

IN THE COURT OF THE MUNSIF, KAYAMKULAM

Present: Smt. Aneesa.A, Munsiff

Tuesday the 9th day of September, 2025/18th Bhadra, 1947

IA.22/2024 in OS.59/2022

(Filed on 18.03.2024)

Petitioner/Defendant:

Subhash Vasu, aged 60 yrs,
S/o. Vasu, Puthenveetil House,
South mankuzhi, Bharanickavu Village,
Pullikkanakku P.O, Kayamkulam-690 502.

(By Adv.S.Remanan Pillai)

Counter Petitioners/Plaintiffs:

1. Sree Gurudeva Charitable and
Educational Trust having registered office at
Kattachira, Pallickal.P.O, Kayamkulam.
Rep.by through its General Secretary in-charge,
Velanchira Sukumaran, aged 71 yrs,
S/o.Kochummini, Lekshmipriya,
Puthiyavila muri, Kandallloor Village,
Karthikapally Taluk.
2. A.M.Gopalan @ Gokulam Gopalan, aged 77 yrs,
Chairman, Sree Gurudeva Charitable and
Educational Trust, Gokulam Villa,
Palolippalam, Puthuppanam,
Nadakkuthazha, Calicut, Kerala. Pin 673 105.

(By Adv.C.D.Anil)

This petition is coming on for final hearing on 09.09.2025 and the court of the same day passed the following.

ORDER

This is a petition filed by the defendant filed under Order VI Rule 17 of the Code of Civil Procedure, 1908, for amendment of the written statement and for incorporating the counter claim.

2. The gist of averments in the petition are as follows:-

The petitioner is the defendant in the suit. The above suit is filed for an injunction. In this case, the defendant filed a detailed written statement by disputing the entire claim of the plaintiffs and by denying the allegations and averments raised by the plaintiffs. The defendant is the founder member, executive member and the General Secretary of the Trust from the very inception of the Trust. The Trust is governed by the Trust Deed No.160/2008/IV of Bharanickavu S.R.O dated 05.09.2008 and as it is the constitution of the Trust and all actions has to be in strict compliance with that deed. Any act or omission in violation of the provisions of that Trust Deed is not binding either on Trust or on the members of Trust. The Trust Deed No.160/2008/IV of S.R.O, Bharanickavu dated 05.09.2008 is not so far amended or modified by any competent body of the Trust in

accordance with provisions therein. As the defendant averred in his written statement on quoting the specific provisions of clause 5 in the Trust Deed, the Governing Body members could be erected only by the Board of Directors consists of 41 persons and any induction of any member to the Governing Body by some of the members of the Governing Body is illegal. When the Rules say that something has to be done in a particular manner, it should be done so and any deviation from the prescribed rules makes that action, void, illegal and unforceable. So induction of 4 members in the Governing Body during the span of 2020-2021 has no legal sanctity and they cannot be treated as the members of the Governing Body. When induction of 4 members is questioned by other members through written objections, which has to be honoured and the illegal act has to be corrected as per the provisions of the Trust Deed. That is why the elected 5 members of the Governing Body unanimously decided on 07.10.2021 to convene the Board of Directors of the meeting in order to elect 4 members to the Governing Body in strict compliance with the Trust Deed and by appointing a returning officer as envisaged in Clause 18A of the Trust Deed. That decision was subsequently ratified

in the Governing Body meeting of Trust held on 24.01.2022 wherein the signatories in the plaint are also participated.

3. This deponent, who is the sole authority in his capacity as the General Secretary is competent to call for the meeting of the Trust, on the basis of unanimous decision dated 07.10.2021 called for the meeting of the Board of Directors on 21.02.2022 at the venue and agenda, as agreed, one amongst therein is the election of 4 members of the Governing Body which remains vacant after 08.01.2020. But it is later came to know that the 2nd plaintiff had on apprehension that if proper election is conducted at the Board of Directors meeting on 21.02.2022, those elected persons might bit support him and on that reason, he in collusion with Velanchira Sukumaran tried to thwart the meeting of the Board of Directors proposed to be called on 21.02.2022. In the plaint, the plaintiffs have admitted that they received the notice of the meeting of the Board of Directors on 02.02.2022. According to the plaintiffs, the 2nd respondent called for the meeting of the Governing Body on 06.02.2022 with 24 hours notice and the notice was served to the defendant though e-mail. This defendant strongly denied the receipt of that notice to this defendant and the plaintiffs have to put in strict proof of evidence regarding the

serving of notice to this defendant. The plaintiffs claimed that on 07.02.2022 the meeting of the Governing Body was conducted and the defendant as well as the Assistant Secretary had not participated in the meeting. It is further submitted that the meeting of the Governing Body said to have been conducted on 07.02.2022 is illegal and against the provisions of the Trust Deed. The 2nd plaintiff has no authority to call for the meeting of any of the bodies of the Trust. Apart from 4 nominated members, only 3 members of the Governing Body attended so claimed meeting dated 07.02.2022. The quorum of the Governing Body is 5 as per clause 16 of the Trust Deed. This deponent was not served with a notice before the alleged suspension order in violation of the principles of natural justice.

4. The Governing Body can initiate the disciplinary proceedings against the member or office bearer only on the recommendation of Board of Directors. So the so called meeting of the Governing Body dated 07.02.2022 is illegal and the decision said to have been taken on that day is not binding on this deponent or the members of the Trust and to the Trust itself. So the decision of the so called meeting of the Governing Body to hand over the charge of General Secretary to Velenchira Sukumaran is also illegal. The entire decision said to

have been taken on 07.02.2022 and the further proceedings in pursuance of that meeting are illegal and not binding on the Trust or to defendant. Therefore, all proceedings in pursuance of it is to be declared null and void. It is further submitted that the plaintiffs filed I.A.1/2022 praying for a temporary injunction by incorporating the exact same relief as that in the plaint. This court by order dated 19.02.2022 permitted the defendant to conduct the meeting of the Board of Directors on 21.02.2022, but with a rider that decision taken in the meeting will be subject to the result of the order of the I.A. So the meeting of the Board of Directors as decided by the Governing Body on 07.10.2021 and as ratified the same body on 02.12.2021 was conducted on 21.02.2022 with the permission of this court and 25 out of 41 Board of Directors participated in the meeting and 5 members who are out of India consented the convening of that meeting and endorsed their concurrence to the decision taken on that meeting. The Board of Directors meeting held on 21.02.2022 elected 4 persons to the Governing Body and further decided to initiate disciplinary action against Velanchira Sukumaran and Baburaj. It is further submitted that the plaintiffs are proceeding with the administration of the Trust in violation of the Trust Deed by keeping the persons who had been

