

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 921 of 2024

Appellant :- Ajay Pradhan and another

Respondent :- Committee of Management, State Bank of India Scheduled Caste and Tribes Employee Welfare Association and 3 others

Counsel for Appellant :- Nitin Kumar Agrawal

Counsel for Respondent :- C.S.C., Ranjeet Kumar, S.M.A. Abdy

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

Civil Misc. Exemption Application No. 01 of 2024

1. A defect has been pointed out by the stamp reporter that the certified copy of the order impugned in the appeal dated 09.12.2024 of the learned Single Judge has not been appended with the appeal.
2. An exemption application has been preferred seeking exemption with regard to filing of the certified copy of the order dated 09.12.2024 of the learned Single Judge.
3. The grounds taken in the exemption application regarding non-filing of the certified copy of the order dated 09.12.2024 are sufficient.
4. Accordingly, the exemption application is allowed.

Memo of Appeal

5. This intra court appeal is against the order dated 09.12.2024 of the learned Single Judge passed in **Writ-C No.24260 of 2023 (C/M State Bank of India Schedule Castes and Tribes Employees Welfare Association and another v. Registrar, Firms Societies and Chits and 3 others)** whereby the delay condonation application as well as the recall application preferred by the writ petitioner-respondents was allowed on 09.12.2024

recalling the order dated 03.10.2023 while dispensing with the condition keeping the Bank Account No.100863771658 on hold till the disposal of the writ petition restraining the parties to operate the said account.

6. Broadly, the facts as discernable from the pleadings set-forth by the writ petitioner-respondents are that the respondents-writ petitioner claims to be a Welfare Association of the Scheduled Castes and Tribes Employees of State Bank of India having its office in Kanpur Nagar. As per the respondents-writ petitioner, the members of SC/ST employees posted in different branches of different Districts, constitute the District Committee, which contains 10 office bearers. Thereafter, District Committee constitutes 6 Module Committees which contains 17 office bearers and all the Module Committees constitute one Circle Committee, which contains 30 office bearers including one female representative as per the by-laws. The term of the Committee of Management of the Welfare Association is three years. It is the case of the respondents-writ petitioner that the elections which were held on 17.11.2019, the term whereof expired on 03.12.2022. However, owing to complaints, the appellant No.1 who happened to be the Branch Manager of the State Bank of India, Nasirabad, Branch Raebareli had proceeded to put the bank account of the respondents-writ petitioner welfare association on hold. As per the respondents-writ petitioner, the Deputy Registrar, Firms Societies and Chits, Kanpur Nagar passed an order dated 22.06.2023 whereby without there being any dispute with regard to the elections in an *ex parte* manner proceeded to appoint Ajay Pratap Singh, (Appellant No. 2) who was Vice President of the Committee of Management of the Welfare Association requiring him to conduct elections of the Committee of Management of the Welfare Association within a period of three months.

7. Questioning the said action, the respondents-writ petitioner filed Writ-C No. 24260 of 2023 (C/M State Bank of India Schedule Castes and Tribes Employees Welfare Association and another v. Registrar, Firms Societies and Chits and 3 others) seeking following reliefs:

“I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 22.6.2023 passed by Deputy Registrar, Firms Societies and Chits, U.P., Lucknow.

II. Issue a writ, order or direction in the nature of Mandamus directing the S.B.I. Nasirabad Branch, Raibareilly to remove the hold form the Account Number (A/c No. 10863771658) of the Association of S.B.I. Branch Varanasi.

III. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case to meet the ends of justice.

IV. Award cost of the petition to the Petitioners.”

8. On the presentation of the writ petition on 03.08.2023, the following orders were passed:

“1. Supplementary affidavit filed today is taken on record.

2. It is contended by learned counsel for the petitioners that pursuant to the notification for holding elections for the period 2022-2025, issued on 10.08.2022, the petitioner No. 2 was duly elected as General Secretary of the petitioner No.1 Society and election certificate was duly issued on 24.12.2022 under the signature of the Competent Authorities.

3. The submission is that one Shri Ajay Pratap Singh, (respondent No. 4), who himself was elected as Vice President in the same elections, moved certain complaints apart from the other complaints moved by other persons and taking cognizance of the said complaint, specially the complaint moved by respondent No. 4, the Deputy Registrar has passed the order impugned dated 22.06.2023 directing the respondent No. 4 to hold elections and submit documents before the Deputy Registrar immediately thereafter.

4. It is contended that the only finding recorded against the petitioners is that during the course of hearing, petitioner No. 2 had not produced original documents/Minutes Book, Membership Register, Agenda Register, Cash Book, Ledger, etc., which raises doubt on the validity of the elections.

