

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.1955 OF 2016

ORDER:

The petitioner being unsuccessful before the IX Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.1559 of 2015 in O.P.No.2489 of 2015 preferred this revision under Article 227 of the Constitution of India challenging the order dated 4th February, 2016 dismissing the petition filed under Section 23 of the A.P. Societies Registration Act (for short 'the Act') read with Order XXXIX Rules 1 and 2 of C.P.C. and declined to grant interim injunction restraining the 2nd respondent from discharging, acting, officiating etc. as Honorary Secretary of the 1st respondent during the tenure 2015 - 2017 as per the result declared on 11.10.2015.

2. The revision petitioner filed a petition under Section 23 of the Act challenging the election of the 2nd respondent as Honorary Secretary of the 1st respondent on various grounds as the election of the 2nd respondent is affecting the affairs of the society and sought to set aside the election of the 2nd respondent while requesting to declare the petitioner as elected for the office of Honorary Secretary of the 1st respondent society.

3. The petitioner is a member of the 1st respondent, which is a registered society under the Act vide Registration No.1779 of 1981 with Registrar of Societies, Hyderabad. Originally, the

1st respondent was registered as the Hyderabad Industrialist Gymkhana and subsequently in the year 1988, the name was changed to The Hyderabad Gymkhana. The 1st respondent was established for non commercial, non profit, mutually benefits of society to provide social, sporting, recreational and other facilities for the benefit of the members, their families and guests, which is not open to non members. The 1st respondent society consists of voting members and non-voting members. The voting members are founders and permanent members and life members with limited strength. Non voting members are honorary members, long term temporary members, short term temporary members, ex-officio members, senior citizen members, lady members/lady life members, associate members, dependant members and corporate/institutional members with limited strength.

4. The Board of the 1st respondent consists of a Chairman, the Immediate Past Chairman, a Vice-Chairman, an Honorary Secretary and seven other Directors. According to the bye-laws, no member, either permanent or founder or life shall be entitled to seek election as a Chairman, Vice Chairman, Honorary Secretary or Director of the Board, if he has held same office in the Board for two successive periods prior to the election. No office bearer can hold two posts at a time. The Election Board can hold the office for a period of two years from the date of assuming charge. To elect the new board for the period 2015 – 2017, an election notice was issued on

14.09.2015 fixing the election schedule, which is inclusive of receiving nominations, scrutiny and declaration of valid nominations withdrawal of nominations date, time of election, time for declaration of election etc.

5. In pursuance of the election notification for a period of 2015 – 2017, the petitioner filed his nomination for the post of Honorary Secretary along with others. The Chairman of the Board had also filed his nomination for the same office for the post of Honorary Secretary for the same period. Then the petitioner made a representation on 29.09.2015 to the election officer contending that the 2nd respondent was Chairman of the 1st respondent society for two terms for the period of 2011 – 2013 and 2013 – 2015 and by virtue of the bye-laws of the 1st respondent society, he automatically assumes the position on the next Board as an Immediate Past Chairman. The Election Officer of the 1st respondent society ignoring the objection raised by the petitioner, had scrutinized the nominations and declared the valid nominations/contestants list on 29.09.2015, the 2nd respondent shall continue to hold the office only as an Immediate Past Chairman and allowing him to contest the elections to the Board in any position is ultra vires, per se illegal and ipso facto null and void.

6. On representations, dated 29.09.2015, 01.10.2015 and 10.10.2015 of the petitioner lodged his protest with the Election Officer appointed by the 1st respondent ventilating his

grievance, but of no avail as the Election Officer proceeded to conduct the elections basing on the untenable, misconceived and unfounded opinions of counsel said to have been obtained on 10.10.2015 and without considering the objection raised in the representation.

7. The petitioner was in second position out of three candidates declared as elected as per the votes polled and again he lodged a complaint with the District Registrar of Societies on 14.10.2015 annexing the objections and other correspondence between Election Officer and the petitioner himself since the election of the 2nd respondent as Honorary Secretary is invalid. But no purpose was served. Therefore, the petitioner approached IX Additional Chief Judge, City Civil Court, Hyderabad under Section 23 of the Act and filed I.A.No.1559 of 2015 in O.S.No.2489 of 2015 seeking an interim order to restrain the 2nd respondent from discharging, acting, officiating etc. as honorary secretary functioning, who hampers the spirit and violates the bye-laws framed for the welfare activities of the 1st respondent and would lead to unnecessary complications.