wrongly inducted in the Governing Body and without maintaining the quorum of the meeting. The plaintiffs have caused huge financial burden to the Trust through their illegal administration. The plaintiffs inducted many persons as executive members in the Trust without any authority. The present Governing Body consist of persons who are not elected by the Board of Directors and whatever decisions taken by that Body including the so called amendment of Trust Deed and inducting of new members in the Trust is not binding on the Trust, as the decision taken by the plaintiffs in the meeting dated 07.02.2022 is null and void and all further action and decision taken by the plaintiffs are illegal and not binding on the Trust or on this defendant. This defendant is reserving the liberty to challenge the illegal actions committed by the plaintiffs after filing of this suit in a separate proceedings. The signatories in the plaint have no locus standi to represent the 1st plaintiff Trust and they are trying to take advantage from the illegal act of theirs. As the plaintiffs have approached this court with unclean hands and their claim and prayers in the suit are based on illegal acts as committed by themselves, they are not entitled to get any discretionary reliefs. The Hon'ble High Court by order dated 18.06.2022 dismissed I.A.1/2022 and against that order, the

petitioners in the I.A filed CMA.22/2022 before the Additional District Court-I, Mavelikara and the same stood allowed by judgment dated 24.08.2022. As the judgment in CMA.22/2022 is against the facts and law involved in the case, I have filed OP(C)No.1990/2022 before the Hon'ble High Court and the same was disposed of on 20.02.2024 by giving liberty to defendant to amend the written statement by raising a counter claim to declare that the meeting held by the plaintiffs on 07.02.2022 inclusive of the so called suspension of the defendant and the further proceedings thereto is null and void and not binding on the defendant or on the Trust. The only point that has been found against the defendant by the Hon'ble High Court is that the defendant has not challenged the illegal decisions of the plaintiffs dated 07.02.2022. The Hon'ble High Court giving liberty to defendant to file an application for temporary injunction as against the plaintiffs after filing the application for amendment of the written statement. For the proper disposal of the case as well as to consider the legality of the claims raised by the plaintiffs and the defendant, the legal sanctity of the induction of 4 persons to the Governing Body during the span of 2020-2021 in violation of the Trust Deed has also to be considered. So a counter claim is raised to declare that the induction of 4 members in

the Governing Body during the span of 2020-2021 in violation of the Trust Deed is also null and void. The defendant was the founder member and the executive member of the Trust and the General Secretary from the very inception of the Trust. So a counter claim is also raised for a permanent prohibitory injunction by restraining the counter claim defendants/plaintiffs from interfering with the discharge of the counter claim plaintiff/defendant as the General Secretary of the Trust. The following matters to be amended in the written statement.

a) In the cause title of written statement, in the first line after the word “WRITTEN STATEMENT”, the following word ‘AND COUNTER CLAIM’ is to be inserted. Also first page cause title in 5th line after the words “UNDER ORDER VIII RULE 1”, the following may be inserted ‘AND ORDER VIII RULE 6A’.

b) After the 16th para, “Hence it is respectfully prayed that this Hon’ble Court may be pleased to dismiss the suit with costs of the defendant”.

Verification

I, Subhash Vasu aged 60 yrs, S/o.Late.Vasu, Puthenveetil House, South Mankuzhy, Bharanickavu Village, Pullikkanakku P.O,

Kayamkulam do hereby declare that the above written statement contains paragraphs 1 to 16. The written statement. All the facts stated in the written statement are true and correct to best of our knowledge, information and belief.

Defendant:Subhash Vasu” to be deleted.

c) After the 16th para of the written statement, the following paragraphs be included.

17. The clause 5 of the Trust Deed deals with the Constitution of the Governing Body of the Trust and modus of electing the members of the Governing Body. Clause 18A of the Trust Deed deals with the election. The Governing Body members could be elected only by the Board of directors consists of 41 persons as provided in Clause 18A and any induction of any member to the Governing Body by some of the members of the Governing Body is illegal. When the Rules says that something has to be done in a particular manner it should be done so and any deviation from the prescribed rules make that action void, illegal and unenforceable.

18. The meeting of the Governing Body conducted on 07.02.2022 is illegal. The 2nd plaintiff has no authority to call for the meeting of any of the bodies of the Trust. Since the induction of the 4

nominated members are invalid and only 3 members of the Governing Body attended the alleged meeting dated 07.02.2022, all the decisions taken in the said meeting are invalid and ab initio void. The quorum of the Governing Body is 5 as per clause 16 of the Trust Deed. This defendant was not served with a notice before the alleged suspension and the suspension order is issued in violation of the principles of natural justice. The Governing Body can initiate the disciplinary proceedings against the member or office bearer only on the recommendation of Board of Directors. So the so called meeting of the Governing Body dated 07.02.2022 is illegal and the decision alleged to have been taken on that day is not binding on this defendant or the members of the Trust and to the Trust itself.

19. In fact, the governing body meeting chaired by the 2nd plaintiff on 07.10.2021 had unanimously decided to conduct election of 4 governing body members of the Trust on 21.02.2022 through due process of election as provided in the Bye-law of the Trust Deed. The minutes of meeting dated 07.10.2021 was also approved as a general routine by the 2nd plaintiff in the governing body meeting chaired by him held on 02.12.2021 at office of the Chairman at his office at Gokulam Medical College, Venjarammoodu and all the 9 decisions

taken in the said meeting dated 07.10.2021 were implemented by the Trust and accordingly the 6 appointments were made and new increased salaries were disbursed in the month of November 2021 itself. As per decision No.8 of the said meeting, a case was filed against Treasurer and staff by the trust for misappropriation of funds of the Trust. So the contention that plaintiffs were not aware of the election on 21.02.2022 is only a suppression of material facts. Since the said decisions in the meeting held on 07.10.2021 were taken in the presence of the plaintiffs, they are estopped from contending that they are unaware about the said decisions.

