stand from stage to stage. Even this question had not been adverted to by the learned courts below.

39. While doing so, the courts, as has been noticed in *Dhariwal Industries Ltd.* v. *M.S.S. Food*

Products [(2005) 3 SCC 63] whereupon Mr Mahabir Singh relied upon, would look into the documents produced before the trial court as also the appellate court in terms of Order 41 Rule 27 of the Code of Civil Procedure but the same would not mean that this Court must confine itself only to the questions which were raised before the courts below and preclude itself from considering other relevant questions although explicit on the face of the records. Questions of law in a given case may be considered by this Court although raised for the first time. The question as to whether this Court would permit the parties to raise fresh contentions, however, must be based on the materials placed on records. ....."

(ix) **(2002) 4 SCC 68 [*J.M. Biswas v. N.K. Bhattacharjee*]**

wherein the Hon'ble Supreme Court held as follows:-

" .....10. From the narration of facts and the contentions raised on behalf of the parties, it is clear that the dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. As noted earlier, the dispute in the case relates to election of office-bearers of the South-Eastern Railway Men's Union. The dispute arose at a point of time when both the appellant and Respondent 1 were members of the said Union. Now both have ceased to be members of the Union. Further, successive elections have been held to elect office-bearers and the office-bearers so elected have been recognized by the management. In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interest of the Union. Accepting the contentions raised on behalf of

Respondent 1 that the successive elections held in the meantime were invalid because he was not permitted to participate in them and to quash all such elections and direct holding of fresh elections under the supervision of the court, will be contrary to democratic functioning of the employees' Union. Furthermore, courts in the present situation of exploding dockets can ill afford to stand (*sic* spend) time in such an exercise. ....."

(x) **(2003) 7 SCC 219** [***Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarn***] wherein the Hon'ble Supreme Court held as follows:-

" .....4. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. *Patterson* v. *State of Alabama* [294 US 600 : 79 L Ed 1082 (1934)] (US at p. 607) illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. *Lachmeshwar Prasad*

Shukul v. *Keshwar Lal Chaudhuri* [1940 FCR 84 : AIR 1941 FC 5] falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs — cannot deny rights — to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the court, even in appeal, can take note of such supervening facts with fundamental impact. This Court's judgment in *Pasupuleti Venkateswarlu* v. *Motor & General Traders* [(1975) 1 SCC 770 : AIR 1975 SC 1409] read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in the cause of action or relief. The primary concern of the court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine (see *V.P.R.V. Chockalingam Chetty* v. *Seethai Ache* [AIR 1927 PC 252 : 26 All LJ 371]). ....."

(xi) **(2018) 11 SCC 508 [*Nabha Power Ltd. v. Punjab SPCL*]**

wherein the Hon'ble Supreme Court held as follows:-

".....56. In *Principles of Statutory Interpretation* by Justice G.P. Singh (former Chief Justice, Madhya Pradesh High Court), it has been expressed as under:

> "(*e*) *Reddendo Singula Singulis* [*Principles of Statutory Interpretation* by Justice G.P. Singh (former Chief Justice, M.P. High Court) 4th Edn., 1988.]
>
> The rule may be stated from an Irish case in the following words: 'Where there are general words of description, following an enumeration of particular things such general words are to be construed distributively, *reddendo singula singulis*; and if the general words will apply to some things and not to others, the general words are to be applied to those things to which they will, and not to those to which they will not apply; that rule is beyond all controversy. [*M'Neill* v. *Crommelin*, (1858) 9 Ir CLR 61 : 62 Digest, p. 672] ' Thus, 'I devise and "bequeath" all my real and personal property to A' will be construed, *reddendo singula singulis* by applying "devise" to "real" property and "bequeath" to "personal" property [Osborne, *Concise Law Dictionary*, p. 269] and in the sentence: 'If any one shall draw or load any sword or gun' the word "draw" is applied to "sword" only and the word "load" to gun only, because it is impossible to load a sword or draw a gun. [Wharton, *Law Lexicon*, 14th Edn., p. 850.] ....."

(xii) **1964 SCR (1) 1 [T. P. Daver v. Lodge Victoria]** wherein the Hon'ble Supreme Court held as follows:-

> " ....8. The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules, whether a

particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra. ..."

(xiii) ***2022 SCC online Ker 1302*** **[*Santharam Roy T.S. v. Travancore Devaswom Board Represented by its Secretary and others*]**

wherein the Division Bench of Kerala High Court held as follows:-

"30. For answering th issue on the validity of Ext.P5 notice, we deem it apposite to refer few passages from Shackleton on the Law and Practice of Meetings, 13th Edition, at Page 47, which read thus;

"The regulations of the body on whose behalf notice is being given usually prescribe the method to be followed. The rules of a club, for example, may provide that notices of meetings posted at the clubhouse and a copy sent to every member. Encyclopedia of Forms and Precedents (5th Edn), Vol.7, Para.3215] Where no club rule prescribes a mode, it is within the general functions of the committee of a club to say how notices should be given on each particular occasion. Labouchere v. Earl of Wharncliffe [[L.R.] 13 Ch. 346 at 352] The greater the importance of the matter to be discussed, for example, where the expulsion of a

club member is to be considered or rules are to be altered, the more the need to send a copy of the notice to each member rather than merely affixing it to the club notice board. On the other hand, in matters affecting clubs the courts eschew a meticulous examination of the rules reasonableness and fairness are given more weight than a rigid interpretation.

In the words of Megarry V.C. "allowance must be made for some play in the joints". GKN Sports and Social Club, Re [[1982] 1 WLR 774, 776] In general, if there are no specific provisions, and subject to custom and practice - for example, the following of similar previous arrangements- notice may be given by advertisement : a notice in newspapers convening a meeting of debenture holders under a trust deed has been held good. Mercantile Investment and General Trust Co.v. International Company of Mexico[[1893] 1 Ch. 484]

Where a particular form of service is provided for in the regulations, no other form is permitted; thus, where service by post is stipulated, delivery by dropping the notice into the letter box personally, or by handing it to a clerk would not be in order.

It has been held that "post" includes registered post - TO Supplies (London) Ltd. v. Jerry Creighton Ltd. [[1952] 1 K.B. 42] - and, so far as documents that are required or authorised by any enactment to be sent by registered post are concerned, sending can be effected by the recorded postal delivery service. [Recorded Delivery Service Act 1962 Sec.1] Where an

important notice is concerned, the use of recorded delivery can provide proof that it has been received; however, the use of this service or registered post for notice of meetings is rare. Where the regulations of the body concerned provide for notice to be sent by post, it is normally the responsibility of the member to keep up to-date the record of his address in that body's records. James v. Institute of Chartered Accountants [(1907) 98 LT 225]" (underline supplied)

31. The learned Standing Counsel for Travancore Devaswom Board would point out that, the practice of hitherto followed in all davsworm under the Travancore Devaswom than the permanent members to the advisory Committee is to convene such a meeting after publishing the notice issued by the Assistant Devaswom Commissioner on the notice board of the Travancore Devaswom Board inside the temple premises and also on the 'gopurams' of othe temple. Accordingly Ext.P5 notice issued by the 4th respondent Assistant Devaswom Commissioner was published on the notice board of the Travancoare Devaswom Board inside the premises of Thirunakkara Sree Mahadeva Temple as well as on four 'gopurams' of the temple. Apart form the publica;tion of Ext.P5 notice as abvoe, the 4th respondent had given Exts. R1(d) andR1(2) press releases in two major Malayalam dailies, i.e. Mathrubhumi daily and Malaya Manorama daily, on 04.11.2021, considering Covid-19 pandemic situation, with an intend to ensure maximum participation of devotees in the general

meeting. Ext.P6 is only a 'bit notice' issued by the 3rdrespodnent Administrative Office for those visiting the temple. ....."

(xiv) **AIR 1962 SC 666 [*Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti*]** wherein the Hon'ble Supreme Court held as follows:-

> ".....7. The first question to determine is whether limitation for filing an application to set aside the award began to run against the appellant-Defendant 12 from a date more than a month before 9-11-1948, when a written statement on his behalf was filed stating that the award be declared null and void. According to Article 158 of the First Schedule to the Indian Limitation Act, the period of limitation for an application to set aside an award under the Arbitration Act, 1940, begins to run from "the date of service of the notice of the filing of the award". No notice in writing was issued by the court to the appellant or his guardian intimating that the award has been filed in Court. It is therefore urged for the appellant that the period of limitation for filing an application to set aside the award never began to run against him. There could be no date of service of notice, when no notice had been issued. On the other hand, it is submitted for the respondents, that the limitation began to run from 21-2-1948, the date on which the court adjourned the case for parties' say to 22-3-1948, and that, in any case, from 7-9-1948, when his guardian had applied for time to file the statement after having received a summons from

the court on 5-9-1948. On 21-2-1948, the pleaders were present, according to the entry against the date in the roznama of the Court. Notice to the counsel of the filing of the award means or amounts to notice to the party.