8. The 2nd respondent filed counter denying material allegations, admitting registration of the 1st respondent as society officially as 'Hyderabad Industrialist Gymkhana' and later the name was changed as 'the Hyderabad Gymkhana', which is a non-commercial, non-profit, mutual benefit society

with various objections referred supra. They also admitted the issue of election while filing of nominations etc. While denying the allegations that existing Chairman in the next board is only as an immediate past Chairman, which is mandatory in nature and not optional or nominated, and that same was made with the sole intent that there would be a bar to the outgoing Chairman to contest any other post in the immediate ensuing elections and that the 2nd respondent shall continue to hold office only as an immediate past Chairman and allowing him to contest the election to the Board in particular is ultra vires per se illegal and ipso facto, null and void. It is specifically contended that as per Clause XIII(e) of the bye-law of the 1st respondent, bar for contesting election is that 'no member either permanent or founder shall be entitled to seek elections as a Chairman, Vice Chairman, Honorary Secretary or Director of the Board, if he has held same office in the Board for two successive periods prior to election, which means a member who holds a post either Chairman, Vice Chairman, Honorary Secretary or Director for two successive periods of election shall not contest for the same post, but there is no bar in bye-laws of the 1st respondent that a Chairman shall not contest for any other post. Therefore, he is competent to contest for the office of Honorary Secretary and the allegation made in the affidavit to the contra is denied. The respondent resigned to his post of immediate post of Chairman to the newly elected board and the same was

accepted vide resolution, dated 21.12.2015, and continuing as Honorary Secretary. As per bye-law 13(j), the 1st respondent is co-opted to fill up vacancy that would arise due to his resignation and he was elected democratically as per bye-laws. Therefore, he cannot be restrained in discharging his duties as Honorary Secretary and prayed for dismissal of the petition.

9. During enquiry, Exs.P.1 to P.13 were marked on behalf of the petitioner and Exs.R1 to R5 were marked on behalf of the respondents.

10. Upon hearing argument of both counsel, lower Court dismissed the petition declining to grant interim injunction on the ground that the respondent was democratically elected as Honorary Secretary and that the petitioner failed to establish the three requisites for grant of temporary injunction viz., *prima facie* case, balance of convenience and irreparable injury.

11. The main contention of the petitioner during hearing is that the petition filed under Section 23 of the Act is maintainable as the provisions of the Code of Civil Procedure have application. The trial Court did not consider the three requirements for grant of temporary injunction. However, those three requirements are applicable only to pass order under Order XXXIX Rules 1 and 2 and not under Section 23 of the Act. Therefore, the order of the trial Court is erroneous. He further contended that the language used in the bye-laws

i.e. 'shall' indicates that it is mandatory and it cannot be read as 'may' and placed reliance on several judgments in support of his contention. He drawn the attention of this Court to the bye-laws of the society to contend that he has got *prima facie* case to succeed in the main petition and balance of convenience is in his favour and he will be put to irreparable injury, if no injunction is granted. While pointing out the several reasons while answering the point before it against the petitioner and prayed to grant interim injunction as claimed.

12. Whereas, Sri B.Nalin Kumar, learned counsel for the respondents would contend that the petition is silent as to the requirement for grant of interim injunction and failed to establish all the three requirements, which are *sine qua non* for grant of interim injunction. In such a case, the order of the lower Court cannot be found fault and no interference is required by this Court while exercising power under Article 227 of the Constitution of India since the jurisdiction is limited which is supervisory in nature and prayed for dismissal of the revision petition.

13. Based on rival contentions and perusing the material available on record the point that arises for consideration is as follows:

Whether the petitioner is required to establish prima facie case, balance of convenience and irreparable injury in a petition filed under Section 23 of the Act to obtain an interim order of injunction restraining the 2nd respondent from discharging his duties as Honorary Secretary?