20. Since the decision dated 07.02.2022 create a cloud in to the status of the defendant herein as the general secretary, the said decision has to be declared as void for the reasons already stated and induction of 4 members in the governing body itself is perse illegal. The induction of 4 members were done by the alleged Governing Body itself is invalid which will invalidate the constitution of the Governing Body. It is trite law that the Governing Body members can be elected only by Board of Directors from the founder members and executive members. At the time of alleged induction, one person Sri.South Indian Vinod was not a founder member or executive

member and not even paid the membership fee. It is also important to note that from the perusal of the Minutes up to 06.02.2022, it can be seen that no election has been conducted as per the provisions of the Trust Deed. Hence the decision taken by the alleged Governing Body on 07.02.2022 is not competent to impose any punishment or dismissal of any member or officials as per the Byelaw. Similarly there is no provision for secretary in charge, instead of the Assistant Secretary can act as authorised by the General Secretary.

21. It is also the power of the Board of Directors to remove or to recommend for actions against the members of the Trust in the event if they are acting against its interest. The Governing Body has no right to suspend or remove the General Secretary of the Trust and their power is limited to suspend any officer or staff alone. Apart from the above reason and the reasons already stated in the written statement, the decision of the plaintiffs dated 07.02.2022 is illegal and same has to be declared as void since the same is decided by an incompetent body and the same is ultra vires. Hence the defendant herein has raised a counter claim to declare the decision dated 07.02.2022 as illegal or in the alternative to set aside the same. Since the defendant herein convened the meeting as General Secretary of the Trust, prior

to the alleged suspension, as per the provisions of the Trust Deed and election has been conducted on 21.02.2022 in terms with provisions of the Trust Deed and election has been conducted on 21.02.2022 in terms with provisions of 18A of the Trust Deed, it is highly necessary to declare the election conducted by the executive members convened by the General Secretary/ defendant herein is valid and the same is to be declared by this court.

22. In the Governing Body Meeting convened on 24.02.2022, 6(six) members out of 9 (nine) had participated and unanimously approved the recommendation of the Board of Directors to cancel all the actions taken by the plaintiffs and to initiate disciplinary actions against the plaintiffs and others for their anti-organizational activities as mentioned above. The decisions made in the void meeting held on 07.02.2022 by plaintiffs are in-executable and nonest. First plaintiff never acquired any authority to represent the Trust in any proceedings or right to sign any cheque or to discharge any of the duties as the General Secretary of the Trust. It is also important to note that the defendant continued as the General Secretary even after 07.02.2022 and he has absolute right to call for a meeting of the original director board members on 21.02.2022. In the Board of

Directors meeting was held on 21.02.2022, 25 Board of Directors were present in the said meeting which was presided over by Sri.Thushar Vellappally – the former Chairman of the Trust who was not been removed any known-process of law. So, the persons who were governing body member as on 08.01.2020 will continue till a proper election is held as per the provisions of bye-law.

23. The meeting of the Board of Directors as decided by the Governing Body on 07.10.2021 and as ratified by the same body on 02.12.2021 was conducted on 21.02.2022 with the permission of this court and 25 out of 41 Board of Directors participated in the meeting and 5 members who are out of India consented the convening of that meeting and endorsed their concurrence to the decision taken on that meeting. It is submitted that 4 (four) governing body members were duly elected by the returning officer and its results were declared by Returning Officer in the meeting of the board of directors held on 21.02.2022. The Board of Directors meeting held on 21.02.2022 approved the election of 4 person to the Governing Body and further decided to initiate disciplinary action against Velanchira Sukumaran and Baburaj.

24. After the said election on 21.02.2022, certain executive members received a notice issued by the 1st plaintiff, falsely claiming that he is the Acting General Secretary of the Trust informing that a meeting of the Governing Body I scheduled to be held on 15.03.2022. Among the 8(eight) existing elected members of the governing body, 6 (six) of them are unaware of such a decision. Such a meeting called by the 1st plaintiff is illegal because of the reason that he has no right or locus standi to issue such a notice purporting to be the General Secretary of the Trust. Moreover out of total 41 (forty one) members of the Trust, almost 30 (thirty) members are against the illegal activities of the plaintiffs and the treasurer.

25. The cause of action for this counter claim arise on 07.02.2022, the date of alleged illegal meeting of the plaintiffs claiming to suspend the defendant from his posts and portraying the 1st plaintiff as the acting General Secretary of the trust, on 23.06.2023 the date of alleged show cause notice issued by the 1st plaintiff and so on and also at Kattachira in Bharanickavu Village wherein the office of Trust situates, which is within the jurisdiction of this Hon'ble Court.

26. VALUATION AND COURT FEE: For the relief of declaration of the defendant as the General Secretary of the Trust, this suit is

valued at Rs.1000/- as A sala and a Court fees of Rs.40/- is to paid under Section 25(d)(ii) of the Kerala Court Fees and Suit Valuation Act, to declare the meeting held on 07.02.2022 by plaintiffs as null and void, this suit is valued at Rs.1000/- as B Sala and a Court fee of Rs.40/- is paid under Section 25(d) (ii) of the said Act and to declare the election of 4 Governing Body Members held on 21.02.2022 in compliance with Sec 18A of the byelaw as valid, this suit is valued at Rs.1000/- as C Sala and a Court fees of Rs.40/- is paid under Section 25(d) (ii) of the said act and suit valuation act and for permanent prohibitory injunction, the suit is valued at Rs.500/- as D Sala and a court fee of Rs.20/- is paid U/s.27(c) of the Kerala Court Fees and Suit Valuation Act and the total Sala of the suit is valued at Rs.3500/- and a total court fee of Rs.140/- is paid U/s.76(1) of the said Act towards Legal Benefit Fund. Thus this petition.

5. The respondents/ plaintiffs filed objection contending inter alia as follows:- The petition is not maintainable either in law or on facts. The above petition is filed for amending the written statement for the sake of incorporation of counter claim in the above suit. This application is filed in the light of observations made by the Hon'ble High Court of Kerala in OP(C)No.1990 of 2022. In the said

original petition, the Hon'ble High Court confirm the judgment of the Appellate Authority in CMA.22/2022. The Hon'ble High Court in its judgment in OP(C) No.1990 of 2022, vide paragraph 7 of the said judgment, it is held on modification of the appellate judgment as follows;

“In the circumstances, the impugned Ext.P11 order is sustained, though for reasons different altogether. However, the injunction granted requires modification in the estimation of this Court. Rather than preventing the defendant from entering into the premises, what has to be prevented is the convening of the Director Board meeting by the defendant and also from interfering with the affairs of the 1st plaintiff Trust. The injunction granted accordingly is modified in tune with Ext.P3 application”.

