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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 148/2018**

I.A. 4738/2018, I.A. 10373/2018-U/O-39,R-1,2, I.A. 16626/2018-U/O-39,R-1,2, I.A. 665/2019-151 CPC, I.A. 1894/2019-151 CPC, I.A. 11557/2019—151 CPC, I.A. 1860/2020-U/O-39,R-1,2, I.A. 4957/2020-U/O-39,R-1, I.A. 5047/2020-O-6,R-17, I.A. 5602/2020-ex I.A. 8491/2020-U/O-39,R-2a, I.A. 12584/2020-U/O-39,R-2a and I.A. 12585/2020

**THE YOUNG MENS CHRISTIAN ASSOCIATION OF
ERNAKULAM & ORS** Plaintiffs

Through: Mr. P.I. Jose and Mr. Prashan
Kumar Sharma, Advs.

versus

NATIONAL COUNCIL YMCAS OF INDIA Defendant

Through: Mr. Manish Sharma and Mr.
Puneet Jaiswal, Advs. for Defendant No. 1
Mr. S. Nagamuthu, Sr. Advocate with Mr.
Kishore Kumaar, Adv. for Defendant No. 8

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

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13.01.2021

(Video-Conferencing)

CS(OS) 148/2018

1. It is seen that there is a multitude of applications filed in this matter, listed today.
2. This Court observes that, in several matters, on board today, applications, which have not been directed to be listed for today, are being reflected in the list.

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3. In the present matter, as many as 13 applications are reflected in the list today. In actual fact, the only applications, in which listing, for today, was directed, on 23rd December, 2020, are IA 12584/2020 and IA 12585/2020.

4. On perusing the order sheets in this matter, it appears that the remaining applications have been posted, by earlier orders in this matter, for other dates, *inter alia*, for 8th February, 2021, by order dated 24th November, 2020.

5. This Court has gone through the order sheets in order to ascertain why applications, which are not posted for today, are reflected in the list. It is seen that though, on 24th November, 2020, IA 4957/2020, IA 5047/2020 and IA 8491/2020, were adjourned to 8th February, 2021, these applications were again reflected in the advance list, which was circulated on 2nd December, 2020. The said list also included all the other applications which are listed today, which were never directed to be listed on 2nd December, 2020. The listing of these applications today before this Court appears to be the cascading effect of the listing of these applications, by the Registry, on 2nd December, 2020.

6. Even so, except for IAs 12584/2020 and 12585/2020, there is no order of this Court, directing listing of any other application today.

7. The Registry is, therefore, directed to list all other applications on the dates fixed in respect thereof.



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8. This is not a phenomenon which is isolated to this matter. In as many as three matters listed today, this Court notices that several applications, in respect of which no orders, directing listing of the applications today, and which are, in fact, listed on other dates, are reflected in the list. This results in utter chaos, as applications get listed on more than one date, and if they are adjourned, the effect cascades to future dates as well. As a result, the same application gets adjourned to more than one date.

9. Besides, this Court takes the trouble of reading the applications in advance, only to find, when the matter is taken up, that the applications are wrongly listed.

10. The Registry is directed to be more circumspect, in future, in listing of applications, taking care to ensure that only those applications are reflected in the list, which stands adjourned to that date.

11. Let a copy of this order be circulated to the Registrar (Listing) as well as to the worthy Registrar-General of this Court, to ensure strict compliance therewith.

IA 12585/2020 (Section 151 CPC)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.



IA 12584/2020 (Order XXXIX Rule 2A CPC)

1. This is an application, at the instance of Defendant No. 1, alleging violation, by Defendant No. 8, of the order dated 11th August, 2020, passed by this Court as well as an undertaking given by Defendant No. 8 before this Court on 6th December, 2020.

