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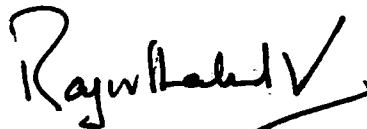
Present : Mr V.K. Tandon, Court Commissioner.
Mr Ajay Laroia, Advocate for the intervenor/ Applicant.

+ IA Nos. 8818/2008 & 8819/2008 in CS (OS) 1438/2008

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I am informed by the learned counsel that the present suit has been disposed of by virtue of the order dated 11.09.2009 passed in FAO(OS) 381/2009.

Renotify on 11.01.2010. Registry is directed to place the file of FAO(OS) No. 381/2009 along with the order dated 11.09.2009 before the court, on the next date.


RAJIV SHAKDHER, J

OCTOBER 21, 2009

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— Fresh PA. 16076/09 v/s ISI

— M.D.M. 11.1.10 before court

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO (OS) 381/2009 & CM 12381/2009

ANIL KUMAR THIAREJA & ORS. Appellant

Through Dr Anurag Kumar Agarwal
with Mr Umesh Mishra, Adv.

Versus

KULDIP JULKA & ORS. ...Respondent

Through Mr V.P.Singh, Sr.Adv. with
Mr P.K.Sharma, Adv.
Mr Sidharth Yadav with Mr Ranjan
Sharma, Advocate for R-2
Mr N.S.Dalal, Advocate for R-3 & 4

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE V.K.JAIN

ORDER
11.09.2009

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1. This Appeal assails the Order of the learned Single Judge directing inter alia that the applications of 21 persons to the membership of Shri Shirdi Sai Prachar Samiti should be considered afresh by the General Body in the presence of the Court Commissioner. In particular the Court had directed that it should be ascertained by interviewing, these 21 persons aspiring for the membership of the Samiti whether they are the believers in the tenets promulgated by Shri Shirdi Ke Sai Baba.

2. It is contended before us that the Appeal is not maintainable for the reason that these are consent orders. Paragraph 3 of the impugned Order passed in IA Nos. 8818-19/2008 makes it palpably clear that the aforementioned directions are not orders that have been passed with the consent of the parties. These are clear directions passed by the Court. The applications have been filed under Order XXXIX Rule 1 and 2 and are thus appealable by virtue of Order XLIII Rule 1. Therefore, the Appeal is maintainable.

3. The facts of the case are that Respondent No.1, alongwith Shri Shirdi Sai Prachar Samiti, had filed suit bearing No. CS(OS) 1438/2008 for declaration, mandatory and permanent injunctions. The prayers contained in the Plaint are reproduced below:-

"A. Pass a decree of Declaration declaring that with the resignation of majority of the members of the Governing Body, no Governing Body of defendant No. 1;

B. Pass a decree for directing holding of elections to the Governing Body of defendant no. 1 from amongst the present life members of the General

Body under the Chairmanship of any Retired Judge of the Hon'ble High Court;

C. Pass a decree of Mandatory Injunction thereby directing that no 'life member' inducted contrary to the Rules & Regulations of defendant No. 1 can be permitted to participate in the proceedings and / or management of defendant No. 1;

D. Pass a decree of permanent Injunction thereby restraining any office bearer/ President from unilaterally inducting any new life member without the consent of Majority of the Governing Body;

E. Pass any other or further orders as this Hon'ble Court may deem fit and proper."

4. The suit file has been summoned.

5. The Defendants had not opposed the granting of these prayers before the Single Judge. Before us, they have certainly affirmed that the suit could have been decreed as prayed for.

6. The powers of the Civil Court in the affairs of entities such as the Defendants is indeed a limited one. A detailed discussion of the law in this regard can be found in a decision of the Division Bench of the Calcutta High Court titled *Chitranjan Jadavji Padia -vs- Bhupesh Chandra Dutt*, AIR 1979 Cal289. The leading case remains *T.P.Dawar -vs- Lodge Victoria*, AIR 1963 SC 1144. Dealing with the powers of the Court to examine the expulsion of members from a club or an association Their Lordships ruled that a Court could interfere in the internal management of such entities if there had been an infraction of the Constitution or the Rules and Regulations or Articles of Association (as the case may be) of the concerned entity.