IN Re POINT:

14. Undisputedly, the main petition was filed questioning the election of the 2nd respondent, while seeking declaration that he is elected as Honorary Secretary on a ground that the 2nd respondent is incompetent to contest for the post of Honorary Secretary being the Past Chairman for two terms. Therefore, the Court entertained an application under Section 23 of the Act and he admitted that the provisions of CPC have no application to the petitions filed under Section 23 of the Act while contending that in the absence of applicability of provisions of C.P.C, the lower Court can exercise power under Section 23 of the Act and pass temporary or interim orders. He also placed reliance of the judgment of a Division Bench of this Court in **T.Tirumala Reddy, SE, APSEB, Cuddapah and another v APSEB and others**¹. The Division Bench of this Court while deciding the similar application held that:

“the provisions of CPC including Order 39 Rule 1 CPC cannot be made ipso facto applicable to the proceedings before the said Court under the special Act merely because the Court which has seisin of the matter is the Principal Civil Court of the District. This is not to say that the Act, though skeletal in nature, precludes any application for interim relief including an injunction being sought by the aggrieved party if it relates to a matter concerning the management or dissolution of the society. It is well settled that the Court or a Tribunal which has jurisdiction to try or enquire into a matter, has all incidental and ancillary powers so as to effectuate the substantive powers conferred on the Court or Tribunal. The power to enquire into and dispose of the application filed under Section 11 of the Act carries with it, in our view, the incidental or ancillary power to grant an interim order to prevent miscarriage of justice. Such power is; in our view, an adjunct to the power of adjudication conferred on the

¹ 1998 (4) ALD 372(DB)

Court under Section 11 of the Act. That being the legal, position, we cannot view the interlocutory application filed by the respondent as an application under Order XXXIX Rule 1 CPC though a wrong provision was cited, In reality and in substance, it must be deemed to be an application filed under Section 11 of the Act itself and the Court is empowered to pass appropriate orders thereon in exercise of its incidental power as clarified above. When once it is held that the application is not traceable to Order XXXIX Rule 1 CPC and the order passed thereon is not really an order felling under Order XXXIX, Rule 1 CPC. Order XLIII Rule 1 CPC cannot be invoked for preferring an appeal. We, therefore, uphold the preliminary objection and dismiss the Civil Miscellaneous Appeal as not maintainable.

15. A Division Bench of this Court while deciding a similar question in **P.Veera Swamy and others v Gandham Chandra Sekhar Rao and others**² held that grant of an interim relief by the District Court in exercise of incidental and ancillary power implicit in statutory scheme and power of the District Court to grant interlocutory relief not traceable to Order XXXIX Rule 1 CPC and no appeal is therefore, lies against Order XXXIX Rule 1 CPC.

16. In view of the above decision, though provisions of CPC are not applicable and no bye-law allows under Order XLIII CPC, against such order, therefore, he invoked the jurisdiction of the lower Court under Section 23 of the Act, which permits the Courts to pass an interim order by exercising power implicit in the statutory scheme itself. Therefore, the objections regarding maintainability of a petition under Section 23 of the Act cannot be upheld in view of the law declared by this Court.

² 2013(5) ALD 76

17. The major contention of the respondent is that the jurisdiction of this Court under Article 227 of the Constitution is limited and this Court can exercise power under Article 227 of the Constitution only for limited purpose to keep the subordinate Courts and Tribunals within the jurisdictional limits of this Court, within its bounds and the findings recorded by the trial Court based on facts, cannot be interfered. No doubt, the powers of this Court are supervisory in nature under Article 227 of the Constitution and the powers have to be exercised sparingly and not in routine manner. While invoking the provisions of power under Article 227 of the Constitution, the High Court would exercise such power most sparingly and only in appropriate cases for the purpose of keeping the subordinate Courts and Tribunals within the bounds of their authority and it cannot intervene in the judicial functions of the lower judiciary. The independence of the subordinate Courts in discharge of their judicial functions is of paramount importance just as the independence of the superior courts in discharge of their judicial functions. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and therefore, it is no less important that their independence should be protected effectively to the satisfaction of the litigants. The independence of the judiciary has been considered as a part of basic structure of constitution absolute not only in the form of executive, but also in the form of other

source of power as held by the Apex Court in **Basavaraj R Patil & Ors. Vs. State of Karnataka**³ following the judgment in **Trimbak Gangadhar Telang and another. vs Ramchandra Ganesh Bhide and others**⁴. Thus, the powers under Article 227 of the Constitution has to be invoked only for limited circumstances and such exercise of power is unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal, but it must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes as held in **D. N. Banerji vs P. R. Mukherjee And Others**⁵ and **Koyilerian Janaki v. Rent Controller (Munsiff)**⁶.