6. It is submitted that, that for the anti-organizational activities, the defendant was suspended from the post of General Secretary on 07.02.2022, by the Governing Body of the Trust. On the very same day, the Governing Body in adherence to the Bye Law elected Velanchira Sukumaran as the General Secretary of the Trust.

The defendant was suspended pending enquiry, M.R.Sudheendran, Advocate, Hon'ble High Court of Kerala was appointed as the Enquiry Officer. The enquiry was conducted by the Enquiry Officer and the report was submitted on 14.02.2023. On based on the enquiry report, the Governing Body meeting was held on 03.03.2023 and considered the domestic enquiry report and by virtue of decision in Agenda No.1, the Governing Body unanimously resolved to remove the defendant in the above suit from the post of General Secretary in the Governing Body, on specific finding that the defendant is disqualified to contest to the office of the Governing Body of the Trust for succeeding ten years. It is further submitted that by virtue of decision No.2 in the said meeting, the Governing Body had decided to issue show cause notice to the defendant in the suit to show cause why the decision of the Governing Body should not be implemented and reply was solicited within 7 days also. The copy of the domestic enquiry report was also sent to the defendant. Thereafter, on 23.06.2023, the General Secretary of the Trust issued show cause notice along with domestic enquiry report with allied documents, which was received by the defendant on 26.06.2023. Thereafter, after the expiry of 7 days, the 1st plaintiff received a letter in reply to show cause notice

issued to the defendant on contending that the Governing Body of the Trust has no authority to take any action against him. Later the reply issued by the defendant was considered by the Governing Body on 04.07.2023 and by virtue of decision in Agenda No.6, as the reply was not satisfactory, the defendant was removed from the post of General Secretary. On 05.07.2023, the defendant had filed O.S.256/2023 seeking the following reliefs.

- a) To declare that the Governing Body meeting held on 07.02.2022 and all the decisions taken therein as null and void and not binding on the 1st plaintiff and the Trust.
- b) To cancel the Supplementary Trust Deed No.33/04/2022 dated 17.03.2022 of Kayamkulam S.R.O.
- c) To pass an order of permanent prohibitory injunction restraining the defendants or anyone under them from removing the 1st plaintiff from elected post as the General Secretary or member of governing body or any other position in the 2nd

plaintiff Trust and also by an order of temporary injunction till the disposal of the suit.

7. The very fact as to the removal of the defendant from the Governing Body was duly communicated to the defendant in the suit on 07.07.2023. The said communication was served on the defendant along with extract of Agenda no.6. The chronological list of events which led to the removal of the defendant from the post of General Secretary in the governing body is stated as follows:

1)08.01.2020:- The defendant was elected as General Secretary of the Governing Body, the 2nd plaintiff was elected as Chairman, the 1st plaintiff was elected as Governing Body Member then, Mr.Baburaj was elected as Treasurer, Mr.Sadasivan was elected as Assistant Secretary. During the span of 2020-2021, 4 executive members were inducted into the Governing Body as Governing Body Members. From 08.01.2020 to 06.02.2022, the defendant had resumed the post of General Secretary, till his suspension on 07.02.2022.

2)24.01.2022: The defendant issued void notice notifying that meeting of the director board to be held on 21.02.2022 at Bhagavath Gardedn Hotel, Chengannur, for electing four Governing Body

members, since there was no vacancy in the Governing Body. The said notice was issued to constitute parallel committee to the Governing Body of the Trust, without knowledge of the Chairman or Governing Body members. As on 24.01.2022, the Governing Body had a total strength of nine members, out of which five of them shall be Governing Body Members and other four, the office bearers. During the period, wherein the defendant was the Secretary, Mr.Sunilkumar Nadesan, South Indian Vinod, Thampi Parameshwaran, Sasidharan Achuthan were inducted into the governing body. So the defendant was privy to such induction.

3)02.02.2022:The 2nd plaintiff received the notice dated 24.01.2022. In the said notice, it was prescribed that 2nd defendant, Chairman of the Trust will preside the said parallel meeting. Thereafter, the defendant lodged the caveats before various courts in Alappuzha. On 02.02.2022 itself, the 2nd plaintiff in the capacity as Managing Trustee/ Chairman issued a notice to the defendant that the notice issued is void and neither Chairman nor the Committee resolved to convene any such meeting of the Director Board, for erecting four Governing Body members to the Trust in a parallel manner, as there had no vacancy. Moreover, it was clarified by the 2nd

defendant that the 2nd defendant had not at any point of time never accorded sanction or permission to convene any such meeting. The defendant in an unbecoming manner on committing breach of obligation, resorted to anti organizational activities in defiance to the regulations set forth in the Trust Deed.

4) 06.02.2022: 24 hours prior notice was issued by 2nd plaintiff in the capacity as Chairman for convening the Governing Body of the Trust to take necessary disciplinary action against the defendant vide agenda No.6 by virtue of power conferred under Regulation 6(7) of the Trust Deed.

5) 07.02.2022: On 07.02.2022 at 9 a.m on issuing 24 hours urgent prior notice as per proviso to clause 15(a), the Governing Body of the Trust was called for by the 2nd plaintiff, the Chairman and due communication was given to the defendant also. That on 07.02.2022, the meeting was presided by the 2nd plaintiff, agenda No.6 was discussed in detail in regard to the disciplinary action against the defendant as per Regulation 6(7) of the Trust Deed. Thereafter the Governing Body had unanimously decided to suspend the defendant from the post of General Secretary by virtue of power invested in the Governing Body as per Regulation 6(7) of the Trust Deed, pending

enquiry. M.R.Sudheendran, Advocate, High Court of Kerala was appointed as the Enquiry Officer. The suspension had taken effect from 07.02.2022 itself. Thereafter the Governing Body had elected, then governing body member, the 1st plaintiff herein as the General Secretary pending enquiry against the defendant as per Regulation 6(11) of the Trust Deed. The 1st plaintiff assumed charge on 07.02.2022 itself. On 07.02.2022 itself, the 2nd plaintiff through the due process issues suspension order to the defendant along with charge memo through registered post. By virtue of Agenda No.10, the said Governing Body had resolved to initiate legal action against the defendant as he had fraudulently removed Minutes from the date of incorporation and the documents of the Trust, for which notice was issued to the defendant by the 2nd defendant.