2. Mr. Manish Sharma, learned counsel for the applicant/ Defendant No. 1, submits that Defendant No. 8 has violated para 8 of the order dated 11th August, 2020, passed by this Court. The said paragraph read thus:

“8. In the meanwhile, this court reiterates the directions, in para 51 of the judgment dated 19th July, 2018, restraining the defendants - including Defendant Nos. 8 to 11—from dealing with any of the immovable properties, which they hold in trust, or regarding which lease or license has been granted to them. All the defendant including Defendant Nos. 8 to 11, are directed to maintain *status quo* with respect to the said immovable properties and not to create any third party interest thereon or effect any construction or alteration on the said properties.”

3. Para 8 of the order dated 11th August, 2020, as is seen from the reading thereof, reiterates the directions contained in para 51 of the judgment dated 19th July, 2018 passed by this Court. The said paragraph reads as under:

“51. However, until the elections take place, the Defendant ought not be permitted to deal with any of the immovable properties which it holds in trust. Accordingly, the Defendant is directed to maintain status quo with respect to all the immovable properties which are under its management/administration and no third party interest shall be created in the same.”



4. Mr. S. Nagamuthu, learned Senior Counsel for Defendant No. 8 acknowledges the fact that the judgment dated 19th July, 2018 (*supra*) remains undisturbed till date, and that operation of the said judgment has not been stayed by any superior court.

5. The undertaking given to this Court on 6th October, 2020 is reflected in para 8 of the order passed, on the said date in IA 4957/2020, which reads thus:

“8. Mr. S. Nagamuthu, learned Senior Counsel, assisted by Mr. Kishore Kumar, learned counsel, appearing for Defendants Nos. 8 to 10, undertakes that they would not interfere, in any manner, with the students who may seek to avail the facilities of the premises forming subject matter of consideration in this application.”

6. There is, therefore, a clear interdiction, by this Court, as reflected in the above orders, against Defendant No. 8 *using, in any manner*, the premises held by it in trust which, admittedly, includes the swimming pool used by the students of Defendant No. 1.

7. Mr. Manish Sharma has drawn my attention to a communication dated 14th December, 2020, addressed by Defendant No. 8 to the Correspondent, YMCA College of Physical Education Nandanam, Chennai, which read thus:

“Date: 14.12.2020

From

Mr.M.Elangovan,
S/o. Muthu. M/A-50 Years,
Proprietor, Aqua Pure Swimming Centre,
Having office at
No.27 /12, Bhrahmin Street,
Saidapet, Chennai - 600 015



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To

The Correspondent,
YMCA College of Physical Education,
Nandanam,
Chennai – 600035

Sir,

I wish to bring the following for your kind information and notice:-

I state that I am the Proprietor of **Aqua Pure Swimming Centre** having office at No.27 /12, Bhrahmin Street, Saidapet, Chennai - 600 015.

I further state that I am the lease holder of the swimming pool premises in the YMCA College of Physical Education, Nandanam, Chennai-600035 with effect from 20.09.2017 by paying security deposit of Rs.2 Lakhs and annual rental value of Rs.24 Lakhs, apart from the said security deposit and lease rent, I have invested about 65 Lakhs for renovation of the existing swimming pool and a new swimming pool inside the premises of the YMCA College of Physical Education, while so the National Council of YMCAs of India represented by its General Secretary being the first defendant in a suit CS(OS) 148 of 2018 filed by the YMCA of Ernakulam and others is pending before the Delhi High Court.

I further state that in the said suit the first defendant namely the National Council of YMCAs have filed an Application for impleading me as 8th Defendant and prayed for an injunction restraining me to run the swimming pool inside the YMCA College of Physical Education. *While the position being so, the Hon'ble High Court at Delhi in I.A.No.4957 of 2020 in CS(OS) 148 of 2018 have passed an order of status quo on 11.08.2020 and hence as per the above order of Hon'ble High Court at Delhi. I am entitled to run the swimming pool inside the premises of YMCA College of Physical Education by virtue of a valid and legal lease and license agreement dated 20 .09.2017.*

I further state that due to the Covid-19 pandemic the



Government of Tamil Nadu has not permitted any of the swimming pools in the State of Tamil Nadu to be opened and in pursuance to the order passed by the Government of Tamil Nadu to open the swimming pools all over the state and also to the status quo order of the Hon'ble High Court at Delhi.