18. In view of the law declared by various Courts, this Court can exercise jurisdiction under Article 227 of the Constitution of India to set aside or ignore the findings of fact of an inferior court or tribunal, if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion, which the court or tribunal, who has come or in other words it is a finding, which was perverse in law. Except to the limited extent indicated above, the High Court has no jurisdiction to interfere with the findings of fact

³ (2006) 8 SCC 294

⁴ 1977 (2) SCC 437

⁵ 1953 SC 302

⁶ (2000) 9 SCC 406

as held in **Mani Nariman Daruwala vs Phiroz N. Bhatena and others**⁷.

19. The case where the High Court can interfere while exercising power under Article 227 of the Constitution are enumerated hereunder:

- a) Erroneous assumption or exercise of jurisdiction.
- b) Refusal to exercise jurisdiction.
- c) Error of law occurring on the face of the record, but not in concurrent finding of the fact as extinguished from a mere mistake of law or error of law relating to jurisdiction.
- d) Violation of principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse was based on own material.
- g) A patent error in procedure.
- h) Based on no material or resulting in manifest injustice.
- i) Error both on facts and under law or even otherwise.

20. The questions enumerated above are not exhaustive, to interfere with the orders of sub-ordinate Court by exercising power under Article 227 of the Constitution. The list of instances are elliptic. However, it is clear from the law declared by the Apex Court, that the power under Article 227 is purely discretionary and such power can be exercised only in extra-ordinary circumstances, which are enumerated in the list above.

⁷ AIR 1991 SC 1494

21. In the recent judgment in **State through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshar Guru and others**⁸ the Apex Court discussed about the scope of jurisdiction under Article 227 of the Constitution of India and the latest earlier judgment of the Apex Court in **Hari Vishnu Kamath vs Syed Ahmad Ishaque And Others**⁹ laid down certain guidelines regarding jurisdiction to exercise power under Article 227 and also in view of the settled principles referred in the judgment of Apex Court in **Surya Dev Rai v. Ram Chander Rai**¹⁰ this Court has got limited jurisdiction to interfere with the orders of the inferior Court in extra-ordinary circumstances and such power has to be exercised sparingly.

22. In the present facts of the case, the lower Court recorded a finding that the petitioner failed to establish the three requirements for grant of interim injunction. Though the petition has filed under Section 23 of the Act claiming interim injunction in the absence of any other provisions in the Act, the parameters applicable for grant of temporary injunction under Order XXXIX Rules 1 and 2 CPC can be applied to this petition. The lower Court declined to grant interim injunction on the ground that the petitioner has neither pleaded nor established the three requirements for grant of temporary

⁸ 2003(2) RCR (Criminal)

⁹ 1955(1) SCR 1104

¹⁰ (2003) 6 SCC 675

injunction, they are *prima facie case*, balance of convenience and irreparable injury.

23. The only contentions before this Court urged by the learned counsel for the petitioner is that since the election of the 2nd respondent is against the bye-laws, there is every likelihood of succeeding in the main petition, thereby he made out a *prima facie* case to succeed in the main petition and that he would sustain irreparable injury, if the 2nd respondent is allowed to continue as a Honorary Secretary having deprived of, from enjoying the pleasure of discharging duties as Honorary Secretary by the petitioner and that the balance of convenience is also in his favour.

24. For grant of temporary injunction under Order XXXIX Rules 1 and 2 of CPC and by applying the same principle to the petitioner for grant of interim or temporary injunction under Section 23 of the Act, the petitioner is required to approach the Court within a reasonable time and seek appropriate relief by establishing the three requisites for grant of temporary injunction and when the petitioner approached the Court with unclean hands, no temporary injunction can be granted.

25. As seen from the allegations made from the petition, the election notification was issued on 14.09.2015 and the election result was declared on 11.10.2015 and filed an application in the year 2015 itself questioning the election under Section 23

of the Act and filed I.A.No.1559 of 2015 for temporary injunction. The tenure of the office would expire in the month of October, 2017 approximately. Almost half of the tenure of the office of Honorary Secretary was over as on today and the 2nd respondent discharging his functions as Honorary Secretary for the last one year.