8. Sub-Section (1) of Section 14 of the Arbitration Act, 1940 (Act 10 of 1940) requires the arbitrators or umpire to give notice in writing to the parties of the making and signing of the award. Sub-section (2) of that section requires the Court, after the filing of the award, to give notice to the parties of the filing of the award. The difference in the provisions of the two sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. No question of the service of the notice in the formal way of delivering the notice or tendering it to the party can arise in the case of a notice given orally. The communication of the information that an award has been filed is sufficient compliance with the requirements of sub-section, (2) of Section 14 with respect to the giving of the notice to the parties concerned about the filing of the award. “Notice” does not necessarily mean “communication in writing”. “Notice”, according to the *Oxford Concise Dictionary*, means “intimation, intelligence, warning” and has this meaning in expressions like “give notice, have notice” and it also means “formal intimation of something, or instructions to do something” and has such a meaning in expressions like “notice to quit, till further notice”. We are of opinion that the expression “give notice” in sub-section (2) of Section 14, simply means giving intimation of the filing of the award, which certainly

was given to the parties through their pleaders on 21-2-1948. Notice to the pleader is notice to the party, in view of Rule 5 of Order 3 of the Civil Procedure Code, which provides that any process served on the pleader of any party shall be presumed to be duly communicated and made known to the party whom the pleader represents and, unless the court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

10. We see no ground to construe the expression "date of service of notice" in column 3 of Article 158 of the Limitation Act to mean only a notice in writing served in a formal manner. When the legislature used the word "notice" it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words "notice" and "service" it would have said so explicitly. It has not done so here. Moreover, to construe the expression as meaning only a written notice served formally on the party to be affected, will leave the door open to that party, eventhough with full knowledge of the filing of the award he has taken part in the subsequent proceedings, to challenge the decree based upon the award at any time upon the ground that for want of a proper notice his right to object to the filing of the award had not even accrued. Such a result would stultify the whole object which underlies the process of arbitration — the speedy decision of a dispute by a tribunal chosen by the parties. .....

(xv) **(1993) 3 SCC 445 [*Food Corpn. of India v. E. Kuttappan*]**

wherein the Hon'ble Supreme Court held as follows:-

> " .....10. Assimilating the legal thoughts afore-expressed and applied to the facts afore-stated, it becomes manifest that when the arbitrator had sent the award and other papers to the respondent through his counsel, unless he had authorised the respondent or his counsel on his behalf to the filing of it in court, it cannot be assumed that when the respondent or his counsel filed the award and other connected papers in court it was not done for and on behalf of the arbitrator. Instantly it was the respondent who by his letter had requested the arbitrator to send to his lawyer the award for filing it into court and to whom the arbitrator obliged on such request. In our view, when the arbitrator chose to accede to the request of the respondent in specific terms, he by necessary implication authorised the respondent's counsel to file the award and the connected papers in court on his behalf. The law enjoined on the arbitrator to file the award in court for which purpose he could even be directed by the court. The obligation of filing the award in court is a legal imperative on the arbitrator. The agency of the party or its lawyer employed by the arbitrator for the purpose normally need be specific but can otherwise be deduced, inferred or implied from the facts and circumstances of a given case. It needs, however, shedding the impression that when a lawyer files the award in court when given to him by the arbitrator his implied authority to do so, shall not be presumed to exist. In the instant case, no one raised the plea that the filing of the award in court by the respondent's lawyer was without the authority of the Arbitrator and the courts below were not engaged on

that question. The matter was agitated on the basis of knowledge of award from that fact.

11. On the strength of afore-mentioned two cases of this Court, i.e. *Nilkantha case* [(1962) 2 SCR 551 : AIR 1962 SC 666] and *Indian Rayon case* [(1988) 4 SCC 31] it was claimed on behalf of the appellants that though the legal requirement is that the notice be sent by the court, some other act of the court is enough to foist awareness of the filing of the award in court, wherefrom the period of limitation was to commence. Instantly, it was urged that when the award had factually been placed before the court and the court had accepted its placement into it on October 25, 1988 itself, the factual filing of the award had been made and sequelly notice to the respondent through his counsel. Even though the court had subsequently on November 3, 1988 issued notice for November 7, 1988, the former act, according to the appellant, was enough compliance with court sending the notice and the latter act was of no consequence. It does not lie in the mouth of the respondent to say that though he filed the award in court through his counsel, with or without the implied or express authority of the arbitrator, he did not have the corresponding knowledge of the filing of the award, when the award was readily received by the court. It seems to us that the mute language inherent in the action of the court did convey to the party placing the award before it, the factum of the award being filed in court. The mere fact that at a subsequent stage, the court issued notice to the parties informing them of the filing of the award in court for the purpose of anyone to object to the award being made the rule of the court is an act of the court which cannot in law prejudice the rights of the parties. If once it is taken that the period of limitation for the purposes of filing the objection, insofar as the respondent was concerned, had begun on

October 25, 1988, the objections filed by it on December 6, 1988 were obviously barred by time, those having been filed beyond the prescribed period of thirty days. If this be the logical conclusion, the appeals shall merit acceptance, holding the objections filed by the respondents to be time barred. Thus, so concluding, we allow these appeals, set aside the common judgment and order of the High Court, and that of the trial court, holding the objections filed by the respondents to be time barred. The trial court will proceed further in these matters in accordance with law. The parties to bear their own costs.

(xvi) **(2003) 3 SCC 454 [*CST v. Subhash & Co.*]** wherein the Hon'ble Supreme Court held as follows:-

" .....12. Whether service of notice is valid or not is essentially a question of fact. In the instant case, learned Single Judge found that certain procedures were not followed while effecting service by affixture. There was no finding recorded that such service was non est in the eye of the law. In a given case, if the assessee knows about the proceedings and there is some irregularity in the service of notice, the direction for continuing proceedings cannot be faulted. It would depend upon the nature of irregularity and its effect and the question of prejudice which are to be adjudicated in each case on the basis of surrounding facts. If, however, the service of notice is treated as non est in the eye of the law, it would not be permissible to direct de novo assessment without considering the question of limitation. There also the question of prejudice has to be considered.

....

17. Notice is making something known, of what a man was or might be ignorant of before. And it produces diverse effects, for, by it, the party who gives the same shall have the same benefit, which otherwise he should not have had; the party to whom the notice is given is made subject to some action or charge, that otherwise he had not been liable to; and his estate in danger of prejudice.

.....

22. The emerging principles are:

(*i*) Non-issue of notice or mistake in the issue of notice or defective service of notice does not affect the jurisdiction of the assessing officer, if otherwise reasonable opportunity of being heard has been given.

(*ii*) Issue of notice as prescribed in the Rules constitutes a part of reasonable opportunity of being heard.

(*iii*) If prejudice has been caused by non-issue or invalid service of notice the proceeding would be vitiated. But irregular service of notice would not render the proceedings invalid; more so, if the assessee by his conduct has rendered service impracticable or impossible.

(*iv*) In a given case when the principles of natural justice are stated to have been violated it is open to the Appellate Authority in appropriate cases to set aside the order and require the assessing officer to decide the case de novo. .....”

(xvii) **Manu/OR/0097/1978 [Debaraj Mallika v. Collector, Puri and Ors]** wherein the Hon'ble Supreme Court held as follows:-

“ ....7. The first contention of the Petitioner is that the provision regarding giving of notice at least fifteen clear days before the date fixed for the meeting has not

been complied with. It is contended that though the Subdivisional Officer issued the notice on 11-8- 1977 for convening a special meeting and fixed the date to 31-8-1977, it was only on 17-8-1977 that an attempt was made to serve the notice on opposite party No. 3 Gopal Mallick. It is asserted by opposite parties 4 to la, 12, 13, 15, 16, 18 and 19 that the notice was received by all the members of the Grama Panchayat on 16-8-1977 except the Petitioner and his brother opposite party No. 3 - who avoided service of the notice. It is stated in their counter affidavit that when the attempt to serve the notices on the Petitioner and opposite party No. 3 through a peon, failed on 16-8-1977 and 17-8- 1977, the notices were sent by registered post. The notice sent to opposite party No. 3 by post was duly received by him, but the Petitioner avoided to accept the same even though he was present in the village. These averments have not seen controverted by the Petitioner. Rather it is admitted in para 3 of the writ petition that when the attempt to serve the notice on opposite party No. 3. through the peon of the B.D.O's office failed on 17-8-1977, the notice was sent to him by post. In his counter affidavit the opposite party No 3 has not taken the plea of want of notice. His contention is that as there was no proposed Resolution to be moved, he did not attend the meeting on 31-8- 1977. Clause (d) of Sub-section (2) of Section 24 provides that a copy of the notice shall be published at least seven days prior to the date fixed for the meeting in the notice-hoard of the Samiti. It is maintained by the opposite parties that a copy of the notice was duly published on the notice-board of the Samiti and the Petitioner as Sarpanch was a member of the Samiti at that time. This averment has not been denied by the Petitioner. According to the Clause (e), the proceedings of the meeting shall not be invalidated merely on the ground that the notice has not been received by any member. The ordinary meaning of the word 'notice' is knowledge, information or announcement. On a proper

construction of Clauses (c), (d) and (e) of Sub-section (2) of Section 24, the legislative intention appears to be that a communication which carries knowledge of the fact that a no-confidence motion would be brought should be sent to the members. The provision of Section 24(2)k) regarding notice of at least fifteen dear days is directly in character and if there has been substantial compliance with the requirements of the section, that is sufficient to uphold the validity of the notice and the proceedings of the meeting convened in pursuance thereof.

8. The next contention of the Petitioner is that there was no requisition for the meeting and there was also no proposed Resolution to be moved in the meeting. Admittedly Annexures 1/1 and 1/2 were sent along with the notice. Annexure 1/1 is the requisition which was signed by more than a third of the total number of members of the Panchayat. Annexure 1/2 is the Resolution which was proposed to be moved. The Petitioner's contention IS that Annexures 1/1 and 1/2 are only in the nature of information about a Resolution having been already passed and there was no indication about any proposal to move the Resolution in the special meeting. In the notice (Annexure 1) issued by the Subdivisional Officer, Nayagarh it was clearly mentioned that the enclosures thereto were the requisition and the proposed Resolution. It was no doubt stated in Annexure 1/1 that a Resolution recording want of confidence in the Petitioner had been passed on 2-7-1977, but therein a request was made to the Subdivisional Officer, Nayagarh to take legal steps on the proposal to bring a motion of no-confidence. The contention raised on behalf of the Petitioner is, therefore, without any force. It is clear from the proceedings of the meeting held on 31-8-1977 (Annexure-2) that the motion of no-confidence essentially on the same basis as contained in Annexure 1/2 was

discussed in the meeting and was duly passed. Out of the total strength of 19 members of the panchayat including the Petitioner, 13 members voted in favour of the motion of no confidence against the Petitioner. We hold that there was substantial compliance with the provisions of law and the Petitioner was duly removed from the Sarpanchship. ...."

