

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.**

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,**
Principal District Judge, Chengalpattu.

Wednesday the 8th day of February 2023

I.A.No.2/2022
in
O.S.No.148/2022

Diamond Das, representing

Residents/members of Cosmo City and CCRWA,

Pudupakkam, Chennai – 603103.

. . . Petitioner/Plaintiff.

/Vs/

1. Cosmo City Residents Welfare Association CCRWA,

Represented by the authorized person,

Pudupakkam, Chennai – 603103.

2. Sreenivasarao Kattaa,

The President,

B21-303, Cosmo City Residents Welfare Association CCRWA,

Pudupakkam, Chennai – 603103.

3. Mohanraj Murugesan,

The Secretary,

B21-303, Cosmo City Residents Welfare Association CCRWA,

Pudupakkam, Chennai – 603103.

4. Vijay Krishna,

Treasurer,

B21-303, Cosmo City Residents Welfare Association CCRWA,

Pudupakkam, Chennai – 603103.

5. The District Registrar of Societies,
Chengalpattu.

6. The State Bank of India,
Represented by its Bank Manager,
Padur Branch, Chengalpattu.

. . . Respondents/Defendants.

This petition came up before me in this court for final hearing on 6.1.2023, in the presence of Tvl.K.Aswini Devi, S.T.Bharath Gowtham and Pranav V Shankar, Advocates for the petitioner, Tvl.A.R.Sakthivel and Syed Musthaba, Advocates for the respondents 1 to 4, Thiru.Arunadeepan, Advocate for the 6th respondent and the 5th respondent set exparte after paper publication, upon hearing the arguments of both side counsel, perusing the entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This is an application filed by the petitioner under Order 1 Rule 8(2) r/w Section 151 CPC, praying to permit the petitioner to file the suit in a representative capacity on behalf of the members of the 1st respondent and residents of the Cosmo city.

2. The case of the petitioner in brief :

The petitioner is a resident of Cosmo City, Pudupakkam, Chennai – 603013 which is a large gated comprised of 4 blocks with over 2174 families and residents living in the said gated community. The owners

are also members of Cosmo City Welfare Resident Association (hereinafter referred as to CCRWA) the 1st respondent herein. All the flat owners in Cosmo City are deemed to be a member of the CCRWA 1st respondent as per the bye-laws of the Association. The petitioner is a member of the Association consequent to purchase of Flat A-22 in the year 2018. The 1st respondent is a registered society with the 5th respondent under Tamil Nadu Societies Registration Act, 1975 vide Regn.No.112/2012 and the 1st respondent is being managed by its office bearers respondents 2 to 4. The 1st respondent CCRWA is governed by the bye-laws CCRWA registered with the 5th respondent. The registration of the has not been renewed by the respondents 2 to 4 being its office bearers and 1st respondent had become defunct. The 6th respondent is a nationalized bank wherein the 1st respondent is maintaining its account. The petitioner filed the above suit representing the members of the 1st respondent seeking a declaration from this court to declare the minutes of meeting along with resolutions dated 12.12.2021 to be null and void as it affects all the 2174 members of the association. Some of the members had also authorized the petitioner to file the above suit representing them. Considering the larger good in mind the petitioner further issued legal notices on behalf of the members after getting authorization. The plaint and all the documents filed therein may be read as part and parcel of this petition affidavit. Hence, the petition.

3. The averments of counter filed by the respondents 1 to 4 in brief :

The Cosmo City Residents Welfare Association (CCRWA) is a society registered under the Tamil Nadu Societies Registration Act, 1975 vide Registration No.112/2012. The members are represented by the said Association in all matters / issues concerning Cosmo City. The members are represented by the said Association in all matters / issues concerning Cosmo City. The newly elected office-bearers and Executive Committee members of the Association had taken charge recently and subsequently, in the Annual General Meeting of the said Association held on 12.12.2021 certain resolutions concerning the betterment of Cosmo City were passed. The said resolutions were passed with 2/3rd majority of the members present and voting and the actions of CCRWA, in pursuance of the said resolutions have been fully welcomed and appreciated by the whole community. While so, the petitioner / plaintiff who is a members of CCRWA, being disgruntled with the appreciation earned by the present administration from the community at large, has deliberately chosen to create hurdles to the implementation of welfare projects, by filing the above false and frivolous suit challenging said resolutions passed in the AGM held on 12.12.2021, falsely projecting himself to be the representative of the residents/members of Cosmo City and CCRWA. The statutory obligations of a society due under the Tamil Nadu

Societies Registration Act, 1975 and the Rules thereunder, are being performed by the CCRWA and the Association is fully functional. The petitioner / plaintiff at the first instance, has absolutely no locus standi at all to file the above suit representing the members of the 1st respondent/Association. The owners of Cosmo City apartments/members of the 1st respondent/Association can be represented only by the Association and not by anybody else. Any members in disagreement with the actions of CCRWA can proceed against CCRWA only in an individual capacity and such member can never proceed as the representative of the entire community. The said resolutions had 2/3rd majority of the members present and voting. And payments to the Association towards execution of projects pursuant to the said resolutions have been made by an impressive majority of the community. The petitioner / plaintiff himself has not been specific as to the number of members and the identity of the said members, who have authorized him to institute the above suit. Any member of the Association who is in line with the petitioner / plaintiff and is interested in the reliefs sought for, ought to have arranged himself as a party to the suit alongside the petitioner / plaintiff. Subsequent to the filing of the above suit, a banner had been displayed in public places in the vicinity of Cosmo City by one Balaji Sankaran, an accomplice of the petitioner as a case is pending in Chengalpattu court against CCRWA decision taken on 12.12.2021. Several