6) 08.02.2022: The plaintiffs got reliable information that based on the void notice, the defendant is taking hasty steps to convene the Parallel Meeting illegally, for forging a parallel committee to the Trust without any authority on 21.02.2022 and to take further steps to trespass into the Managerial block of the trust.

7)10.02.2022: The suspended General Secretary, the defendant during the said period issued another notice for convening General Body meeting on 10.02.2022 at 1 p.m. The entire bank transactions were managed by the 1st plaintiff along with the authorized other signatories.

8)10.02.2022: The plaintiffs filed the above suit on the file of this court and thereafter the matter was posted to 19.02.2022, on the said day, this court passed an interim order to the effect that 'any decision taken on 21.02.2022 will be subject to final outcome in I.A.1/2022'. Later the interim application for injunction was heard and on 18.06.2022, this court dismissed I.A.1/2022 and thereafter the said order was kept in abeyance.

9)23.06.2022: CMA.22/2022 was filed before the Hon'ble Additional District Court-1, Mavelikara by the plaintiffs. After hearing both sides, the Appellate Court passed an interim order in I.A.1/2022 therein and by virtue of the interim order, the defendant was restrained from entering into the Trust premise so as to cause any hardship to the proper functioning of the Trust.

10) 24.08.2022: CMA.22/2022 was disposed by judgment dated 24.08.2022 as follows:

“The CMA allowed, thereby, impugned order is set aside. The trial court has to dispose off the case, untrammelled by any of the observations made by this Court. But for time being, the respondent is restrained from entering into the trust premises so as to cause any hardships to the proper functioning of the Trust”.

11) 29.11.2022: Challenging the order referred supra, the defendant preferred OP(C)No.199-/2022 before the Hon’ble High Court of Kerala.

12) 07.12.2022: On 07.12.2022, after hearing both sides regarding the interim application in the above said proceedings, the Hon’ble High Court of Kerala passed the following interim order;

“pursuant to the interim order dated 29.11.2022, the petitioner has filed counter affidavit to I.A.1/2022. On a consideration of Exts. P12 to P14 documents produced along with the application, I am of the prima facie view that no interim order can be granted. Instead the original petition itself has to be heard and disposed off’.

13) 07.10.2021: Obviously, on 07.10.2021, the defendant had called for a meeting with respect to specific agendas such as appointment of teaching staff. In page No.12 of the said minutes, the attendance of the presentees including the inducted members were recorded and in the said meeting, since the business of the meeting runs in volumes, the 2nd plaintiff had directed to manuscript the minutes on a later point of time at the handwriting of Sreeletha, an officer of the Trust. There has a consensus among the members including the defendant that the voluminous minutes be manuscripted on a later point of time.

14) 02.12.2021: Thereafter on 02.12.2021, another meeting was scheduled at Gokulam Medical College quarters with specific agendas. That for the said meeting also, the attendance for the meeting was recorded in page. No.28 and 29 after leaving pages 13 to 27 as blank. On representing to the governing body that the defendant will manuscript the meeting of 07.10.2021 at the handwriting of Smt.Sreeletha, an officer of the Trust shortly. According with bonafides the inducted persons along with the plaintiffs, other office bearers and Governing Body members subscribed their signatures, on reposing faith on the defendant. In the

meeting dated 02.12.2021, the inducted persons such as Sunil Kumar, Thampi Parameswarann were also participated. On 02.12.2021, soon after the attendees had put their signature, the defendant picked up quarrel in the meeting and left the meeting hall on removing the original minutes into his custody. At the time of removal of the Minutes by the defendant dishonestly, the pages 13 to 27 and 29 to 31 were left blank, in neither of the said two minutes, the 2nd plaintiff being the Chairman had not subscribed his signature in conformity with the requirement under the Trust Deed. Taking advantage of the said situation, the defendant on committing breach of obligation manipulated and forged entries in the said minutes book, altogether in a different handwriting, so as to forge documents to show that the Governing Body of the Trust took decision conduct illegal meeting on 24.02.2022. The forgery is writ large throughout the document.

15) 15.03.2022: On defying the pendency of proceedings before this court, the defendant had issued a notice notifying that he will conduct meeting in the Trust Office, despite the fact that he remains as suspended General Secretary.

16) 03.03.2022: Thereafter OP(C)No.398/2022 was filed on the file of the Hon'ble High Court of Kerala whereby the defendant

undertook that he will not conduct any meeting on 15.03.2022. Thereafter on 03.03.2022, the Hon'ble High Court of Kerala in OP(C)No.398/2022 further held that any meeting held on 21.02.2022 or later shall not be implemented without further orders. In the said proceedings, the defendant undertook that there will not any trespass on his part until the matter is disposed by the trial court. Thereafter this court dismissed I.A.1/2022 and the order was kept in abeyance which was further extended by the Hon'ble High Court of Kerala till the disposal of the stay petition in CMA.22/2022. As referred earlier, the CMA was allowed in favour of the Trust. In fact, on 21.02.2022, there had no four vacancy to the governing body, the main challenge in O.S.59/2022 was as to legality of the decision taken by the governing body of the Trust inclusive of the four inducted members. In CMA.22/2022, the appellate court conclusively found that as there is no provision for conducting interim election, the induction is permissible and the action pursued by the inducted person is as good as at par with any governing body members or office bearers, in view of de facto doctrine. In the light of the said observation, the suit as well as interim application is devoid of merits and the plaintiffs have no cause of action also. It is submitted that by virtue of conclusive

findings in judgment in CMA.22/2022, the interim application is barred by the doctrine of constructive res judicata, as the contention raised in the petition is found against the defendant. So the suspension of the defendant is held to be valid. Therefore the alleged meeting conducted by a suspended General Secretary as void and nonest in the eye of law and the same shall not bind the Trust also. The Trust is running educational institutions on employing necessary staff and teaching faculty and the entire salaries are disbursed from the account of the Trust maintained with the Catholic Syrian Bank also.