(xviii) **(1969) 2 SCC 694 [*Parasramka Commercial Co. v. Union of India*]** wherein the Hon'ble Supreme Court held as follows:-

".....5. It is not necessary to go into the reasoning which made the learned Judges in these cases to lay down that there must be a proper notice in writing of the making of the award. That follows in fact from the words of Section 14(1) of the Arbitration Act. That section says that when the arbitrators or umpire have given their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award. What will be considered a sufficient notice in writing of the making and signing of the award is a question of fact. In the cited cases emphasis sometimes has been laid upon the latter part of the sub-section which speaks of the arbitration and award. Sometimes emphasis has been placed upon the opening words namely that there should be a notice in writing. Reading the word "notice" as we generally do, it denotes merely an intimation to the party concerned of a particular fact. It seems to us that we cannot limit the words "notice in writing" to only a letter. Notice may take several forms. It must be sufficient in writing and must intimate quite clearly that the award has been made and signed. In the present case, a copy of the award signed by the arbitrator was sent to the company. It

appears to us that the company had sufficient notice that the award had been made and signed. In fact the two letters of May 5 and May 16 to which we have referred quite clearly show that the company knew full well that the arbitrator had given the award, made it and signed it. In these circumstances to insist upon a letter which perhaps was also sent (though there is some doubt about it) is to refine the law beyond the legitimate requirements. The only omission was that there was no notice of the amount of the fees and charges payable in respect of arbitration and award. But that was not an essential part of the notice for the purpose of limitation. To emphasise the latter part as being the essential part of the notice is to make the first part depend upon the determination of the fees and charges and their inclusion in the notice. A written notice clearly intimating the parties concerned that the award had been made and signed, in our opinion certainly starts limitation.

6. In this view of the matter we are in agreement with the decision of the learned Single Judge who has endorsed the opinion of the Subordinate Judge that limitation began to run from the receipt of the copy of the award which was signed by the Arbitrator and which gave due notice to the party concerned that the award had been made and signed. That is how the party itself understood when it acknowledged the copy sent to it. Therefore, the application must be treated as being out of time and the decision of the High Court to so treat it was correct in all the circumstances of the case. ....."

(xix) **ILR 1941 Bom 497 [A.S. Krishnan vs M. Sundaram]**

wherein the Hon'ble Supreme Court held that even if the Court decides in favour of the plaintiff, the society can call' a meeting of its members tomorrow, confirm the acts of the defendants and confirm their position

as members of the managing committee, thus rendering the decision of the Court a nullity.

(xx) **(1997) 3 CTC 229 [S.Thirunavukkarasu v. Selvi J. Jayalalithaa]** wherein the Hon'ble Supreme Court held as follows:-

> " .....35. In the light of the contentions of the parties, as can be seen from the pleadings and submissions, the following points arise for consideration and decision:-
>
> i. Whether the suit filed by the plaintiff is prima-facie maintainable;
>
> ii. Whether the meeting of the general council convened by the defendant on 3.6.1997 was authorised and valid; and
>
> iii. Whether the order of the learned single Judge granting interim injunction calls for interference, keeping in view, prima facie case, balance of convenience, and irreparable injury, if any, that may be sustained if the order of injunction is refused?
>
> We will deal with these points in seriatim.
>
> 36. Point No. 1: According to the learned senior counsel for the appellants, the subject matter of the suit relates to the dispute regarding indoor management of the party affairs; the suit does not involve dispute as to the property of the party; the suit in the present form is not maintainable as the plaintiff has filed the suit in her individual capacity as the General Secretary and not for the party, and the suit is filed against the defendant in his individual capacity; as such the orders that may be passed cannot be binding on the members of the defendant's

group; the suit is not also a representative suit in character; and there is implied bar in taking cognizance of the suit under paragraph 15 of the Symbols Order.

37. It is well settled that under Section 9 of the Code of Civil Procedure, all suits of civil nature can be entertained by a Civil Court unless such a suit is expressly, or by necessary implication, barred. It is not shown to us that there was any express bar or prohibition for the plaintiff in filing the suit. It cannot also be said that the suit is not of a civil nature.

38. Shri Shanthi Bushan, learned senior counsel relied on paragraphs 201 and 202 of Halsbury's Laws of England, Volume 6, Fourth Edition. Paragraph 201 gives definition of a club. Paragraph 202 reads:

> "202. Jurisdiction of court over constitution of club. The court does not take cognisance of the rules of a voluntary society, entered into merely for the regulation of its own affair, save to protect the disposal and administration of property. The rules of a club may effectively provide that the governing body shall be the final arbiter on questions of fact but cannot prevent its decisions on questions of law being determined by the courts."

Relying on the statement contained in paragraph 202, he submitted that the court could not entertain the suit as the dispute did not relate to the disposal and administration of the property.

39. A careful reading of this paragraph 202 does not show that there was a bar of suit, but it only shows that the Courts cannot take cognisance of the rules of a voluntary society entered into merely for the regulation of its own affairs save to protect the disposal and administration of

property. In the same paragraph itself, it is further stated that the rules of a club may effectively provide that the governing body shall be the final arbiter of questions of fact but cannot prevent its decisions on questions of law being determined by the Courts (Italics applied). In this view, we are unable to agree with the submission that the suit of the plaintiff, prima facie, is not maintainable merely on the ground that the dispute does not relate to the disposal and administration of property of the party. Moreover the resolution No. 6 passed in the meeting convened by the defendant and held on 3.6.1997 is to request the plaintiff to hand over the party files, movable and immovable property belonging to the party to the defendant. Again resolution No. 18 directs the plaintiff to return a sum of Rs. 4 crores taken away by her from out of the party fund to pay her individual income tax arrears, and if she fails to return the said amount it should be collected through legal process. Hence it cannot be said at this stage that the dispute does not relate to disposal and administration of the property of the party, prima facie.

40. The learned counsel cited few more decisions in support of his submission, which are not directly on the point although some inferences were to be drawn from the said decisions. Further in the light of the judgment of the Honourable Supreme Court in "Most Rev. R.M.A. Metropolitan and Others v, Moran Mar Marthoma and another, 1995 Supp (4) S.C.C. 286, we consider it unnecessary to refer to the other decisions cited by the learned senior counsel for the appellants. Paragraph 28 of the said Judgment reads:-

> "One of the basic principles of law is that every right has a remedy. Ubi jus ibi remediem is the well known maxim. Every civil suit is cognizable unless it is barred, "there is an inherent right in every person to bring a suit of a civil nature and unless the suit is

> barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue" Ganga Bai v, Vijay Kumar, 1974 (2) S.C.C. 393. The expansive nature of the section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the section by use of the word 'shall' and the expression 'all suits of a civil nature' unless 'expressly or impliedly barred'."

41. In paragraph 29 of the said Judgment it is stated that not only suits which are civil, but are even of civil nature, can be entertained by Courts unless such suits are barred expressly or impliedly. The Constitution Bench of the Apex Court in *Narayan Row* v. *Ishwarlal Bhagwandas*, A.I.R. 1965 S.C. 1818, dealing with the expression "civil proceedings" has held,

> "a proceedings for relief against infringement of civil right of a person is a civil proceedings."

In the same paragraph, referring to another case in *Arbind kumar Singh* v. *Nand Kishore Prasad*, A.I.R. 1968 S.C. 1227

wherein it was held that all proceedings which directly affect civil rights are civil proceedings, it is further stated that the word 'civil nature' is wider than the word 'civil proceedings'. Thus section 9 would therefore be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of a civil nature.

42. In paragraph 30 of the said judgment, their Lordships of the Supreme Court, referring to Explanations I and II Section 9, have noticed thatthere are numerous authorities where dispute about entry in the temple, right to worship, performing certain rituals, have been taken cognisance of and decided by civil Courts. In paragraph 38 of the same Judgment the Apex Court went on to say that,

> "The dispute about the religious office is a civil dispute as it involves disputes relating to rights which may be religious in nature but are civil in consequence."

The learned single Judge has also referred to and relied on the Judgment of the Apex Court aforementioned, and rightly so in our opinion also.

43. The learned single judge has stated that the plaintiff is entitled to hold the post of General Secretary unless she is legally removed or the term of office expired; membership in the party confers certain rights which cannot be denied except in accordance with the rules of the party; if her rights are interfered with as the General Secretary of the party, she was entitled to take remedy under Section 9 of the C.P.C. This being the position, we have no hesitation to say that the suit filed by the plaintiff being one of civil nature, prima facie, is maintainable though the dispute raised directly does not relate to any property of the party. We have already stated above that the reliance placed by the learned senior counsel for the defendant on paragraph 202 of Halsbury's Laws of England, on its plain reading, does not help the defendant. Added to

that, when we have a direct decision of the Honourable Supreme Court, we are bound by it. ....."