owners of apartments in Cosmo City had represented to CCRWA to take immediate steps for restraining the concerned from displaying the said banner and to initiate appropriate action, for having spread such mischievous and misleading information among the public and the residents/owners of Cosmo City. The same banner was also published in social media (Apartment Adda) posts, and the copies of such misleading banners have been sent by e-mail to third party vendors, contractors and suppliers of CCRWA with intention to damage the reputation of the Association. It is affirmed that only the CCRWA could be the representative of the residents/owners of apartments in Cosmo City. As such no leave can be granted to the petitioner / plaintiff to file / pursue the above suit in a representative capacity, representing the residents/ members of Cosmo City and CCRWA. In the event of leave being granted to him, would be binding on all the residents / members of Cosmo City and CCRWA, which, in the interest of justice, ought not to happen at all. Hence, prayed for dismissal of petition.

4. The point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This petition is filed under Order 1 Rule 8(2) to permit the petitioner to file the suit in a representative capacity of the members of 1st respondent and the residents of Cosmo city. The suit was filed by plaintiff

claiming that he is representing the members of Cosmo City. The plaintiff is one of the resident in a block of apartments known as Cosmo City at Pudhupakkam, Chennai. According to him he purchased the property on 31.12.2018 which is an apartment complex known as Cosmo City. The 1st defendant is the Cosmo City Welfare Association, the other defendants are the President, Secretary and Treasurer of the 1st defendant Association. As usual there is a disagreement between the Association office bearers and the plaintiff. According to the plaintiff new members were elected for the 1st defendant Association on 12.12.2021. They had a plan of action by which they planned to carryout major activities like painting, paver road, CCTV etc. There was a proposal for collection of Rs.6 C 50 L from all the members numbering 2174 members of the Association. According to the plaintiff it is a deceptive plan and violation of clause 13.2.1 of Bye-law and violation of principles of natural justice. There was a proposal for conducting a general body meeting on 20.11.2021 thereby notice was issued.

6. Therefore, as usual when money involves problem will start and thereby confrontation was escalated which resulted in filing of the plaint.

7. The plaintiff filed the suit for a relief declaring the minutes of general body meeting held on 12.12.2021 and the resolution therein is null and void, mandatory injunction directing the 1st defendant to refund the money collected, mandatory injunction directing the defendants 2 to 4 in their

personal capacity to pay damages to all the members with penalty of 24% for their illegal collection. The plaintiff also prays for permanent injunction restraining the defendants from collecting money for painting, road repair work and for a permanent injunction labeling any member as defaulted, permanent injunction restraining the defendants from stopping any essential services, permanent injunction restricted members from participating the meeting.

8. On filing the suit the learned counsel for the plaintiff very much insisted upon this court for a temporary injunction from collecting the money. But this court not inclined to grant interim injunction. Thereafter the respondents appeared and whenever the learned counsel for the respondent appeared before the court they used to make a big noise to dismiss the suit as the plaintiff not filed the suit in a representative capacity.

9. Thereafter the plaintiff approached the Hon'ble High Court, Madras, by filing CMA.No.2496/2022 and an order was passed on 2.12.2022. The said order was modified by the Hon'ble High Court by order dated 2.12.2022 thereafter the Hon'ble High Court gave a direction to dispose this IA on 12.12.2022 or on the next adjourned date. In the counter it is submitted that the plaintiff has not filed the case in a representative capacity and the respondents are disputing the same. It is claimed that the Association meeting represented by newly elected members held on 12.12.2021. It is further stated

a resolution by 2/3rd majority of members was passed for betterment of Cosmo City in the Association meeting. It is alleged the plaintiff is a disgruntle member who hurdles the implementation of welfare of projects. The respondents state that the activity of the Association cannot be stopped by a single member like plaintiff. It is contended that the plaintiff has mischievously filed a suit only to project and propagate, disrepute to the 1st defendant Association. Therefore the claim of the plaintiff that he is representing the flat owners of the Cosmo City is very much denied. Earlier this court directed the petitioner / plaintiff to produce a document authorizing him by the flat owners to represent on behalf of them to file the suit. But no such document produced by the plaintiff. By the time, the Hon'ble High Court has directed this court to dispose this IA in a time bound manner.

10. Under Order 1 Rule 8 CPC,

One person may sue or defend on behalf of in the same interest.

(1) *Whether there are numerous persons having the same interest in one suit:*

(a) *one or more of such persons may with the permission of the court, sue or be sued, or may defend such suit, on behalf, or for the benefit of, all persons so interested;*

(b) the court may direct that one or more of such persons may sue or be sued, or may defend such suit on behalf, or for the benefit of, all persons so interested;

Now on perusal of the petition as well as the counter it appears the petitioner / plaintiff is not representing the flat owners but he has filed the suit in the individual capacity. There is no proof or authorization to the plaintiff to represented on behalf of other owners. The petitioner / plaintiff cannot file the suit in a representative capacity. Therefore the plaintiff cannot maintain the suit in a representative capacity. The petitioner under Order 1 Rule 8 CPC has to be dismissed.

11. As the result, petition is dismissed. No costs.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 8th day of February 2023.

Principal District Judge,
Chengalpattu.

Both side witness and exhibits : Nil.

PDJ/CPT.