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HIGH COURT OF DELHI: NEW DELHI

Order decided on: 07.12.2011

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CS(OS) No.2209/2011, I.A. No.14401/2011,
I.A. No.16455/2011, I.A. No.17721/2011,
I.A. No.17797/2011 & I.A. No.17798/2011

PADAM KUMAR JAIN & ORS

..... Plaintiffs

Through Mr. Rakesh Khanna, Sr. Adv. with
Ms. Hetu Arora, Adv.

versus

SH. ALL INDIA SHWETAMBER STHANAKWASI JAIN
CONFERENCE AND ANR

..... Defendants

Through Mr. C.S.Vaidyanathan, Sr. Adv. with
Mr. Harish V. Shankar, Adv.

AND

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CS(OS) No.2565/2011, I.A. No.16524/2011,
I.A. No.19099/2011 & I.A. No.19100/2011

SANJIV JAIN

..... Plaintiff

Through Mr. Chetan Sharma, Sr. Adv. with
Mr. Gaurav & Mr. Anjani Kumar
Singh, Adv.

versus

ALL INDIA SWETAMBER STHANAKWASI JAIN
CONFERENCE & ORS

..... Defendants

Through Mr. C.S.Vaidyanathan, Sr. Adv. with
Mr. Harish V. Shankar, Adv. for
defendant No.2.
Mr. A. Mishra, Adv. for D-3.

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Mr. Anurag Jain, Adv. for D-4.
Ms. Anuradha Anand, Adv. for
defendants No.5 & 6.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The first suit bearing CS(OS) No.2209/2011 has been filed by 7 plaintiffs against two defendants, for declaration and mandatory injunction. Defendant No.1 is a Society registered under the Societies Registration Act on 26.03.1954. Defendant No.2 is the National President of defendant No.1-Society. The plaintiffs No.1 to 4 are the Life Members of the Society; plaintiff No.5 is the National General Secretary of the Society; plaintiff No.6 is the National Youth President, while plaintiff No.7 is the National Executive Member of the Society.

2. The case of the plaintiffs is that as per the Rules and Regulations enforced, the existing tenure of the National Executive Committee cannot exceed its normal tenure since the National Executive and the office of the National President are held by rotation so that representative from every zone has equal opportunity to preside over the Society. It is specifically stated in the plaint that the tenure of defendant No.2 came to an end by an efflux of time on 21.06.2011. The said defendant No.2 was elected as National President on 21.06.2009 and as per the bye-laws, the office of the National President is required to be held by rotation from members from each zone in the sequence of zones specified in the Regulations and Rules {Clause 12(b)}.

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3. The further contention of the plaintiffs in the plaint is that on 21.06.2011 defendant no.2 and other office bearers of the National Executive Committee including plaintiffs No.5 to 7 ceased to be office bearers thereof by efflux of time. No meeting was held by the National Executive Committee to extend the term of the office by a further period of six months or less. However, on 26.06.2011, defendant No.2 chaired the National Executive Committee meeting and he extended his tenure by a period of six months. After the said meeting, defendant No.2 was appointed Vice-President, National General Secretary and Senior Advisory which is contrary to the bye-laws.

4. It is also stated that on 23.06.2011 defendant No.2 passed an order terminating the plaintiff No.5 from the post of National General Secretary without any reason or show-cause notice. Similar communications were issued for terminating plaintiff No.6 from the post of National Youth President and plaintiff No.7 from the post of National Executive Member and also Manav Sewa Yojana, President of Rajasthan. The other allegations are also made by the plaintiffs against defendant No.2 in the plaint which are mentioned in paragraphs 29 to 34 thereof. The following prayers have been sought in the suit:-

“(a) Pass a decree of declaration that the proceedings of the National Executive Committee and the Managing Committee of the Defendant No.1 as presided by the Defendant No.2 is illegal and void and contrary to the Rules & Regulations of All India Shwetamber Sthanakwasi Jain Conference and consequently all actions taken by the said bodies are void and nonest;

(b) Pass a further decree of declaration holding that the communication dated 23.06.2011 terminating the

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appointments of Plaintiffs No.5 to 7 from the post of National General Secretary, National Youth President and National Executive Committee Manav Sewa Yojana, President of Rajasthan State is illegal, void and beyond the power of the Defendant No.2 and also contrary to the Principles of Natural Justice;

(c) Pass a further decree of declaration that the action of the Defendant No.2 in appointing himself as the Chairman of the Board of Trustees is illegal, null and void and contrary to the Rules and Regulations of the Defendant No.1-Society; and

(d) Pass a further decree of mandatory injunction directing that the Constitution of a Special Election Committee comprising of respected & independent persons from the Jain community preferably a Hon'ble Retired Judge of any High Court to direct the election body to undertake the exercise of electing the National President from eligible members from Zone 2 within a period of 90 days as provided under Regulations 12(5) (c) (i) (ii) (iii) thereof.