7. In the light of the exposition of the law to be found in *Dawar*, and applied in several other cases from time to time the Civil Court is empowered to grant an injunction or a declaration only in the context of whether any grievance ventilated in the Plaint tantamounted to a violation of the Constitution of the Defendant Samiti. We have already noted

that the Defendants had submitted that the suit may be decreed, as prayed for.

8. It has not been controverted by any of the parties before us that the governing body comprised of five persons, of which three had tendered their resignations. In this event, the vacancies that had occurred were required to be filled up as per the Constitution of the Samiti from amongst the General Body or the Life Members of the Samiti. The prayers in the Plaint were to the effect that the exercise of holding of elections of the Governing Body of the Defendant Samiti should be completed under the Chairmanship of any Retired Judge of this Court. So far as the Constitution of the Samiti is concerned, the decision of admission to the membership of the Samiti would be the province of the Governing Body since it was fastened with the responsibility for day to day administration of the Society. This is evident from a reading of Article V (b) of the Memorandum of Association which is to the following effect:-

"(v) Powers/ and duties, functions of the Governing Body

b) The Governing Body will authorised to take final decision regarding enrolment of the members.

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Decisions taken by the Governing Body, in this context, will be final.

9. It has also not been disputed before us by Mr V.P.Singh, learned Senior Counsel appearing for Respondent No.1(Plaintiff No.1), that it is the Governing Body and not the General Body which is invested with the powers of admitting new members to the Defendant Samiti.

10. The question that arises is whether the learned Single Judge had exceeded jurisdiction in firstly not decreeing the suit, as prayed for, since all the parties had joined in on this request and secondly whether he had jurisdiction to prescribe a particular procedure with regard to the admission of fresh members of the Samiti. So far as the first question is concerned, since the ordinary civil jurisdiction of this Court had been invoked the learned Single Judge ought to have granted the prayers in the Plaint to the extent they are in consonance with law; none of them appears to us to result in a consequence which would be illegal. If the suit had been decreed, the vacancies in the Governing Body would have to be filled up as a first step. In this regard, the learned Single Judge would have

been justified in appointing a person who oversees the holding of elections by the General Body to the vacancies on the Governing Body, even of an Advocate in place of a Retired Judge of this Court. No grievance as on this aspect of the case has been ventilated by any of the Respondents. However, the learned Single Judge in exercise of civil powers ought not to have prescribed a procedure alien to that contained in the Articles of Association, which is the Constitution of the Defendant Samiti. While arriving at a decision on whether a person should be admitted to the membership of the Samiti it would indeed be salutary to ascertain whether such person is a devotee of Shri Shirdi Ke Sai Baba and believes in his preachings and teachings. This is what is postulated under Clause (iii) of Rules and Regulations, contained in Memorandum of Association. The learned Single Judge, in our considered view ought not to have directed the General Body to carry out the task of admitting fresh members to the Samiti when, as also prayed for in the Plaint, this could rightly have been achieved by making the Governing Body functional by filling up the vacancies created therein as a consequence of the resignation of the three members.

11. Plaintiff No.2 has not supported Plaintiff No.1 in **resisting** the Appeal. In fact, learned counsel for Plaintiff No.2 has supported the Appeal.

12. In these circumstances, the Appeal is allowed, and the impugned Order is set aside. CS(OS) No.1438/2008 is decreed, to the extent we direct hereunder. In terms of the prayer B of the Plaint, we direct that the General Body shall meet within fifteen days in accordance with the Memorandum of Association of the Defendant Samiti with the purpose of filling up the vacancies that have occurred in the Governing Body. Shri V.K.Tandon shall act as the Court Commissioner to oversee this Meeting and shall file his Report in this file within fifteen days of the holding of the Meeting and the conclusion of the elections to the Governing Body. He shall be paid a further Fee of Rs 20,000/- in this regard. After the vacancies are filled up, the Governing Body shall take up the applications of the 21 persons who have applied for membership of the Samiti. We are aware that the candidature of all 21 aspiring members has been rejected, but since this has been carried out in a manner which we find is not in consonance with the Memorandum of