(xxi) **(2001) 7 SCC 231 [*B.R. Kapur v. State of T.N.*,]** wherein the Hon'ble Supreme Court held as follows:-

> "....15. Central to the controversy herein is Article 164, with special reference to sub-article (4) thereof. This Court has considered its import in a number of decisions. In *Har Sharan Verma* v. *Tribhuvan Narain Singh, Chief Minister, U.P.* [(1971) 1 SCC 616] a Constitution Bench rendered the decision in connection with the appointment of the first respondent therein as the Chief Minister of Uttar Pradesh at a time when he was not a member of either House of the Legislature of that State. The Court said: (SCC p. 617, paras 3 & 6)
>
> > "*3*. It seems to us that clause (4) of Article 164 must be interpreted in the context of Articles 163 and 164 of the Constitution. Article 163(1) provides that 'there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion'. Under clause (1) of Article 164, the Chief Minister has to be appointed by the Governor and the other Ministers have to be appointed by him on the advice of the Chief Minister. They all hold office during the pleasure of the Governor. Clause (1) does not provide any qualification for the person to be selected by the Governor as the Chief Minister or Minister, but clause (2) makes it essential that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. This is the only condition that the Constitution prescribes in this behalf.

***

6. It seems to us that in the context of the other provisions of the Constitution referred to above there is no reason why the plain words of clause (4) of Article 164 should be cut down in any manner and confined to a case where a Minister loses for some reason his seat in the Legislature of the State. We are assured that the meaning we have given to clause (4) of Article 164 is the correct one from the proceedings of the Constituent Assembly and the position as it obtains in England, Australia and South Africa."

The Court set out the position as it obtained in England, Australia and South Africa and observed that this showed that Article 164(4) had "an ancient lineage".

.....

57. We are aware that the finding that the second respondent could not have been sworn in as the Chief Minister and cannot continue to function as such will have serious consequences. Not only will it mean that the State has had no validly appointed Chief Minister since 14-5-2001, when the second respondent was sworn in, but also that it has had no validly appointed Council of Ministers, for the Council of Ministers was appointed on the recommendation of the second respondent. It would also mean that all acts of the Government of Tamil Nadu since 14-5-2001 would become questionable. To alleviate these consequences and in the interest of the administration of the State and its people, who would have acted on the premise that the appointments were legal and valid, we propose to invoke the de facto doctrine and declare that all acts, otherwise legal and valid, performed between 14-5-2001 and today by the second respondent as Chief Minister, by the members of the Council of Ministers and by the Government of the State shall not be adversely

affected by reason only of the order that we now propose to pass. ....."

(xxii) **(2012) 6 SCC 792 [*Best Sellers Retail (India) (P) Ltd. v. Aditya Birla Nuvo Ltd.*]** wherein the Hon'ble Supreme Court held as follows:-

> " ..... 29. Yet, the settled principle of law is that even where prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable.
>
> 30. In *Dalpat Kumar* v. *Prahlad Singh* [(1992) 1 SCC 719] this Court held: (SCC p. 721, para 5)
>
> > "5. … Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages. ....."

(xxiii) **(1992) 1 SCC 719 [** ***Dalpat Kumar v. Prahlad Singh***

wherein the Hon'ble Supreme Court held as follows:-

> ".....5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion

in granting or refusing the relief of ad interim injunction pending the suit. ....."

(xxiv) **1990 Supp (1) SCC 727 [Wander Ltd. And Anr. vs Antox India P. Ltd]** wherein the Hon'ble Supreme Court held as follows:-

> "..... 14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :

> ... These principles are well established, but as has been observed by Viscount Simon in Charles Osention & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.
>
> The appellate judgment does not seem to defer to this principle. ....."

14.1 The learned Senior Counsels appearing for the 1st respondent in O.S.A.No.227 of 2022, the 4th respondent in O.S.A.Nos. 231 and 232 of 2022 and the learned counsel appearing for the 1st respondent in O.S.A.Nos. 231 and 232 of 2022, made the following submissions:-

(i) Notice of invitation dated 26.06.2022 to attend the meeting on 27.06.2022 was neither signed nor authorised by both the Co-Ordinator and Joint Co-Ordinator and it is against the Rule 20A(v) of the Bye-Laws of the Party. As per Rule 26 of the Bye-Laws of the Party, the Party Headquarters' Secretary has no power to convene any meeting. On the contrary, only the Co-Ordinator and Joint Co-Ordinator of the Party have power to convene the meeting. Under Rule 20A(v), if 1/5th of the Members of the General Council request the Co-Ordinator and Joint

Co-Ordinator to convene the Special Meeting, it is obligatory on the part of the Co-Ordinator and Joint Co-Ordinator to do so within 30 days of receipt of such a requisition. No other Office Bearer or Member of the General Council is vested with the power to convene the Meeting even in the absence of the Co-Ordinator and Joint Co-Ordinator. Notice issued to the 1st respondent by the 6th respondent inviting him to the General Council Meeting to be held on 11.07.2022 is illegal. As per Rule 20A(vii), 6th respondent can only be permitted to hold office and continue to function till the new Co-Ordinator and Joint Co-Ordinator are elected and assume office.

(ii) The General Council can only alter, amend or delete any Bye-Laws so far as it might be consistent with the fundamental principles upon which the Party is formed. It is not open to the Members of the General Counsel to alter the basic structure of the Party Constitution. The General Council did not have the power to assume and declare that the Co-Ordinator and Joint CO-Ordinator had automatically lapsed on 23.06.2022.

(iii) In respect of the Resolution of election of Mr.Tamil Magan Hussain as Permanent Presidium Chairman, the Proposer is stated to be the appellant in his capacity as "Joint Co-Ordinator". The said Resolution was seconded by two other General Council Members and the 1st respondent was not a Proposer or a Party to the said Resolution. The learned Single Judge has rightly held that the 1st respondent-plaintiff has made out a *prima facie* case. The notice calling for the General Council Meeting on 11.07.2022 is bad in law. The grant of relief of status quo ante as on 23.06.2022 was proper, in the light of the specific defence taken by the appellant before the learned Single Judge that the posts of Co-Ordinator and Joint Co-Ordinator had fallen vacant on 23.06.2022.

14.2 The learned Senior Counsels, in support of their submissions have relied upon the following Judgments.:-

(i) **1990 Supp SCC 727 [*Wander Ltd. v. Antox India (P) Ltd.*,]** wherein the Hon'ble Supreme Court held as follows:-

> " .....**7.** The case of Antox is that its agreement dated March 28, 1986 with Wander Ltd. was itself void in that its

object was one forbidden by law; that it would, if permitted, defeat and violate several statutory provisions and prohibitions; that the agreement thus, out of way, the undertaking furnished on June 21, 1986 by Wander Ltd. to the Drug Controller in Karnataka, had the effect, in law, of and amounted to an abandonment by Wander Ltd. of its proprietorship of the registered trademark "Cal-De-Ce" and of all such exclusive rights as Wander Ltd. had or may have had in respect of that trademark and that the subsequent continued user of the said trademark by Antox under the Drug Controller's licence amounted to an independent user of the trademark by Antox in its own right as, indeed, according to Antox, the said trademark after its abandonment by Wander Ltd. came to be in a nascent unowned condition eligible to be picked up and used by anybody. It was said that the user of the trademark by Antox after June 21, 1986 amounted to such an independent user on the strength of which Antox claimed that it was entitled to maintain a passing-off action even against Wander Ltd. The mere earlier registration of the trademark by Wander Ltd., it is urged, is no evidence of earlier user and with the abandonment of the trademark by Wander Ltd. Antox is entitled, on the strength of its continuous user, to restrain Wander Ltd. from manufacture.

8.The point for consideration is whether there is a prima facie case on which Antox could be held entitled to restrain Wander Ltd. and Alfred Berg from manufacturing and marketing goods under the trade name "Cal-De-Ce" and whether on considerations of balance of convenience and comparative hardship a temporary injunction should issue. The corollary is that even if the injunction sought by Antox is refused, that does not, ipso facto, entitle Wander Ltd. and Alfred Berg to manufacture and market the goods if they are not otherwise entitled to do so under the relevant laws regulating the matter. ....."

(ii) In an unreported judgment dated 06.10.2015, made in ***CRP No.22(AP) of 2015 [The Arunachal Pradesh Congress Committee (APCC), Arunachal Pradesh and another v. Shri Kalikho Pul],*** the Single Judge of the Gauhati High Court dealt with the maintainability of the Civil Suit and ultimately held that the suit filed by a member of Indian National Congress is maintainable.

15. Challenging the common order passed by the learned Single Judge in O.A.Nos.368, 370 and 379 of 2022 in C.S.Nos.118 and 119 of 2022, the 5th defendant in C.S.No.118 of 2022, who is also the 4th defendant in C.S.No.119 of 2022, have filed the above Original Side Appeals.

16. On a careful consideration of the materials available on record, the submissions made by the learned Senior Counsels appearing for both sides and also taking into consideration the Judgments relied upon by the learned counsels, it could be seen that the dispute between the appellant

and the 1st respondent (in O.S.A. No.227 of 2022) is in connection with the intra-party rivalry over the question who had to lead the Political Party called AIADMK. It is not in dispute that the Party was launched in the year 1972 by its founder Late Mr.M.G.Ramachandran. When he launched the Anna Dravida Munnetra Kazhagam on 17.10.1972, he ensured that the General Council of the Party would be the Supreme body among the party organs, and the General Secretary of the party to be elected by the Primary Members and the General Secretary will head the party with unfettered powers. The Party Bye-Law was accordingly drafted. Rule 20, Rule 42 and Rule 43 of the Bye-Law vested the ultimate administrative responsibility with the General Secretary, including power of exemption to the Rules and Regulations, except the mode of electing the General Secretary, which should be by the Primary Members of the Party. Rule 43 prohibited any change or amendment to the above mode of electing the General Secretary.

17. After the demise of Mr.M.G.Ramachandran, there was a split in the party and later they joined together and were functioning under the leadership of Selvi J.Jayalaithaa as the General Secretary of the Party.

