

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

+ CM(M) 89/2015

% Decided on: 2nd February, 2015

DELHI CINE GOERS COUNCIL (REGISTERED) Petitioner
Through Mr. Tarique Siddiqui with Ms.
Rakushan Ahmed and Mr. Shriram
Chauhan, Advs.

versus

RAMESH DAWER Respondent
Through None.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 1781/2015 (Exemption)

Allowed, subject to all just exceptions.

CM(M) 89/2015 & CM 1780/2015 (STAY)

1. The present petition impugns the order dated 24th November, 2014 passed by learned Additional District Judge dismissing the appeal of the petitioner herein against the order dated 19th May, 2014 whereby the application under Order 39 Rule 1 and 2 CPC was dismissed by the learned Civil Judge.

2. In the plaint it is stated that the petitioner/plaintiff is the registered society with its office at 3160/34, First Floor, Beedonpura, Karol Bagh, New Delhi. On an election being held on 1st June, 2013, a new body was elected.

The respondent, who is a retired employee of United Bank of India was looking after the functioning of the petitioner society as its general secretary prior to the elections held on 1st June, 2013. According to the petitioner/plaintiff, the respondent/defendant got forged two demand drafts dated 3rd June, 2013 and 4th June, 2013 for Rs.1,35,000/- and 4,25,765.19p in the name of “Cine Goers Council” which is not concerned with the petitioner/plaintiff. It is alleged that the respondent was misguiding the public and illegally collecting funds by inviting new members.

3. In the written statement the defendant/respondent stated that he is the Secretary General of “Delhi Cine Goers Council” having its office at 3197, Lal Darwaja, Sita Ram Bazar, Delhi-110006 which has been functioning for the last 44 years in Delhi. The plaintiff and defendant’s societies are two separate and distinct societies one unregistered and formed in 1969 and the other registered in 2013. It is the case of the respondent/defendant that the petitioner society has been created mischievously and illegally with the ulterior motives of usurping the funds of the defendant’s society and to illegally take advantage and credit of all the good work and goodwill earned by the defendant society. The defendant has placed on record material showing the establishment of Delhi Cine Goers Council in 1969, their founder members as mentioned in magazine “Smarika” published in the year 1999 and events organized by them. The defendant has already written a letter to the office of SDM on 24th July, 2013 requesting for de-registering/cancellation of Delhi Cine Goers Council whereafter the plaintiff society gave a show cause notice to the respondent/defendant. The defendant has no concern with the plaintiff society or its elections.

4. In view of these averments, the learned Civil Judge noted that the stand of the plaintiff was that there was only one society in the name of 'Delhi Cine Goers Council' which was got registered in the year 2013 and the defendant was its earlier general secretary, however the defendant has placed on record documents to show that the 'Cine Goers Council' run by the defendant had been running since 1969 with its office at 3197, Lal Darwaja, Sita Ram Bazar, Delhi-110006 and not at 3160/34 Beedonpura. Thus, the learned Civil Judge held that the defendant's contention that the President and certain other members of the unregistered society formed the plaintiff society which had no concern with the defendant's society seems to be prima facie corroborated from the plaintiff's/petitioner's own memorandum of association and the documents placed by the respondent/defendant. In view of the documents placed on record, balance of convenience lies with the defendant, who has been running the unregistered society for the past many years, thus no injunction was granted in favour of the plaintiff.

5. In the appeal vide the impugned judgment, the learned Additional District Judge also reiterated the same findings and held that the learned Trial Court rightly reflected in the order that the plaintiff /petitioner herein has no prima facie case in its favour.

6. The only ground urged before this Court is that the respondent having admitted in the written statement that he had never done any social work in the name of "Delhi Cine Goers Council (Regd.)" thus injunction should have been granted. As noted above, both the learned Trial Court and the Appellate Court have considered the rival contentions and in view of the fact

that the defendant/respondent has been able to prima facie show that he has been running a society though unregistered since the year 1969 and some members of that unregistered society have now formed the Delhi Goers Council registered in 2013, neither there is any prima facie case in favour of the plaintiff nor balance of convenience lies in its favour.

7. An order on an application under Order 39 Rule 1 and 2 CPC is a discretionary remedy and granted only if the plaintiff is able to show that he has made out a prima facie case in his favour, balance of convenience also lies in his favour and he would suffer irreparable loss if no injunction is granted. The plaintiff having failed in all these aspects, it cannot be held that the impugned orders suffer from any illegality.

8. Consequently, the petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

February 02, 2015
‘v mittal’