26. The petitioner contended that the bye-laws disqualify the 2nd respondent to contest the office of Honorary Secretary. But at this stage of deciding interlocutory application, this Court cannot record any specific finding as to the validity of the election of the 2nd respondent as Honorary Secretary in view of the law declared by the Apex Court in **Mohd Mehtab Khan & others vs Khushnuma Ibrahim Khan & others**¹¹ where the Apex Court held that given the ground realities of the situation it is neither feasible nor practical to take the view that interim matters, even though they may be inextricably connected with the merits of the main suit, should always be answered by maintaining a strict neutrality, namely, by a refusal to adjudicate. Such a stance by the courts is neither feasible nor practicable. Courts, therefore, will have to venture to decide interim matters on consideration of issues that are best left for adjudication in the full trial of the suit. In view of the inherent risk in performing such an exercise which is bound to become delicate in most cases the principles that the courts must follow in this regard are required to be stated in some detail

¹¹ 2013 (3) ALD SC 34

though it must be made clear that such principles cannot be entrapped within any straitjacket formula or any precise laid down norms. Courts must endeavour to find out if interim relief can be granted on consideration of issues other than those involved in the main suit and also whether partial interim relief would satisfy the ends of justice till final disposal of the matter. The consequences of grant of injunction on the defendant if the plaintiff is to lose the suit along with the consequences on the plaintiff where injunction is refused but eventually the suit is decreed has to be carefully weighed and balanced by the Court in every given case. Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. Though experience has shown that observations and clarifications to the effect that the findings recorded are prima facie and tentative, meant or intended only for deciding the interim entitlement of the parties have not worked well and interim findings on issues concerning the main suit has had a telling effect in the process of final adjudication it is here that strict exercise of judicial discipline will be of considerable help and assistance. The power of self-correction and comprehension of the orders of superior forums in the proper perspective will go a long way in resolving the dangers inherent in deciding an interim matter on issues that may have a close connection with those arising in the main suit. Thus, in view of the law declared by the Apex Court, I am unable to express any opinion as to the validity of the election of the 2nd

respondent in violation of bye-laws, but for limited purpose on deciding the *prima facie* case, bye-laws are adverted to.

27. In view of my foregoing discussion, it is obligatory on the part of the petitioner, not only prove *Prima facie* case, but also prove other two requirements, they are balance of convenience and irreparable injury. Though, it is a petition under Section 23 of the Act and the relief claimed therein akin to or partakes, the character of interim injunction under Order XXXIX Rules 1 and 2 CPC in the petition, the petitioner did not either directly or indirectly state that he has got *Prima facie* case and balance of convenience is also in his favour and that he would sustain irreparable injury, in case no injunction is granted is *sine quo non*. The lower Court based on the material on record concluded that the petitioner failed to prove all the three requirements.

28. The word *prima facie* case was not defined anywhere either in CPC or in any other enactment. In **Srimad Sudhindra Thirtha Swamiji vs Raghavendra Thirtha Swami**¹² the apex Court while deciding the petition under Order XXXIX Rule 1 CPC discussed about the grant of temporary injunction during pendency of the suit held that in order to obtain an order of temporary injunction the party, who seeks for grant of injunction has to prove that he has made out *prima facie* case to go for trial, the balance of convenience is

¹² AIR 2010 SC 296

also in his favour and he will be put to irreparable loss or injury, if injunction is not granted. Therefore, it is the duty of the petitioner to prove that he has got *prima facie* case to go for trial and sustain irreparable loss in case no injunction is granted besides proof of tilting balance of convenience towards him. If for any reason, the petitioner failed to prove any one of the requirements, the petitioner is not entitled to claim temporary injunction.

29. This Court while interpreting the word *prima facie* case in **Yashoda Super Speciality Hospitals, Partnership firm represented by its Partner G.Devendar Rao v Yashoda Medicare and Research Centre (P) Ltd, A company registered under Companies Act, 1956, having its Director and another**¹³, it was held that *prima facie* case means a strong case to go for trial and there should be a bonafide contention between the parties or a serious question to be tried, there should be a fair or arguable or debatable case. In **United Commercial Bank v Bank of India**¹⁴ laid down the same principle. Thus, in view of the law declared by the apex Court and this Court *prima facie* case means fair case to go for trial or a bonafide contention between the parties or a serious question to be tried or it should be a arguable case.

30. In the present case, learned counsel for the petitioner placing reliance on bye-law No. XIII(a)(a) to (e) contended that

¹³ 2010(6) ALT 466

¹⁴ AIR 1981 SC 1426

there is an arguable bonafide contention between the parties to go for trial. Clause (e) is a relevant clause, which reads as follows:

‘ no member, either permanent or founder shall be entitled to seek elections as a Chairman, Vice Chairman, Honorary Secretary or Director of the Board, if he has held same Office in the Board for two successive periods prior to the election.’