About 25 years ago, this Party faced a similar situation as it is now undergoing. When the then Deputy General Secretary of the Party Mr.S.Thirunavukkarasu, who was expelled from the Party, sought to convene the General Council Meeting alleging that the General Secretary is inaccessible to the Party Men, Selvi J.Jayalalithaa filed a Civil Suit before this Court seeking for an order of injunction restraining Mr. S.Thirunavukkarasu from convening the General Council Meeting. Selvi J.Jayalalithaa as General Secretary of this Party, in the year 2011, made certain amendments to the Party constitution and it was in force till 11.09.2017. Selvi J.Jayalalithaa had expired on 05.12.2016 and thereafter, some provisions of the Bye-Laws were amended on 12.09.2017 and on 01.12.2021.

18. On 01.12.2021, the Executive Council Meeting of the Party was held in which Resolution in respect of the Amendment to the Party Constitution Rule 20 (ii), Rule 43 and Rule 45 was approved. The Election Notification for the posts of Co-Ordinator and Joint Co-Ordinator by Single Vote was issued i.e., both the appellant and the 1st respondent in O.S.A.No.227 o f 2022 contested for the posts of Co-

Ordinator and Joint Co-Ordinator respectively on a "Single Ticket", i.e., the Members casted a Single Vote for electing the Co-Ordinator and Joint Co-Ordinator jointly. When they were elected jointly on a "Single Ticket", they cannot perform their duties individually i.e., neither the Co-Ordinator nor the Joint Co-Ordinator can act independently without the support of the other.

19. The appellant has sent a letter dated 28.06.2022 to the Election Commission of India stating that the posts of Co-Ordinator and the Joint Co-Ordinator had lapsed for the reason that their election on 01.12.2021 was not ratified in the General Council Meeting held on 23.06.2022. The appellant has addressed the said letter dated 28.06.2022 to the Election Commission of India as the Headquarters' Secretary and not as the Joint Co-Ordinator of the Party. When the appellant has addressed the letter to the Election Commission of India as Headquarters Secretary stating that the posts of Co-Ordinator and the Joint Co-Ordinator had lapsed, it implies that he is no longer Joint Co-Ordinator of the AIADMK Party. When the appellant has relinquished the post of Joint Co-Ordinator, either by lapse or by his own act, he cannot be compelled to

continue as Joint Co-Ordinator. When the appellant is no longer the Joint Co-Ordinator of the Political Party, the 1st respondent in O.S.A.No.227 of 2022 also cannot act independently as Co-Ordinator for the reason that both of them were elected to the posts of the Co-Ordinator and the Joint Co-Ordinator in "Single Ticket". Since the Joint Co-Ordinator, by his letter dated 28.06.2022 addressed to the Election Commission of India, gave up his post as Joint Co-Ordinator, the Co-Ordinator cannot act separately. In these circumstances, the contention of the appellant that the posts of Co-Ordinator and Joint Co-Ordinator had lapsed for want of ratification need not be gone into in the above appeals and the said issue can be decided in the pending suit in C.S.Nos. 118 and 119 of 2022.

20. There was no separate election for the post of Co-Ordinator and Joint Co-Ordinator. There was no other nomination received except from the appellant and from the 1st respondent (in O.S.A.No.227 of 2022). Hence, they were declared as Co-ordinator and Joint Co-ordinator elected unopposed on 04.12.2021. Thereafter, the election for the other Organs of the Party including the General Council was held. After completing the Party Organ Election, the same was intimated to the

Election Commission of India as mandated under the Representation of People Act, 1951 and the Rules framed thereunder.

21. The appellant and the 1st respondent (in O.S.A.No.227 of 2022) as Co-Ordinator and Joint Co-Ordinator, by letter dated 02.06.2022, jointly communicated to the Executive Council Members and the General Council Members that there will be Executive Council Meeting and General Council Meeting on 23.06.2022 presided by the temporary Presidium Chairman Mr.A.Thamizl Magan Hussain. When the Draft Resolutions for the said Executive Council Meeting and the General Council Meeting was sent to the Co-ordinator, he consented for placing the Draft Resolutions Nos.1 to 23 for consideration in the proposed Executive Council Meeting and the General Council Meeting. Since there was a demand in respect of the Single Leadership among the Members of the Party, one of the General Council Member filed a Civil Suit in C.S.No.111 of 2022 seeking for an order of injunction of the proposed Executing Council Meeting and General Council Meeting scheduled to be held on 23.06.2022. The learned Single Judge, by order dated 22.06.2022, declined to grant an order of injunction, hence, the

plaintiff therein filed an Original Side Appeal in O.S.A.No.160 of 2022 challenging the order of the learned Single Judge. This Court, by order dated 23.06.2022 in C.M.P. No.9962 of 2022 in O.S.A.No.160 of 2022, while ordering notice to the respondents 1 to 3, passed the following interim order:-

> " .... 9. However, the submission made by the learned Senior Counsel appearing for the 5th respondent cannot be accepted for the reason that the draft resolution containing 23 items that were to be discussed and decided in the General Council Meeting scheduled to be held on 23.06.2022 was approved by the 4th respondent on 22.06.2022, i.e. prior to the date of the General Council Meeting. Therefore, by the approval given by the 4th respondent on 22.06.2022, it is clear that subjects that are to be discussed and decided in the General Council Meeting requires his approval.
>
> 10. Mr. S.R.Rajagopal, learned counsel who is also appearing for the 5th respondent submitted that the Original Side Appeal filed against the interim order passed by the learned Single Judge is not maintainable for the reason that though the learned Single Judge had passed a detailed order in the applications, ultimately he ordered notice to the respondents returnable by 11.07.2022, hence, the Original Side Appeal filed as against the said order is not maintainable. However, we made it clear to the learned counsel that the said submission with regard to maintainability can by made by him at the time of hearing the Original Side Appeal.
>
> 11. Since the draft resolution approved by the respondents 4 and 5 does not contain an item with regard to

the amendment of the Rule-20A 1 to 13, 45 and 45, we are of the view that the appellant has made out a *prima facie* case for the grant of an order of interim injunction. In the event of not granting any interim order in the above petition, the appellant and the 4th respondent would be greatly prejudiced. Further, if an order of injunction is not granted, the prayer sought for in the suit will become infructuous. We are also of the view that the interim injunction sought for by the petitioner to prohibit the respondents from conducting the General Council Meeting cannot be granted. However, the General Council can discuss and take decisions only with regard to 23 items mentioned in the draft resolution, which has been approved by the respondents 4 and 5. The respondents shall not take any decision apart from the 23 items mentioned in the draft resolution The General Council are at liberty to discuss any other matter apart from the 23 items mentioned in the draft resolution, however, no decision shall be taken in the General Council Meeting with regard to the same.

12. In the result, we permit the respondents 4 and 5 to convene the General Council Meeting at 10.00 a.m. on 23.06.2022 and we also permit the General Council to discuss and take any decision as per the Rules and Bye-Laws with regard to 23 items mentioned in the draft resolution and we make it clear that the respondents shall not take any decision other than the 23 items mentioned in the draft resolution. The members of the General Council are at liberty to discuss any other matter, however, no decision should be taken in the General Council with regard to the same. ....."

By the above order, this Court directed the conduct of the General Council Meeting and also permitted the General Council to decide the 23 Draft Resolutions approved by the Co-Ordinator and the Joint Co-

Ordinator. However, restrictions were imposed to decide any new resolution, apart from the 23 Draft Resolutions. When O.S.A.No.160 of 2022 came up for hearing along with the Miscellaneous Petitions on 04.07.2022, this Court made it clear that the interim order passed on 23.06.2022 pertains only to the General Council Meeting scheduled to be held on 23.06.2022 and that it cannot be extended for an indefinite period. Further, this Court also observed that this Court is not expressing any opinion with regard to the General Council Meeting scheduled to be held on 11.07.2022. Subsequently, on 07.07.2022 also, in view of the order of stay granted by the Apex Court in S.L.P.No.223167 of 2022, dismissed the Miscellaneous Petitions in C.M.P. Nos.10411, 10416, 10417 and 10418 of 2022 filed by the 1st respondent (in O.S.A No.227 of 2022) seeking (i) to implead the proposed respondents in the O.S.A.No.160/2022; (ii) to punish the respondents for disobeying the order dated 23.06.2022; (iii) to grant an order of interim injunction restraining the respondents from conducting the General Council Meeting scheduled to be held on 11.07.2022 for the implementation of any decisions ; and (iv) to grant an order of interim stay of the appointment of the 8th respondent as the Permanent Presidium

Chairman in the General Council Meeting held on 23.06.2022.

22. After passing of the order dated 23.06.2022, the 5th respondent-Mr.A.Thamizh Magan Hussain, was announced as Permanent Presidium Chairman in the General Council Meeting held on 23.06.2022. In the General Council Meeting, 2190 Members gave a written requisition for convening the General Council Meeting. In the presence of the appellant and the 1st respondent (Co-Ordinator and Joint Co-Ordinator), an announcement was made in the meeting that the next General Council Meeting would be held on 11.07.2022.

23. Challenging the order dated 23.06.2022 passed in C.M.P. No.9962 of 2022 in O.S.A.No.160 of 2022, the appellant preferred an appeal before the Hon'ble Supreme Court in S.L.P (Civil) No.11237 of 2022 and the Apex Court, by order dated 06.07.2022, granted an order of interim stay of the order dated 23.06.2022 made in C.M.P. No.9962 of 2022 in O.S.A.No.160 of 2022. The Special Leave Petition is pending before the Hon'ble Supreme Court. Thereafter, the 1st respondent in the above Original Side Appeals filed Civil Suits in C.S.Nos. 118 of 2022 and

119 of 2022 seeking for the prayers mentioned above. In the said suits, the 1st respondent filed applications in O.A.Nos. 368, 370 and 379 of 2022 for grant of injunction as mentioned above. The learned Single Judge, by order dated 11.07.2022, declined to grant an order of interim injunction and permitted the appellant to conduct the General Council Meeting on 11.07.2022. By virtue of the order dated 06.07.2022 passed by the Hon'ble Supreme Court and the order passed by the learned Single Judge, the General Council Meeting was conducted on 11.07.2022.