17) 1st plaintiff is the General Secretary and the 2nd plaintiff is the Chairman of the Sree Gurudeva Charitable and Educational Trust, Kattachira, Pallickal. The election to the office of the governing body of the Trust was conducted on 08.01.2020, eventually for office bearers such as Chairman, General Secretary, Assistant Secretary, Treasurer, one Governing Body Member alone was elected, and remaining four governing body members vacancy was not filled as there had no contestants. That by virtue of the said election, the 2nd plaintiff was elected as chairman, defendant was elected as general secretary, Sadasivan was elected as assistant secretary and Baburaj

was elected as treasurer. In addition, there to the first defendant was elected as the governing body member. That as per the bylaw, the governing body of the Trust consist of four posts with respect to the office bearers, five vacancies of governing body members. Thereafter, during the span of 2020-21, following four members were inducted to the governing body of the Trust, as Regulation 18A of the Trust deed does not provide for entering election. That in such premise alone, such induction was re-coursed on following common law principle.

(18) The defendant was privy to such induction. Since the date of induction, the above referred inducted persons were given notice for attending the governing body by the defendant and the inducted persons were participated in the process of decision concerning the affairs of the Trust. In fact, on 7-2-2020, Sasidharan Achuthan, one among the four who were inducted into the governing body as nominated during the tenure of the defendant as the general secretary of the Trust. Being the custodian of the minutes, as per the regulation in the Trust deed, the above referred suspended general secretary Subhash Vasu was in possession of the entire minutes and other records of the Trust.

(19) 11-7-2023 : That during the pendency of the OP(C) no 1990 of 2022 on the file of Hon'ble High Court of Kerala and during the subsistence of the injunction granted in CMA 22-2022, it is submitted that, in disobedience to the judgement in the appeal, and in express breach of the terms on which the injunction was granted, on 11-7-2023, the defendant had issued a notice styling it as show cause to the plaintiffs, in the suit. It is submitted that the said notice was issued by the defendant in sub-judice, as the allegations set forth there in are found negated by the Hon'ble Additional District Court-1, Mavelikara, especially in respect to the alleged void director board meeting alleged to be held on 21-2-2022. So the above petition is barred by the Principle of Constructive Res Judicata. It is submitted that on express breach of terms of injunction, the defendant cannot claim that even on 11-7-2023 or in the month of March 2024, general secretary ship of the first plaintiff Trust. It is fraudulently alleged by the defendant that in express breach of terms of injunction, the defendant claimed that he is the general secretary of the first plaintiff Trust and in the alleged void director board meeting dated 21-2-2022, it was decided to remove the first plaintiff from the director board and the governing body of the Trust. Said issuance of void

notice by the defendant is nothing, but breach of the express terms on which the injunction was granted and the act perpetrated on the part of the defendant is in violation and disobedience of the injunction granted by the Additional District Court 1 Mavelikara. The first plaintiff is restrained from entering into the Trust premises so as to cause a hardship to the proper functioning of the Trust. The analogous void notices were also issued to the 2nd plaintiff and the treasurer of the Trust, Mr. Baburaj, on maintaining that if sufficient explanations are not provided, the defendant will remove the plaintiffs from the general secretary and chairman of the Trust, in his capacity as general secretary. The said issuance of notice with a threat that the defendant will remove the plaintiffs and other office bearers of the Trust would come within the trapping of breach of express terms of injunction, as the act perpetrated on the part of the respondent would cause hardship to the functioning of the 1st plaintiff Trust. Thereby the defendant had disobeyed the injunction granted in CMA.22/2022 on the file of Hon'ble Additional District Court 1 Mavelikara.

(20) 23-7-2023 : It is submitted that thereafter on 23-7-2023, the defendant claiming to be the general secretary of the Trust issued

a void notice in express breach of terms on which the injunction was granted in CMA.22/2022, wherein it is published as follows:

"ശ്രീ ഗുരുദേവ ചാരിറ്റബിൾ & എഡ്യൂക്കേഷണൽ ഗവേർണിംഗ് ബോർഡ് അംഗങ്ങളുടെ ഒരു മീറ്റിംഗ് 30.07.2023 (ഞായർ) രാവിലെ 10 മണിയ്ക്ക് കരുണാഗപ്പള്ളി എസ് . എൻ . ഡി . പി യൂണിയൻ ഓഫീസിൽ വെച്ച് ചെയർമാന്റെ അധ്യക്ഷതയിൽ കൂടുന്നതിന് തീരുമാനിച്ചിരിക്കുന്നു. താങ്കൾ കൃത്യ സമയത്തു തന്നെ യോഗത്തിൽ പങ്കെടുക്കണമെന്ന് അറിയിക്കുന്നു.

എന്ന് സുഭാഷ് വാസു

ജനറൽ സെക്രട്ടറി "

21) 30.07.2023: That was settled, in general sense though every order of the Court which commands or forbid is an injunction, but in its accepted legal sense, an injunction is a judicial mandate operating in personam by which upon certain established principles of equity, a party is required to do or refrain from doing a thing. The publication of the said notice for convening void meeting on 30.07.2023 at Karunagappally SNDP Union office, is a willful violation of injunction granted in the above referred Appeal, as the proposed void meeting and publication of the said void notice causing hardship to the proper functioning of the Trust. The 1st plaintiff had widely circulated the

said Notice among the public on due notice regarding the injunction granted in the appeal, which is perse, express breach of terms on which injunction was granted by the Hon'ble Additional District Court-I, Mavelikara.

22) 03.03.2023: The Governing Body of the 1st plaintiff Trust was convened on 03.03.2023 for taking further cause of action in pursuance of the domestic enquiry report of the Enquiry Officer dated 14.02.2023. The Domestic Enquiry Officer in its finding concluded that the delinquent/ defendant is guilty of the charges levelled against him. The report of the Domestic Enquiry Officer placed in the Committee for detailed discussion and in consideration of the Report, pursuing brain storming deliberation in the matter, the Governing Body had unanimously resolved to pass following resolutions/ decisions:

a) The Governing Body unanimously resolved to remove Mr.Subhash Vasu from the post of General Secretary from the Governing Body on the basis of specific findings in the Domestic Enquiry Report, with a disqualification to contest to the office of the Governing Body for succeeding

ten years.

b) It is further decided to issue a show cause notice to the delinquent Mr.Subhash Vasu to show cause within 7 days why the above decision of the Governing Body should not be implemented.

c) It is decided to provide a copy of the Domestic Enquiry Report to Mr.Subhash Vasu along with the Domestic Enquiry Report.

d) The General Secretary Mr.Velanchira Sukumaran was authorized to issue show cause notice in respect to the above decision along with the Domestic Enquiry Report and charge to Mr.Subhash Vasu.