5. Learned counsel for the petitioners has referred to pleadings contained in paragraph No. 31 of the writ petition and submitted that on the date of hearing i.e. 27.02.2023, the petitioner No. 2 had appeared before the Deputy Registrar along with entire original record i.e. proceeding Register, Membership Register, Cash Book, ledger etc. and no hearing took place on the said date and the Deputy Registrar just stated that he would see the documents.

6. Learned counsel for the petitioners submits that the aforesaid original documents are in possession of petitioner No. 2 and the same can be produced even before this Court or in case this Court directs, the same may be produced before the Deputy Registrar also.

7. Matter requires consideration.

8. Issue notice to respondent Nos. 3 and 4, returnable within four weeks. Steps be taken within a week.

9. All the respondents are directed to file counter affidavit within six weeks from today.

10. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

11. List this case on 3rd of October, 2023 in top twenty cases.

12. Till the next date of listing, the effect and operation of the order impugned dated 22.06.2023 passed by respondent no. 2, Deputy Registrar, Firms, Societies and Chits, Kanpur Region Kanpur, shall remain stayed.”

9. On being noticed, the appellants filed their response and contended that the respondents-writ petitioner in the garb of the interim order dated 03.08.2023 as referred to above are perpetuating illegality while misappropriating the funds of the welfare association. The learned Single Judge accorded time to the respondents-writ petitioner to file its rejoinder affidavit and thereafter proceeded to pass the following orders on 03.10.2023:

“1. Learned counsel for the petitioners submits that counter affidavit has been served upon him on 12.09.2023 and seeks time to file rejoinder affidavit.

2. Shri Nitin Kumar Agarwal, learned counsel for the respondent Nos. 3 & 4 submits that the interim order granted by this Court on 03.08.2023 simply stays the effect and operation of the impugned order dated 22.06.2023 but under the garb of the interim order, the petitioners have succeeded to get the hold removed from the concerned Account No. 10863771658 held in the name of the petitioners-Association at S.B.I. Branch Varanasi. He further refers to interim and final prayers made in the present writ petition by which the petitioners have prayed for removal of the hold from the said bank account.

3. He submits that this Court neither granted interim relief nor final relief, insofar as the Bank Account is concerned, though the prayers were made in this regard, and therefore, it is apparent that interim order of this Court dated 03.08.2023 has been, prima facie, misused by the petitioners to that extent only.

4. He further submits that the hold was put pursuant to various serious complaints made against the petitioners and after this Court stayed the effect and operation of the impugned order dated 22.06.2023, and the hold has been removed by the bank after the interim order granted on 03.08.2023, the petitioners have succeeded to withdraw huge sums from the concerned bank account.

5. As prayed by learned counsel for the petitioners, three weeks and no more time is granted for filing rejoinder affidavit.

6. The interim order dated 03.08.2023 is extended till the next date of listing with a further direction that the State Bank of India Branch, Varanasi is directed to keep the bank Account No. 10863771658 on hold till disposal of the present writ petition. None of the parties to lis shall be allowed to operate the said account henceforth.

7. In case this order is communicated to the bank with little delay or otherwise, the bank will ensure that any transaction made from the concerned account on 03.10.2023 onwards shall be undone, and in case any amount is withdrawn from the said account on 03.10.2023 or thereafter before disposal of the writ

petition, the same shall be immediately recovered from the concerned withdrawer by adopting all means.

8. The parties are at liberty to file self-attested downloaded copy of this order before the Bank for necessary compliance.

9. List this case again on 16.11.2023 in top 20 cases.”

10. A correction application is stated to have been preferred being Civil Misc. Correction Application No. 07 of 2023 which came to be rejected on 11.10.2023, the order whereof is being quoted hereinunder:

“Order on Civil Misc. Correction Application No. 7 of 2023.

1. This application has been filed seeking correction in my order dated 03.10.2023 to the extent that date 03.10.2023 appearing in 'paragraph 7' of the order be corrected as 03.08.2023.

2. It appears that the applicant wants to give retrospective effect to the order dated 03.10.2023 by referring to interim order dated 03.08.2023 although the Court in the facts of the case has rightly passed the order by mentioning correct date.