24. Challenging the order dated 11.07.2022 passed by the learned Single Judge the 1st respondent filed an appeal before the Hon'ble Supreme Court in S.L.P. (C) Nos. 12785, 12783 of 2022 and the Hon'ble Supreme Court, by order dated 29.07.2022, passed the following order:-

> "1. Exemption applications are allowed.
>
> 2. Heard learned Senior Advocates for the parties at considerable length.
>
> 3. From the record, it appears that some of the parties to the underlying dispute pending before the High Court of Madras, filed Special Leave Petitions, being Special Leave Petition (C) No. 11237 of 2022, Special Leave Petition (C) No.11578 of 2022 and Special Leave Petition (C) No. 11579 of 2022, before this Court. These petitions were listed before this Court on

06.07.2022, when this Court passed certain directions, inter alia, relating to the meeting of the General Council of respondent no. 1 to be conducted on 11.07.2022.

4. The petitioners presently before this Court filed civil suits challenging, inter alia, holding of the meeting of the General Council of respondent no. 1 dated 11.07.2022 and sought interim reliefs in the pending suits. However, vide the impugned order, rather than adjudicating on the interim reliefs, it appears that the learned Single Judge of the High Court of Madras has not adjudicated upon the reliefs sought. Rather, the learned Single Judge held as follows:

"11. Having heard the learned counsel for parties, this Court finds considerable force in the contentions put forth by the learned Senior counsel for the respondent/defendant. At the outset, it is pertinent to note that the Hon'ble Supreme Court has in unequivocal terms, observed that the Meeting of the General Council of the respondent No.3 slated to be held on 11.07.2022 is concerned, the same may proceed in accordance with law. Therefore, having regard to the direction of the Hon'ble Supreme Court, this Court cannot take a contrary decision by interpreting the same as technically projected by the learned Senior counsel for the applicants, stating that if the applicants make out a prima facie case that the General Council meeting is not in accordance with law, this Court can very well interfere and override the direction of the Hon'ble Supreme Court and pass orders injuncting the respondents/defendants from convening the meeting. This Court is unable to fortify the contention put forth by the learned Senior counsel for the applicants rather amazed, for more than one reason, firstly, in the order, the Hon'ble Supreme Court observed that the learned single Judge can decide the issue regarding the convening of the General Council meeting on 11.07.2022 without bearing in mind the direction already given by the Hon'ble Supreme Court; secondly, no other interim relief has been sought for before this Court by the applicants apart from not to convene the meeting, to examine and pass necessary orders by this Court; thirdly, since the order has been passed permitting the respondents/defendants to convene the meeting, if at all, the same is not proceeded in accordance with law as projected by the learned Senior counsel for the applicants, being custodian of the order, it is for the Hon'ble Supreme Court to consider this aspect of the matter and not by this Court; fourthly, all the grounds which were vehemently raised before

this Court on behalf of the applicants regarding the subject meeting is not going to be proceeded in accordance with law, were in fact, very well available at the time of passing of the order by the Hon'ble Supreme Court and this Court fails to understand as to why the applicants have not brought the same to the notice of the Hon'ble Supreme Court by way of review and seek modification of the order instead calling upon this Court to sit over and interpret the order of the Hon'ble Supreme Court, which, being inferior and abiding by law of precedent, this Court is not inclined to venture upon such course and pass contrary orders."

5. From the above, it is clear that the learned single judge has taken the view that, by virtue of the earlier order dated 06.07.2022 passed by this Court, he is unable to properly adjudicate the matters. However, a perusal of the order dated 06.07.2022 indicates no such restriction on the power or discretion of the High Court.

6. Taking into consideration the above, we are of the considered view that it would be appropriate to remand this issue to the High Court for reconsideration, without being influenced by any of the orders passed by this Court either in the present Special Leave Petitions or in Special Leave Petition (C) No. 11237 of 2022, Special Leave Petition (C) No.11578 of 2022 and Special Leave Petition (C) No. 11579 of 2022 respectively.

7. We request the High Court to dispose of the said matters, pending adjudication before it, expeditiously and preferably within a period of two weeks reckoned from the date of communication of a copy of this order.

8. Till the High Court hears the matters, statusquo as it exists today shall be maintained by the parties.

9. Before parting with these matters, we make it clear that we have not expressed any opinion on the merits of the case. It is further clarified that the statusquo order being granted today, shall not be construed as an expression of any opinion by this Court on the merits of the case. The High Court shall deal with, and decide, the matters on their own merits in accordance with law.

10. The Special Leave Petitions and all the pending applications are disposed of on the above terms."

From the order passed by the Hon'ble Supreme Court, it is clear that the Hon'ble Supreme Court, directed the parties to maintain status quo as on 29.07.2022 i.e., the date on which the order was passed till the High Court hears the matter.

25. After remand, the learned Single Judge took up the applications in O.A.Nos. 368, 270 and 379 of 2022 and passed the order on 11.08.2022 with the directions mentioned above. The said order is being challenged in the above Original Side Appeals.

26. The learned Single Judge while disposing of the applications, formulated three points for considerations viz.

> (1).Whether the plaintiff have *locus standi* to maintain the suit?
>
> (2). Whether the General Council Meeting dated 11.07.2022 was convened by the person authorised to convene the Meeting ?
>
> (3). In whose favour the *prima facie* case and balance of convenience lie ?

The learned Single Judge decided all the three points in favour of the 1st

respondent.

27. So far as the maintainability of the suits are concerned, it cannot be stated that a Civil Court in a Civil Suit cannot interfere with the intra party happenings when there is a dispute in the Political Party. It is always open to the aggrieved party to file a Civil Suit unless there is a bar either under the Civil Procedure Code or under a Special Act. When a case is made out that the civil right of a Member of the Party is affected, the Civil Court cannot decline to interfere and *per se* grant approval to the act of the aggrieved person. Further in respect of the very same Political Party, in the past, several suits were filed and in none of the proceedings, the court has come to the conclusion that the suit is not maintainable. The members of the Political Party are not enjoying any immunity from appearing before the competent Civil Court. Under Section 9 of the Code of Civil Procedure, all suits of civil nature can be entertained by a Civil Court unless such a suit is expressly, or by necessary implication, barred. So far as non filing of Order 1 Rule 8 is concerned, the Civil Procedure Code does not prescribe any stage at which the application can be filed. When the 1st respondent/plaintiffs

are aggrieved over the conduct of the General Council Meeting, there is no bar to seek redressal from the Civil Court for protecting their right. Every Civil Suit is cognizable unless it is barred and there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, the law confers such right to sue. The basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. In the judgment reported in **(1997) 3 CTC 229 (cited supra)** the Division Bench of this court while dealing with a case relating to the very same Political Party also held that the suit filed by Selvi J.Jayalalithaa to restrain the conduct of General Council Meeting is maintainable. The learned Single Judge has rightly held that the 1st respondent-plaintiff has *locus standi* to maintain the suit. We do not find any ground to interfere with the findings with regard to the Point No.1 of the learned Single Judge.

28. So far as the contention with regard to the convening of the

General Council Meeting is concerned, the General Council Meeting was convened by the appellant and the 1st respondent (in O.S.A.No.227 of 2022) on 23.06.2022. The appellant and the 1st respondent were also very much present in the General Council Meeting on 23.06.2022. By order dated 23.06.2022 made in C.M.P. No.9962 of 2022 in O.S.A.No.160 of 2022, this Court permitted the General Council to decide 23 Draft Resolutions and also permitted the Members to discuss other matters, however, restrained them from taking any final decision apart from 23 Draft Resolutions. In the said meeting, 2190 members gave written request to conduct General Council Meeting. Based on the said letter, it was announced in the General Council Meeting itself that the next General Council Meeting would be conducted on 11.07.2022. It is pertinent to note that the 1st respondent was very much present at the time of such announcement. As per Rule 19(vii) of the Bye-Law of the Party, the General Council Meeting should be convened every year or as and when the Co-Ordinator and the Joint Co-Ordinator consider it necessary by giving 15 days notice in advance of the meeting. The quoram for the meeting shall be 1/5th of the total number of Members of the General Council. If 1/5th of the members of the General Council

requests the Co-Ordinator and Joint Co-Ordinator to convene the Special General Council Meeting, they should do so within 30 days on receipt of such representation. It would be appropriate to extract 19(vii) of the Bye-Law both in Tamil and English version.

Rule 19(vii) reads as follows:-

பிரிவு – 7: கழகப் பொதுக்குழுக் கூட்டம் ஆண்டுக்கு ஒரு முறை அல்லது கழகப் ஒருங்கிணைப்பாளர் மற்றும் இணை ஒருங்கிணைப்பாளர் அவசியம் என்று கருதும் பொழுது கூட்டப்படலாம். மேற்படி கூட்டத்திற்கு 15 நாட்கள் முன் அறிவிப்பு கொடுக்க வேண்டும். பொதுக்குழு கூட்டம் நடைபெற குறைந்த அளவு அதன் மொத்த உறுப்பினர்களில் ஐந்தில் ஒரு பங்கு வருகை தந்திருக்க வேண்டும். பொதுக்குழு உறுப்பினர்களில் ஐத்தில் ஒரு பகுதி எண்ணிக்கையினர் கையெழுத்திட்டு கேட்டுக் கொண்டால் பொதுக்குழுவின் தனிக் கூட்டத்தை அறிவிப்பு கிடைத்த 30 நாட்களுக்குள் ஒருங்கிணைப்பாளர் மற்றும் இணை ஒருங்கிணைப்பாளர் கூட்ட வேண்டும்.	**Part – vii :-** The General Council Meeting shall be convened once in a year or whenever it is considered necessary by the Co-ordinator and Joint Co-ordinator by giving 15 days notice in advance of the date of meeting. The quorum for the meeting shall be one-fifth of the total number of members of the General Council. If one-fifth of the members of the General Council request the Co-ordinator and Joint Co-ordinator to convene the Special Meeting of the General Council, the Co-ordinator and Joint Co-ordinator should do so within 30 days of the receipt of such a requisition.