23) 04.07.2023: The Governing Body of the 1st plaintiff Trust was convened for considering Agenda No.6 regarding the further course of action on the basis of the Show Cause Notice and reply given by the delinquent. The Governing Body in Agenda No.6 unanimously resolved as follows:

“In pursuance to the decision taken by the

Governing Body Meeting dated 03.03.2023, it is resolved to remove the delinquent from the post of General Secretary with a dis-qualification for conducting to the office for the succeeding ten years”.

24) 20.02.2024: The Hon’ble High Court of Kerala by its judgment dated 20.02.2024 in OP(C)No.1990/2022 filed by the defendant challenging the judgment in CMA.22/2022, was dismissed on upholding the order passed by the Appellate Authority vide para No.7 as follows:

‘In the circumstances the impugned Ext.P11 order is sustained, though for the reasons different altogether. However, the injunction granted requires modification in the estimation of this Court. Rather than preventing the defendant from entering into the premise, what has to be prevented is the convening of the Director Board Meeting by the defendant and also interfering with the affairs of the 1st plaintiff Trust. The injunction granted accordingly is modified in tune with Ext.P3 application’.

8) It is submitted that the very institutions of the above petition is an express violation of the terms on which the injunction was granted in CMA.22/2022, on the file of Hon’ble Additional District Court-I,

Mavelikara, as well the judgment of the Hon'ble High Court of Kerala in OP(C)No.1990/2022. The above numbered interim application is barred by the Principles of Constructive Res Judicata. The very fact as to the removal of the defendant from the post of General Secretary in the Governing Body is materially suppressed in the above numbered petition. It is submitted that in violation of the injunction granted in the above appeal, the defendant still claims that he is the General Secretary, despite his suspension as well as removal from the Governing Body of the Trust, besides the removal and suspension was upheld by the Hon'ble High Court of Kerala while confirming the Appellate judgment. The defendant cannot perpetrate any act which would hamper the proper functioning of the Trust.

9) The averments in paragraph No.3 of the affidavit is false and hence denied. The Trust Deed does not recognize any such post as Founder, Member or Founder General Secretary. The plaintiffs had not violated any express terms of the Trust Deed. The further contention of the said paragraph that the parent Trust Deed had not so far modified or amended in accordance to the provision is absolute false. The averments in paragraph No.4 of the affidavit is false and hence denied. The contention that the Board of Directors consist of 41 persons and

induction of any members to the Governing Body by some of the members of the Governing Body, rendering said action as void, illegal and un-enforceable is absolute false and hence denied. Regulation No.1 in page No.17 of the Trust Deed postulates the powers of the Director Board and the constitution of the Board of Directors/ Trust Board very succinctly explained in page No.17 as follows:

“The Board of Directors shall consist of all the founder members and executive members of the Trust and 7 members elected from the members as specified in clause B below”

Clause B further postulates as follows”

“Out of the 7 Directors so elected under clause (a) above, 3 of them shall be from sponsored members, two of them shall be from special members and two of them shall be from ordinary members”.

10) When there is ambiguity with respect to two clauses, the latter clause alone will prevail, the figure appears as 41 “in clause number 5 is only a misnomer”. So the contention in paragraph No.4 of the affidavit is false and hence denied. The paragraph Nos.5 and 6 of the affidavit are also false and hence denied. The statement that

the 2nd plaintiff on 21.02.2022, 2nd plaintiff along with Velanchira Sukumaran tried to thwart the Board of Directors Meeting is absolutely false and hence denied. The averments in paragraph Nos.7, 8, 9, 10 and 11 of the affidavit are false and hence denied. The contention that the decision of the Governing Body to hand over charge of General Secretary to Velanchira Sukumaran is illegal and the decision said to have been taken on 07.02.2022 to be declared as null and void is absolute false and hence denied. The statement in paragraph No.12 that as per the decision of the Governing Body on 07.10.2021, later ratified on 02.12.2021, election was conducted with the permission of the court, out of 41 board of directors, 25 directors had participated in the meeting, 5 members who were out of India consented for convening the meeting, endorse their concurrence to the decision taken on the said meeting, on 21.02.2022, 4 persons were elected to the Governing Body and it was further decided to take disciplinary action against Velanchira Sukumaran and Baburaj are absolute false and hence denied. On 21.02.2022, there had no four vacancies to the Governing Body and defendant had no authority to conduct any election also.

11) The averments in paragraph Nos.13 and 14 to 16 of the

affidavit are false and hence denied. The contention that the plaintiffs approached the court with unclean hands and sought reliefs on the basis of the illegal acts committed by them is absolute false and hence denied. The statement that the Hon'ble High Court of Kerala given liberty to the defendant to amend the written statement to declare the meeting held on 07.02.2022 as null and void is absolute false and hence denied. During the course of proceedings before the Hon'ble High Court of Kerala, the very institution of O.S.256/2023 and I.A.1/2023 on the file of this court was materially suppressed in the said proceedings. If at all the above application is allowed on incorporating counter claim appended to the written statement, such counter claim will be barred under Section 10, explanation 4 of Section 11, Order 2, Rule 2 of the C.P.C, as the specific relief sought in the counter claim is a subject matter in O.S.256/2023 pending on the file of this court among similar parties and similar cause of action. The larger principles regarding Section 10 and explanation 4 of Section 11 of the C.P.C will apply to the interlocutory applications also. Moreover, the counter claim is further barred by Order II Rule 2 and constructive res judicata. The averments in paragraph Nos.17 to 19 of the affidavit are false and hence denied. The statement that the

finding of the Hon'ble High Court of Kerala confined to the point that the defendant had not challenged the illegal decision of the plaintiffs dated 07.02.2022, thereby further opportunity was granted to the defendant to file application for temporary injunction and application for amendment of written statement is absolute false and hence denied. The statement that for the fair disposal of the case, induction of 4 persons to be considered through counter claim on appropriate declaration is false and hence denied. The defendant is not entitled for any declaration by way of counter claim. The averments in paragraph Nos.20, 21 and 22 of the affidavit are false and hence denied. The statement that the liberty is granted to the defendant for the amendment of the written statement and for filing injunction application after filing the counter claim is absolute false and hence denied. The statement that the counter claim is raised for permanent prohibitory injunction against the plaintiffs for interfering the discharge of the counter claim plaintiff as the General Secretary of the Trust is absolute false and hence denied. Thus, this petition is liable to be dismissed with their costs.