3. The correction application is misconceived and is rejected.”

11. A Civil Misc. Delay Condonation Application No.10 of 2024 along-with a Civil Misc. Recall Application No.11 of 2024 came to be filed by the respondents-writ petitioner for recalling the order dated 03.10.2023 insofar as it is directed that the State Bank of India to keep the bank account No. 10863771658 on hold till the disposal of the writ petition and none of the parties to *lis* shall be allowed to operate the said account henceforth. The said recall application was opposed by the appellants while filing their objection. In the said recall application, the following orders were passed from time to time which are quoted hereinunder:

18.07.2024

“In Re:- Recall Application No.11 of 2024

1. After hearing the learned counsel for the parties at length on this recall application, the Court deems it necessary to peruse the concerned bank statements after the first interim order was passed by the Court on 03.08.2023 so as to appreciate the statement made by Sri Nitin Agrawal, which was noted in the order dated 03.10.2023 as regards withdrawal of the substantial amount from the concerned bank.

2. Sri Agrawal may also file reply to this recall application.

3. List this application again on 05.08.2024.”

05.08.2024

In Re:- Recall Application No.11 of 2024

1. Passed over on the illness slip of Shri Nitin Kumar Agrawal, learned counsel for the respondents.

2. In view of the previous order passed in the present case, list this application again on 12.08.2024 at 03:30 pm.”

06.09.2024

“In Re:- Recall Application No.11 of 2024

List this application again on 23.09.2024 at 3.30 PM.”

30.09.2024

“Counter affidavit filed by Sri Nitin Kumar Agrawal, learned counsel for the respondents against recall application is taken on record.

As prayed by learned counsel for the petitioners, two weeks' time is granted for filing rejoinder affidavit.

List this application on 21.10.2024 at 3 PM.

It is made clear that hearing of the application shall not be adjourned on any ground on that day.”

12. On 09.12.2024, the recall application along-with delay condonation application came up for consideration before the learned Single Judge and the learned Single Judge allowed the delay condonation application and the recall application while recalling the order dated 03.10.2023 insofar as it had directed to put on hold the bank account restraining the parties to list from operating the said bank account.

13. Questioning the order dated 09.12.2024 passed in Writ-C No.24260 of 2023, the present intra court appeal has been preferred by the appellants.

14. Shri Nitin Kumar Agrawal in support of the appeal has sought to argue that the order of the learned Single Judge impugned in the present appeal cannot be sustained for a single moment. Elaborating the said submission, it has been submitted that due to unavoidable circumstances beyond the control of the counsel for the appellants, he could not appear on 09.12.2024 when the order impugned came to be passed as he had sent

his adjournment slip and by way of abundant caution, he had also instructed his colleague, Sri Ramendra Ojha, advocate to request for passing over of the case. However, the learned Single Judge proceeded to decide the recall application in absence of the counsel for the appellants who had the instructions to argue the matter on account whereof the stand of the appellants who were the objectors to the recall application preferred by the respondents-writ petitioner remained unrepresented. Submission is that though previously on 30.09.2024, the date was fixed on 21.10.2024 at 3:00 PM post recess with a clear understanding that the matter would not be adjourned on any ground on the said date, however, the matter was not taken up on 21.10.2024 but the matter came to be listed on 09.12.2024, however, on account of certain unavoidable reasons, the counsel for the appellants was not able to present himself before the Court when the matter was heard. Thus, according to him, instead of deciding the case in absence of the representation of the counsel for the appellants, a date could have been fixed and on that date, opportunity ought to have been granted to the parties to advance their argument.

15. Additionally, it has been contended that once objections to the recall application had been filed by the appellants and which was available on record then while deciding the recall application, the objections set forth in reply to recall application ought to have been adverted to and considered, however, from the perusal of the order of the learned Single Judge impugned in the present appeal, none of the objections have been considered and the recall application has been allowed only on the basis of the stand taken by the respondents-writ petitioner. He, thus, submits that the order of the learned Single Judge be set aside and the recall application be directed to be heard and decided afresh.

16. Countering the submission of the learned counsel for the appellants, Shri S.M.A. Abdy along-with Shri Ranjeet Kumar have submitted that the order of the learned Single Judge needs no interference in the present

appeal. Submission is that the counsel for the appellants had been sending repeated illness slips from the time to time which occasioned passing of an order dated 30.09.2024 making it clear that the hearing of the appeal shall not be adjourned on any ground while fixing on 21.10.2024. However, the matter could not be taken up on 21.10.2024 but the understanding as contained in the order dated 30.09.2024 was already there but when the matter was listed on 09.12.2024, the counsel for the appellants avoided participation in the proceedings. Learned counsel for the respondents-writ petitioner also disputes the factum of filing of any adjournment slip by the counsel for the appellants. According to him, the adjournment slip is not available on record and further the fact that the adjournment slip was not filed by the counsel for the appellants stands fortified from the fact that the proxy counsel on behalf of the appellants had made request for getting the case passed over. Contention is that the dispute which has been sought to be raised entailing the passing of the order dated 22.06.2023 of the Deputy Registrar, Firms Societies and Chits, Kanpur Nagar is without any basis inasmuch as, it is not an election dispute but rather the dispute was of the membership. He thus submits that no directions could have been issued for holding of the elections and once the position being so, the bank accounts of the welfare association could not have been kept on hold creating a situation whereby the normal functioning of the welfare association is being kept in jeopardy.