On a reading of Rule 19(vii),it could be seen that the first part deals with the regular General Council Meeting which should be convened once in a

year and in respect of the General Council Meeting convened at the instance of the Co-Ordinator and the Joint Co-Ordinator. For conducting such meeting, the first part of Rule 19(vii) stipulates giving 15 days notice in advance of the date of meeting. Rule 19(vii) does not provide for any written notice for convening a meeting. The second part of Rule 19(vii) deals with the quoram for the meeting, which shall be 1/5th of the total number of members of the General Council. For convening the Special General Council Meeting at the request of 1/5th of the Members of the General Council, the same should be convened within 30 days of the receipt of such a requisition by the Co-ordinator and Joint Co-ordinator. The second part does not provide for giving any notice to the members of the General Council. For a requisitioner's meeting of the General Council, Rule 19(vii) does not provide for any notice unlike the regular General Council Meeting, which requires 15 days of advance notice. The Tamil version of the Bye-Laws clearly demarcates the difference between a regular General Council Meeting and a Special General Council Meeting based on requisition of members.. The Tamil Version of the Bye-Law refers to the regular meeting and states "*மேற்படி கூட்டத்திற்கு 15 நாட்கள் முன் அறிவிப்பு கொடுக்க வேண்டும்*",

while there is no such stipulation for the Special Meeting called by the requisitioners. For both the Meetings, the Bye-Laws does not contemplate written notice to be issued. The notice mentioned in Rule 19(vii) is that of the meeting and not a notice to each member. It is clear that the notice can be by way of publication, affixing at notice board, announcement, etc. In the case on hand, notice of Special General Council Meeting was by announcement in the 23.06.2022 meeting. Therefore, the notice given by announcement on 23.06.2022 was a due notice for convening the Special General Council Meeting on 11.07.2022. When the notice for General Council Meeting on 12.09.2017 was issued by the Headquarters office Bearers on 28.08.2017, the announcement made at the floor of the General Council Meeting on 23.06.2022 for convening Special General Council Meeting on 11.07.2022 can be construed as a proper notice. The word "notice", denotes merely an intimation to the party concerned of a particular fact. It cannot be limited to "notice in writing" and only to a letter. A notice may take several forms. Even assuming that the notice suffers from procedural irregularity, it is always open to the members of the General Council to ratify, as long as there is a substantive right/function

underlying in the notice. This ratio has been laid down by the Hon'ble Supreme Court in the judgment reported in **AIR 1962 SC 666 (cited supra)**.

29. Had the Framers of the Bye-Laws thought of giving 15 days notice even for the convening of the Special General Council Meeting at the request of 1/5th of the General Council members, they would have incorporated giving 15 days notice at the end of the second part of Rule 19(vii). The mentioning of giving 15 days notice in the first part would establish the intention of the framers of the Bye-Law was to give notice to the members of the General Council only in respect of the regular Annual General Council Meeting and for the General Council Meeting convened at the instance of the Co-Ordinator and the Joint Co-Ordinator. Since the Special General Council Meeting are being convened at the request of the members of the General Council, there will not be any necessity for giving another notice to the members again for convening the Special General Council Meeting. If 15 days notice is again given even for convening Special General Council Meeting at the request of 1/5th of the

members of the General Council, it leads to a situation where the meeting can be convened only between 16th and 30th day.

30. Admittedly, the Agenda for the meeting was issued on 01.07.2022. On 23.06.2022 itself a decision has been taken to convene a meeting on 11.07.2022. The requisition for convening a Special General Council Meeting signed by 2190 General Council members was addressed to the Presidium Chairman, Co-Ordinator and Joint Co-Ordinator and the same was given to the Presidium Chairman. It cannot be disputed that for convening the General Council Meeting on 23.06.2022 necessarily there should be a Presidium Chairman. In the absence of Presidium Chairman, a meeting cannot be convened. Therefore, 2190 members gave a requisition for convening a Special General Council Meeting to the Presidium Chairman for the reason that there was a rift between the Co-Ordinator and the Joint Co-Ordinator. As already stated, the announcement with regard to the next General Council Meeting on 11.07.2022 was made in the presence of the 1st respondent and also in the presence of about 2500 members. It is not the case of the 1st respondent that they did not know about the announcement made in

the floor of the General Council Meeting on 23.06.2022. Though Rule 19(vii) says that the Co-Ordinator and the Joint Co-Ordinator should convene the Special General Council Meeting within 30 days from the date of receipt of the requisition by its 1/5th General Council members, since the Co-Ordinator and the Joint Co-Ordinator are at loggerheads, they were not in a position to convene the Special General Council Meeting jointly. Since the Co-Ordinator and the Joint Co-Ordinator are at loggerheads one cannot expect them to jointly convene the Special General Council Meeting and if the 2nd part of rule 19(vii) of the Bye-Law is strictly applied then it would result in a deadlock situation. If either the Co-Ordinator or the Joint Co-Ordinator is not co-operating for convening the General Council Meeting, it would lead to a situation where no General Council Meeting could be convened.

31. In the judgment reported in **(1997) 3 CTC 229 (cited supra)** the expelled member from the AIADMK Party viz., Mr.S.Thirunavukkarasu called for a General Council Meeting, parallel meeting to the meeting called by the then General Secretary Selvi J.Jayalalithaa. The General Secretary approached this Court seeking for an order of interim

injunction against the convening of parallel meeting and the same was granted in her favour. Therefore, the facts surrounding the said judgment is completely different to the facts of the present case. In the case on hand, there was no parallel meeting called for by any of the Members. The ratio laid down by the Hon'ble Division Bench of this Court reported in **(1997) 3 CTC 229 (cited supra)** cannot be applied to the facts and circumstances of the present case. It cannot be said as a general rule that the requisitioners have no option but to go to Court if the leaders do not call for a meeting. Such a statement would be undemocratic and illegal. When the Interim General Secretary could not act in the year 2017, the Office Bearers stepped in to convene the meeting on 12.09.2018 based on the requisition received.

32. It is not in dispute that the General Secretary was given power to convene the General Council Meeting. After the death of Selvi J.Jayalalithaa, Mrs.V.K.Sasikala was appointed as the Interim General Secretary and she could not perform as Interim General Secretary in the year 2017 because of her incarceration in a criminal case. Therefore, the Office Bearers convened the meeting on 12.09.2017 based on the

requisition made by the Members. A similar situation has arisen now, (i.e.) since the Co-Ordinator and the Joint Co-Ordinator are in loggerheads, the calling for the meeting by the Presidum Chairman on 23.06.2022 at the floor of the General Council Meeting cannot be termed as illegal.

33. Admittedly, there is a functional deadlock in the Party due to the stand taken by the appellant and the 1st respondent (in O.S.A.No.227 of 2022). Rules 5, 19(i) and 19(viii) are absolutely clear that the General Council is the Supreme body of the Party. As per the By-laws of the Party, the Executive Council has not been given power either to amend the Rules or to take any important decision. If such decision is taken, the same should be approved by the General Council of the Party. Even if the Leaders take any decision or action apart from what has been specifically provided to them under the Rules and Regulations, they have to be ratified at the General Council. The supremacy of the General Council is because it is elected ultimately by the Primary Members in terms of Rules 6 to 14 of the Bye-Laws.

34. As already stated, the General Council consists of 2665 members, who were elected through the Organizational Elections under

Rules 6 to 14 of the By-laws. The elected General Council Members represent the Primary Members of the Party. It cannot be disputed that the General Council is the Supreme Body in the party. As per Rules 19 (i) and 19(viii) of the Bye-Laws, the General Council was given authority to decide on the policy matters. As per Rule 43 of the Bye-Laws, the General Council was given power to amend the Bye-Laws. The General Council held on 11.07.2022 was a requisitioners' special meeting under Rule 19(vii) of the Bye-Laws. As already stated, 2190 members have made the requisition for convening a special General Council Meeting. The requisition given at the General Council Meeting on 23.06.2022 was announced at the floor of the meeting, informing the members that a General Council Meeting would be convened on 11.07.2022. The requisition made by 2190 members was followed by an agenda, which was signed by 2432 members. The meeting was conducted on 11.07.2022 and a total of 2460 members were present in the meeting. Thereafter, 2539 members, supporting the resolutions passed in the General Council Meetings, filed affidavits before the Election Commission of India.

35. The Co-ordinator and Joint Co-ordinator could not act on the

requisition since there was a dead lock in the decision making in the Party. According to the appellant, the posts of Co-ordinator and Joint Co-ordinator had lapsed on 23.06.2022 for want of ratification. It is pertinent to note that the elections of the other members of the General Council shall not lapse since their elections were not based on any amended Bye-Law. The present situation, is identical to the situation that was prevailing in 2017. When the Co-ordinator and Joint Co-ordinator were not in a position to call for the meeting, the members cannot be forced to approach the Court every time, therefore, the power vested on the office-bearers under Rule 20 A (vii) should be exercised for this purpose as exercised for the meeting held on 12.09.2017.