31. Thus, clause (e) interdicted the Chairman, Vice Chairman, Honorary Secretary or Director of the Board to contest the election for the same post. Thus, the petitioner has made out a *prima facie* case with bonafide contention to go for trial or an arguable case. The other two requirements for grant of temporary injunction are balance of convenience and irreparable injury.

32. The word balance of convenience is not defined anywhere, but inconvenience is whether the acts of the 2nd respondent would cause greater inconvenience to him if the injunction is not granted than the inconvenience, which the opposite party or the persons claiming through the Opposite Party would be put to if temporary injunction is granted. The governing principle is whether the party seeking injunction could be adequately compensated by awarding damages and the defendant would be in a financial position to pay them same is also a relevant consideration on the question of the balance of convenience and the threatened mischief or injury irreparable or otherwise, regard must be had to the nature of the suit and the particular right asserted like suits. In the

present case, the petitioner though contended that balance of convenience is in his favour and sustain irreparable injury if no injunction is granted, failed to establish as to how inconvenience is being caused to the petitioner. In case, no injunction is granted is greater than inconvenience caused to the elected member i.e. the 2nd respondent and similarly, the injury being sustained is irreparable or not, was not explained anywhere and failed to satisfy the comparative mischief or inconvenience, which is legal right to suffer if no injunction is granted or not established in **R.M.Subbaiah v N.Sankaran Nair**¹⁵

33. Any one of the requirements, which is *sine qua non* for grant of temporary injunction are not established, the Court cannot pass an order of temporary or interim injunction. Here, the petitioner though proved a *prima facie* case, failed to establish the other two requirements for grant of temporary injunction. Therefore, the lower Court rightly declined to grant temporary injunction restraining the 2nd respondent from discharging his duties as Honorary Secretary of the 1st respondent for the tenure of 2015-17 from the date of assuming charge, the order of the lower Court does not call for any interference by exercising power under Article 227 of the Constitution, in view of the limited scope and circumstance where this Court can exercise said power.

¹⁵ A 1979 M 56

34. The main petition was filed challenging the election of the 2nd respondent as Honorary Secretary invoking jurisdiction of the Court under Section 23 of the Act. Thus, the main issue is regarding the challenge to the election of the 2nd respondent as Honorary Secretary on account of the alleged disqualification as per bye-laws. Thus, the 2nd respondent was admittedly an elected Honorary Secretary of the 1st respondent and discharging his functions for the last one year and when an election petition is filed challenging the election of the 2nd respondent no interim injunction can be granted from discharging duties as elected Honorary Secretary.

35. In **A.P.Arya Vysya mahasabha, Nizamabad District v Mutyapu Sudershan and others**¹⁶ this Court held that when once election process is started, it cannot be stopped by obtaining prohibitory order of injunction and that too without availing remedy available under bye-laws. But here the injunction was not sought for to stop the election process, but to restrain the 2nd respondent to discharge his duties. As long as the election of the 2nd respondent is not declared as void, he is entitled to discharge his duties as Honorary Secretary and till the election of the 2nd respondent is set aside, this Court cannot restrain him from discharging his duties as Honorary Secretary of the 1st respondent. On the other hand, the petitioner is not going to suffer irreparable injury in case no injunction is granted, but the 2nd respondent, who was

¹⁶ 2015(5) ALD 1

successful in the election and discharging his duties for the last more than a year will be put to much inconvenience in case any interim injunction is granted during pendency of the petition against him and the inconvenience being caused to the respondent is grater than the inconvenience being caused to the petitioner. Therefore, I find no balance of convenience in favour of the petitioner and he would not be put to irreparable injury in case interim injunction is not granted in his favour. Therefore, the petitioner is disentitled to claim the temporary injunction during pendency of the main petition filed under Section 23 of the Act to set aside the election of the 2nd respondent.

36. In view of my foregoing discussion, I find no grounds to interfere with the order passed by the lower Court while exercising power under Article 227 of the Constitution of India, which is supervisory in nature. Hence, the revision petition is liable to be dismissed.

37. Accordingly, the revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions if any, pending in this revision shall stands closed.

M.SATYANARAYANA MURTHY,J

Dated: 27.10.2016
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