17. We have heard the learned counsel for the parties and perused the record carefully.

18. The facts are not in issue. It is not in dispute that questioning the order dated 22.06.2023 passed by the Deputy Registrar, Firms Societies and Chits, Kanpur Nagar and also for a direction to remove the hold from the bank account No. 10863771658 of State Bank of India, a writ petition came to be preferred by the respondents-writ petitioner. An interim order was passed on 03.08.2023 staying the effect and operation of the order dated 22.06.2023 of the Deputy Registrar, Firms Societies and Chits,

Kanpur Nagar while issuing notices to the appellants. A response was filed by the appellants and while considering their objections to the continuance of the interim order dated 03.08.2023, the learned Single Judge on 03.10.2023 proceeded to pass an order to keep the Bank Account No.100863771658 on hold, further requiring none of the parties to the lis be allowed to operate the said bank account during the continuance of an interim order. A delay condonation application along-with a recall application came to be filed by the respondents-writ petitioner for recalling of the order dated 03.10.2023 insofar as it had put on hold the bank account and restrains the parties to operate the said account. As per the order-sheet of the writ petition, the recall application was heard on 18.07.2024 and the counsel for the appellants was required to file reply to the recall application and thereafter on 30.09.2024, an order came to be passed requiring the counsel for the respondents-writ petitioner to file its rejoinder affidavit fixing the date 21.10.2024 making it clear that the hearing of the application would not be adjourned on any ground on the said date. As per the counsel for the parties, the matter was not taken up on 21.10.2024. However, on 09.12.2024, the delay condonation application along-with recall application came to be allowed.

19. The only issue which falls for consideration is whether the learned Single Judge was justified in proceeding to decide the recall application on 09.12.2024 despite there was a request for adjournment. Though on one hand, the learned counsel for the appellants have come up with the stand that adjournment slip was filed on 09.12.2024 for adjourning the matter, however, the learned counsel for the respondents-writ petitioner disputes the said fact while contending that there was no adjournment slip filed but only the proxy counsel made a request for passing over of the case. Records reveal that previously on 05.08.2024 on the basis of the illness slip filed by the counsel for the appellants, the matter was adjourned to 12.08.2024 and thereafter there happens to be an order dated 30.09.2024 making it clear to the hearing of the recall application shall

not be adjourned on any ground on the next date fixed. The issue as to whether, the counsel for the appellants had filed the adjournment slip for seeking adjournment on 09.12.2024 or not is not required to be gone into the present proceedings for an additional reason that it is not in dispute and rather admitted to the parties that an objection came to be filed by the appellants to the recall application preferred by the respondents-writ petitioner which is available on record. The learned Single Judge though in absence of the arguing counsel for the appellants while declining the request for the pass over had proceeded to decide the recall application, however, we find that the objections of the appellants have not been adverted to. Once there happens to be the objections of the appellants to the recall application then they are required to be dealt with this way or that way even if the counsel for the appellants was not present.

20. On a pointed query being raised, whether the objections of the appellants had been adverted to and considered in the order dated 09.12.2024 impugned in the present appeal, Shri S.M.A. Abdy along-with Shri Ranjeet Kumar who appears for the respondents-writ petitioner could not point out anything except referring to the order dated 18.07.2024 depicting that the parties had been heard at length on the recall application. Notably, there is no reference to the order dated 18.07.2024 in the order dated 09.12.2024 impugned in the present appeal.

21. Since the objections raised by the appellants in its reply to the recall application has neither been adverted to nor considered, thus, we are of the firm opinion that the order of the learned Single Judge is not liable to be sustained. Accordingly, the appeal is **allowed**.

22. The order dated 09.12.2024 of the learned Single Judge passed in Civil Misc. Recall Application No. 11 of 2024 in Writ-C No.24260 of 2023 (C/M State Bank of India Schedule Castes and Tribes Employees Welfare Association and another v. Registrar, Firms Societies and Chits and 3 others) is set aside.

23. The Civil Misc. Recall Application No.11 of 2024 along-with Civil Misc. Delay Condonation Application No.10 of 2024 be placed before the learned Single Judge to be decided afresh.

24. The contentions and pleas are left open for the parties to be raised before the learned Single Judge.

Order Date :- 3.1.2025

A. Prajapati

(Vikas Budhwar, J.) (Arun Bhansali, C.J.)