36. For easy reference, the Bye-Laws of the Political Party is annexed with this judgement.

37. The amendments to the Bye-Laws can happen only at the General Council under Rule 43 of the Bye-Laws.

38. The General Council Meeting was convened on 11.07.2022

pursuant to the order passed by the learned Single Judge in O.A.Nos.368, 370 and 379 of 2022 and thereafter, by order dated 06.07.2022 the Hon'ble Supreme Court in S.L.P.(C) No.11237 of 2022 has observed as follows:-

> ".....b. So far as the Meeting of the General Council of the respondent No. 3, slated to be held on 11.07.2022 is concerned, the same may proceed in accordance with law and in that relation, the other aspects of any interim relief ought to be projected and presented before the learned Single Judge dealing with civil suit(s) on the Original Side....."

39. The appellant-Co-Ordinator sent a letter dated 28.06.2022 to the Election Commission of India stating that the posts of Co-Ordinator and the Joint Co-Ordinator had lapsed for the reason that the election in the Executive Council Meeting dated 01.12.2021 was not ratified in the General Council Meeting held on 23.06.2022. From the said letter, it is clear that the appellant-Joint Co-Ordinator has given up his right to continue as Joint Co-Ordinator. Therefore, there is no Joint-Co-Ordinator in the Party after the said letter. The appellant cannot be compelled to continue as Joint Co-Ordinator forever. When the appellant has given up his right to continue as Joint -Co-Ordinator, the appellant and the 1st

respondent in O.S.A.No.227 of 2022 cannot jointly conduct the General Council Meeting. The common sense approach was followed on 12.09.2017, wherein the General Council Meeting was announced at the instance of the Office Bearers Party Headquarters. The strict compliance of Rule 19(vii) would lead to absurdity. In these circumstances, the General Council Meeting called for by the Presidum Chairman on 23.06.2022 to convene the Special General Council Meeting on 11.07.2022 is proper.

40. The requisition for the meeting was made by 2190 members out of the 2665 members of the General Council. This amounts to more than 80% of the General Council members. The requisition was to be made by the members for deciding the issue of the Single Leadership. The requisition was readout to all the members who were present and with their approval, it was handed over to the Chairman of the meeting on the stage in front of the requisitioners. The requisition was followed with an Agenda being signed and requested by 2432 General Council Members. Thereafter, the meeting on 11.07.2022 was attended by 2460 members and 2539 members have filed affidavits before the Election

Commission of India affirming their support to the resolutions passed at the General Council Meeting on 11.07.2022.

41. The learned Single Judge, while disposing of the Original Applications observed that since there is interpolation, it can only be a manufactured document. It is pertinent to note that none of the members, who signed the requisition or the agenda or attended the meeting, have come before this Court claiming that they did not do so. That apart, the 1st respondent-plaintiffs has not made out any assertion in the plaint that there was no requisition that was placed at the meeting. Absolutely, there is no averment in the pleadings that the requisition letter is a fabricated document or not genuine. In the absence of any pleading or averment, the contention of the 1st respondent(in O.S.A.No.227 of 2022) that the requisition letter given by 2190 members is not genuine cannot be accepted. When none of the 2190 members, who have signed the requisition letter to convene the Special General Council Meeting, disputed their signature or contents of the document, a third party to the said letter cannot question the same. The person who can dispute the

signature can only be that particular person and not a third party. In the absence of any challenge made by the signatories to the requisition letter, the said letter cannot be held as fabricated or not genuine document. Even assuming that the Resolutions passed on 23.06.2022 and on 11.07.2022 are found to be illegal or against the Bye-Laws of the Parties, it is always open to 1/5th members of the General Council to convene a Special General Council Meeting and reverse the resolution passed in those two meetings. In the case on hand, no such meeting was called for at the instance of 1/5th of the General Council members to reverse the decision. This would establish that no irreparable injury has been caused to the 1st respondent (in O.S.A.No.227 of 2022).

42. The members of the General Council are representing the Primary Members of the Party and when the majority of the members of the General Council have given requisition for convening the Special General Council Meeting on 11.07.2022 and also supported the Resolutions on 23.06.2022 and 11.07.2022, the balance of convenience cannot be held in favour of the 1st respondent. On the contrary, the balance of convenience can only be in favour of the appellant.

43. With regard to the *prima facie* case is concerned, **(2012) 6 SCC 792 (cited supra)** the Hon'ble Supreme Court held that even where *prima facie* case is in favour of the 1st respondent-plaintiff, the Court will refuse temporary injunction if the injury suffered by the 1st respondent on account of refusal of temporary injunction was not irreparable. In the judgement reported in **(1992) 1 SCC 719 (cited supra)** the Apex Court held that while granting or refusing to grant interim injunction, the Court should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of interim injunction pending the suit.

44. By giving a direction that there shall be no Executive Council

Meeting or General Council Meeting without joint consent of the Co-Ordinator and the Joint Co-Ordinator, a situation has arisen where the party, as a whole, will undergo irreparable hardship, since there is no possibility of the appellant and the 1st respondent(in O.S.ANo.227 of 2022) acting jointly to convene a meeting, much less a General Council Meeting to discuss Single Leadership. The direction only furthers the "functional deadlock" that was already in existence in the Party.

45. As per Rule 20A(ix), the Co-Ordinator and Joint Co-ordinator are empowered to take such actions as he may deem fit on important political events, policies and programmes of urgent nature which cannot brook delay and await the meeting of either Executive Committee or General Council of the Party. Such decisions and actions have to be ratified by the General Council in its next meeting. However, it is open to the Co-Ordinator and Joint Co-ordinator to obtain the views of the General Council Members on such urgent matters by post when the Council is not in session. Therefore, even if the Co-Ordinator and Joint Co-Ordinator take any decision/action, the same is to be ratified at the General Council Meeting.

46. When the applications have been filed challenging the Special General Council Meeting held on 11.07.2022 and when the learned Single Judge, by order dated 11.07.2022 permitted the convening of the Special General Council Meeting on 11.07.2022, which was challenged before the Hon'ble Supreme Court, the Apex Court, by order dated 29.07.2022, while remanding the matter back to the learned Single Judge for fresh consideration, directed the parties to maintain status quo as on the date of 29.07.2022. It is pertinent to note that the Apex Court has not directed the parties to maintain status quo as on 11.07.2022 or on 23.06.2022. Therefore, it is clear that the Resolutions passed on 23.06.2022 and 11.07.2022 were not disturbed till the pronouncement of the order by the learned Single Judge in O.A.Nos.368, 370 and 379 of 2022 on 17.08.2022.

47. When the Presidium Chairman had announced the date of next Special General Council Meeting based on the requisition made by 2190 members of the General Council on 23.06.2022 the 1st respondent-plaintiff should have challenged the decision taken on 23.06.2022 to

convene a Special General Council Meeting on 11.07.2022. In the case on hand, the 1st respondent has filed the suit challenging only the Special General Council Meeting held on 11.07.2022. When the 1st respondent did not challenge the Resolutions passed in the General Council Meeting held on 23.06.2022, an order of status quo ante as on 23.06.2022 cannot be granted.

48. So far as the direction to the appellant and the 1st respondent (in O.S.A.No.227 of 2022) to conduct the Executive Council Meeting or General Council Meeting jointly is not workable, as the appellant and the 1st respondent have not been able to act together and there has been a deadlock, which has resulted in the impossibility to perform the functions, which is the very premise based on which the General Council of the Party was held on 12.09.2017, wherein the posts of Co-Ordinator and the Joint Co-Ordinator were created and the appellant and the 1st respondent came to be elected to the said posts.

49. Since the appellant-Joint Co-Ordinator, by his letter dated 28.06.2022 to the Election Commission of India, has stated that his post

along with the post of Co-Ordinator had lapsed, as already stated, he cannot be compelled to continue in the said post. That apart, the 1st respondent (in O.S.A.No.227 of 2022) alone cannot take any decision independently. In these circumstances, we are not giving any finding with regard to the stand taken by the appellant that the posts of Co-Ordinator and Joint Co-Ordinator had lapsed for want of ratification on 23.06.2022. The said issue can be decided in the pending suit.

50. The ratio laid down in the Judgments relied upon by the learned Senior Counsels appearing for the appellant squarely applies to the facts and circumstances of the present case. The ratio laid down by the Gauhati High Court in an unreported judgement made in ***CRP No.22(AP) of 2015 [cited supra]*** applies to the case of the 1st respondent.

51. Though there is no dispute with regard to the ratio laid down by the Hon'ble Supreme Court in the judgment reported in **1990 Supp (1) SCC 727 (cited supra)** relied upon by the learned Senior Counsel appearing for the 1st respondent, since the facts and circumstances of the

present case differs, the said ratio is not applicable to the present case.

52. For the reasons stated above, the order passed by the learned Single Judge in the Original Application in O.A. No.368 of 2022 in C.S. No.118 of 2022 and the Original Applications in O.A. Nos. 370 and 379 of 2022 in C.S.No. 119 of 2022 are set aside. Consequently, the Original Applications in O.A.Nos.368, 370 and 379 of 2022 are dismissed. The above Original Side Appeals are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

[M.D., J.] [S.M., J.]
02.09.2022

Index : Yes/No
Internet : Yes

Rj

Enclosure : Annexure as per the order of the learned Single Judge dated 17.08.2022.

Note : Registry is directed to upload the order copy in the website today (02.09.2022)

M. DURAISWAMY, J.
and
SUNDER MOHAN, J

Rj

Pre-delivery Common Judgment in
O.S.A.(CAD) Nos.227, 231 & 232 of 2022 and

C.M.P. Nos.13833,13853 and 13855 of 2022

02.09.2022