I am opening the swimming pool inside the premises of YMCA College of Physical Education with effect from 16.12.2020. I also enclose herewith the status quo order of the Hon'ble High Court at New Delhi for your reference.

Thanking you,

Yours Sincerely,
(ELANGO VAN)"

8. *Prima facie*, in my view, the afore-extracted communication, especially the sentence italicized therein, reflects a complete misunderstanding, whether advertent or inadvertent, by Defendant No. 8, of the order dated 11th August, 2020, passed by this Court. The interdiction by this Court was against the usage of the premises by Defendant No. 8, which includes the swimming pool in question. The assertion, by Defendant No. 8, in his afore-extracted communication dated 14th December, 2020, to the effect that he was entitled to run the swimming pool, inside the premises of YMCA College of Physical Education, as being a valid lease and licence holder thereof, is in the teeth of the directions issued by this Court in its judgment dated 19th July, 2018 as well as its order dated 11th August, 2020.

9. Mr. S. Nagamuthu, learned Senior Counsel appearing for Defendant No. 8 has fervently requested this Court not to pass any such “clarificatory order” as, in his submission, the application listed before this Court has to be considered on merits and his client is not infracted, in any manner, the orders passed by this Court. Mr. S.



Nagamuthu submits that his client is entitled, in law, to commercially use the swimming pool in question, and that he would be able to establish this fact when the case is heard at length. In view thereof, he submits, any interdiction of his client on commercially using the swimming pool may not be proper at this juncture.

10. That the mere fact that the substantive right of the parties would be decided when the main petition is finally heard cannot interdict the Court from passing interlocutory directions, is axiomatic in law. In the present case, such directions have already been passed by this Court as far back as on 19th July, 2018. They have been reiterated in the order dated 11th August, 2020, passed by this Court. These orders remain undisturbed and, therefore, commercial usage of the swimming pool by Defendant No. 8, during the currency of these directions, *prima facie*, is not permissible.

12. As to whether such usage constitutes contumacious disobedience of this Court, as would justify action under Order XXXIX Rule 2A of the CPC, would, no doubt, be decided when this application is finally heard and at this stage, I do not venture to express any opinion thereon.

13. However, as it appears that Defendant No. 8 is unable to appreciate the true import of the earlier orders passed by this Court, I deem it appropriate to clarify that the interdiction by this Court, is on Defendant No. 8 using, in any manner, the premises in question, which includes the swimming pool. “Usage” would include usage of all kinds, and would especially cover commercial usage of the



swimming pool.

14. That apart, this Court is also satisfied, *prima facie*, that, if commercial usage of the swimming pool by outsiders is permitted by Defendant No. 8, it has every likelihood of interfering with the usage of the swimming pool by the students of Defendant No. 8. On this aspect, however, I do not venture any final opinion at this stage. Suffice it to state that commercial usage of swimming pool by Defendant No. 8 cannot be continued to be permitted, so long as the directions contained in the judgment dated 19th July, 2018 and the order dated 11th August, 2020, as well as the undertaking given by Defendant No. 8 to this Court on 6th October, 2020, continue to remain in force.

15. The position standing clarified as above, issue notice. Notice is accepted by Mr. Kishore Kumaar, learned counsel for Defendant No. 8. Let a response to this application, if any, be filed within a period of three weeks from today with advance copy to learned counsel for the applicant, who may file rejoinder thereto, if any, within a period of one week thereof.

16. List this application for hearing and disposal on 8th February, 2021, subject to completion of pleadings.

C. HARI SHANKAR, J.

JANUARY 13, 2021

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