12. The following points are formulated for consideration:-

1. Whether the petitioner is entitled to an order for amending the written statement and to incorporate counter claim as sought for ?

2. What shall be the order as to reliefs and costs ?

13. Heard both sides.

14. **Point No. 1:-** The petitioner/ defendant filed the petition to amend the written statement and to incorporate the counter claim. The petitioner is mainly relying on the paragraph No.8 of the original judgment in OP(C)No.1990/2022 of the Hon'ble High Court of Kerala. In the 8th paragraph of the said decision, the Hon'ble High Court held that in view of the submissions made by the senior counsel, this court observes that it will be open for the petitioner/ defendant to seek amendment of the written statement, so as to lay a counter claim, challenging the decisions taken on 07.02.2022, as per which the defendant was suspended from office. If such an application is filed, the same will be decided, untrammelled by any of the observations made in the order of the learned Munsiff, the judgment of the learned Additional District Court, as also, the present judgment rendered in this original petition. It is also clarified that if an interim application for injunction is filed by the petitioner herein,

after laying a counter claim, the same shall not be treated as hit by the principles of res judicata as applicable to interlocutory applications in the same suit. In the light of the above observations made by the Hon'ble High Court of Kerala, this I.A is filed by the petitioner/defendant for bringing amendment to the written statement and for incorporation of counter claim. But the respondents pointed out that the petitioner has materially suppressed the pendency of O.S.256/2023 on the file of this court seeking the following reliefs.

- 1) To declare that the governing body meeting held on 07.02.2022 and all the decisions taken therein as null and void and not binding on the 1st plaintiff and the Trust.
- 2) To cancel the Supplementary trust deed No.33/4/2022 dated 17.03.2022 of Kayamkulam S.R.O.
- 3) To pass an order of permanent prohibitory injunction restraining the defendants or anyone under them from removing the 1st plaintiff from elected post as the General Secretary or member of governing body or any other position in the 2nd plaintiff Trust and also by an order of temporary injunction, till the disposal of the suit.

15. On perusal of records, the pendency of the above numbered suit with respect to the above numbered reliefs were not brought to the notice of the Hon'ble High Court of Kerala while pronouncing the judgment in OP(C)NO.1990/2022. Thus the Hon'ble High Court of Kerala made the above mentioned observations in paragraph no.8 of the said judgment. Thereafter, the petitioner/defendant preferred R.P.No.583/2024 against the judgment in OP(C)NO.1990/2022 dated 20.02.2024 and on 12.08.2024, the Hon'ble High Court of Kerala passed the following order by allowing the review expunging the observations in the judgment in paragraph 8 of OP(C)NO.1990/2022 and the order of review dated 12.08.2024 is extracted as follows:

“However, this court noticed that a mere challenge to the petitioner's suspension from the post of General Secretary will not suffice, unless there is an interim order staying the operation of the said suspension. The learned counsel for the petitioner would submit that no such orders have been passed in the suit, O.S.256/2023. Therefore, the vice, which this court found to grant the relief in the judgment under review, that is to say, the petitioner was not competent as on the date to call for a meeting still survives. It is on that premise the injunction that was granted by the first appellate

court was sustained by this court. In these circumstances, the reviews allowed to the limited extent of expunging those observations in the judgment under review to the effect that suspension of the petitioner from the post of General Secretary is to subjected to any challenge. This court notice and recognize that there is a challenge to the same by virtue of the suit, O.S.256/2023. However, the judgment under review is sustained on the premise above referred. Except to the above extent indicated, the judgment under review will stand undisturbed”.

16. In the light of the above order of review, the ground available to the petitioner as per the original judgment in OP(C)NO.1990/2022, especially the observations made in the 8th paragraph of the judgment will not stand.

17. It is further contended in the petition that the decision of the governing body dated 07.02.2022 suspending the defendant is barred as per law and there was no proper quorum for taking such decisions as the induction of 4 governing body members are void and invalid and for the above reasons, the petitioner seek annulment of the decision of governing body dated 07.02.2022 as void through incorporation of counter claim in compliance to the observations

made by the Hon'ble High Court of Kerala in its judgment in OP(C)NO.1990/2022. In the light of the review, the reservations made in favour of the petitioner in paragraph no.8 of the judgment will not stand. Since the petitioner on earlier point of time instituted O.S.256/2023 before this court incorporating the very same reliefs, analogous to the very same relief sought in the proposed counter claim, if the proposed amendment is allowed so as to lay counter claim, the reliefs sought in the counter claim will be directly and substantially in issue with respect to the previously instituted suit, hence the application of Section 10 of C.P.C will come into play. Moreover, the reliefs sought in the counter claim is barred by Order II Rule 2 of C.P.C. The principle relating to the bar under Order II Rule 2 C.P.C applies amendment application also. In **Gopi v. Gopinathan** reported in **2021 (4) KLT 565**, it was held that "the principle relating to bar under Order II Rule 2 of C.P.C applies to amendment application, the reliefs sought in the earlier suit cannot be specifically sought in the subsequent proceedings". Here also, the petitioner sought the relief in subsequent proceedings which is already sought in O.S.256/2023. Since O.S.256/2023 with respect to the same relief is pending before this court for adjudication, no prejudice will be caused

to the petitioner by disallowing this petition. Thus the point No.1 is found against the petitioner/ defendant.

18. Point No.2:- In the light of the above discussion, this court is of the opinion that this petition is to be dismissed. Point No.2 is also answered against the petitioner/ defendant.

In the result, the petition is dismissed. No order as to costs.

(Dictated to the confidential assistant, typed by her, corrected and pronounced by me in open court on 9th day of September, 2025)

Sd/-
ANEESA.A,
MUNSIFF

APPENDIX - Nil.

Sd/-
MUNSIFF

// True copy //

MUNSIFF

Typed by:Shafeek
Compd.by