5. Subsequent to this suit, one another suit bearing CS(OS) No.2565/2011 was filed by Sanjiv Jain against 6 defendants, for declaration and mandatory injunction. The facts stated in the plaint are almost identical so as the prayer. It is pertinent to mention here that the factum of the earlier suit bearing CS(OS) No.2209/2011 filed by the 7 plaintiffs was not disclosed in the second suit filed by Sanjiv Jain. The learned Senior counsel appearing on behalf of the plaintiff Sanjiv Jain tried to justify the conduct of the said plaintiff, alleging that he was not aware about the same. However, after comparing of the plaints of the two suits, it appears that the said plaintiff was aware about the earlier suit, as para by para the second plaint is identical. This Court is, hence, of the view that the plaintiff Sanjiv

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Jain in CS(OS) No.2565/2011 ought to have disclosed the factum of the earlier suit.

6. Though no written statements were filed by the defendants in both the suits, however, in the first suit, the defendants have filed various applications, inter-alia, I.A. No.17797/2011 under Order XXXIX, Rules 1 & 2 CPC, and I.A. No.17798/2011 under Order VII, Rule 11 CPC for rejection of the plaint and directions. No replies to these applications were filed by the plaintiffs. Both the matters were taken up together from time to time, as the parties were trying to resolve the main issue involved.

7. The main contentions of the defendants in the applications are that the plaintiffs are guilty of suppression of material facts and both the suits are gross abuse of the process of the Court. Various other allegations have been made by the defendants against the plaintiffs in the first suit bearing CS(OS) No.2209/2011. It is stated that plaintiff No.5 in the above-mentioned suit has filed a *Vakalatnama* on behalf of defendant No.1 Organization, when admittedly as per the plaint, the plaintiffs No.5 to 7 were ceased to be the office bearers of the Organization, and as a matter of fact, one of the claims of plaintiff No.5 is to reinstate the said office bearers. Therefore, there is no justification on behalf of plaintiff No.5 to file the *Vakalatnama* on behalf of the Society.

8. It is also stated that the plaintiffs have been indulging in various acts, those are affecting the normal functioning of defendant No.1 Organization. Not only that, plaintiff No.5 is still using the letter-head of the General Secretary of the Organization for stopping the publication of the Society's magazine, namely the "Jain Prakash", and he misrepresented to the offices

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of the DCP (Licensing) and the RNI by using the letter-heads fraudulently. The plaintiffs are also misusing the interim orders passed by this Court in the matters in a different way which are denoted by the plaintiffs by playing a fraud upon the Court without disclosing the facts of earlier suit.

9. When the matters were taken up for further proceedings from time to time on 30.11.2011, 02.12.2011 & 07.12.2011, both the parties have made their submissions on merits for some time and at the same time, they have also given their proposals, in order to resolve the issue involved.

10. Mr. Vaidyanathan, learned Senior counsel appearing on behalf of the defendants has also referred the draft application filed under Order XXIII, Rule 3 CPC was drafted by the defendants for the purpose of recording the terms of the compromise between the parties. The learned counsel further submitted that the plaintiffs did not sign the said application, rather they have indulged in filing the false and frivolous suits which are not maintainable.

11. After discussion, as agreed by the parties, both the suits are disposed of, on the following terms and conditions:-

- (a) The defendants undertake to hold elections for defendant No.1-Society on 04.03.2012 as per the Rules and Regulations applicable to the Society.
- (b) The elections shall be held on the basis of the approved list of Members as 33072 as well as the 1613 Members whose application forms have been checked/scrutinized.

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- (c) The plaintiffs are free to participate in the elections. However, as far as the action already taken by the Society against plaintiffs No.5 to 7, the same will be considered on merits by the new Committee, as per the Rules and Regulations.
 - (d) Mr. Justice J.D. Kapoor (Retd.) (16, Park Street, near RML Hospital, New Delhi, Ph.23093695, 9871257474) is appointed as an Observer of the Special Election Committee who will undertake the elections to be held on 04.03.2012. His fee is fixed at Rs.1,00,000/- which shall be paid by defendant No.1.
 - (e) The plaintiffs will cooperate with the Special Election Committee as well as the Observer, and shall see that the elections are held in a trouble-free manner.
 - (f) The plaintiffs will withdraw all the proceedings and representations which have been filed/instituted against the defendants including the representation dated 01.10.2011 filed by plaintiff No.2 with the DCP (Licensing) against the publication of "Jain Prakash". Similarly, liberty as sought by plaintiffs No.5 to 7 in CS(OS) No.2209/2011 is granted to challenge the decision of the New Committee if passed against them.

12. Both the suits and pending applications stand disposed of, with no order as to costs.

DECEMBER 07, 2011/ka


MANMOHAN SINGH, J.