

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 977/2015 & C.M. No.23788/2015
SAROJ BHARTIA Petitioner
Through Mr.Jai Mohan, Advocate.

versus

SANCHARIKA & ANR Respondents
Through Mr.Mukesh M.Goel, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **10.02.2016**

Order impugned before this Court is the order dated 27.8.2015 which had challenged the order passed by the Civil Judge on 07.3.2015. This was on an interim application in the suit which was filed by the plaintiff seeking relief of declaration, permanent and mandatory injunction.

Record discloses that the present suit has been filed by Renu Gupta under the name of the Society Sancharika. Her contention was that the plaintiff Sancharika is a society registered under the Societies Registration Act. Pursuant to an election which was conducted by the Society on 29.5.2014 Renu Gupta was declared as elected president and the suit has been filed by her. The prayer made in the suit is that the governing body of the plaintiff society be declared as the original governing body and all the actions of the defendants (who had set up a case that they had become the valid electees in the subsequent election held) be declared null and void. On the interim application which was

filed along with the plaint, the Trial Judge vide its order dated 07.3.2015 had passed an order holding that Renu Gupta is not the duly elected president of the society as the election was not according to the bye-laws of the society and the prayer made in the aforementioned application was accordingly declined. Against this order an appeal was filed before the higher Authority i.e. the Court of the Additional District Judge who had passed the subsequent impugned order i.e. the order dated 27.8.2015. The Appellate Court was of the view that unless and until evidence is led the question as to whether Renu Gupta is the duly elected president of the plaintiff society or not could not be a finding returned by the Trial Judge and that part of the order of the Trial Judge was accordingly set aside. While disposing the appeal, a direction for preservation of the money lying in the bank account of the plaintiff society which had been passed by the Trial Judge was ordered to be maintained; at the same time, the Appellate Court had also given liberty to both, the plaintiff (Renu Gupta) and defendant no.1 to move an appropriate application before the Trial Court specifying the amount/funds required and the purpose for which the said funds are required as both of them had contended that they had the right to spend the money of the Society. The Appellate Court had thereafter directed the Trial Court to pass appropriate orders in case any application is filed by anyone such party.

Defendant no.1 (in the Trial Court) is aggrieved by this order. His contention is that Renu Gupta is not a legally elected president of the society and as such no such directions could have been given qua Renu Gupta permitting her to file an application to release the funds.

Needless to state that these arguments have been refuted.

This Court finds no error in the impugned order. It is a mere liberty which the impugned order had given to the parties to file an appropriate application seeking release of funds. The Appellate Court has rightly stated that the Trial Court may in its wisdom thereafter pass appropriate orders as and when such an application is filed. The applications are yet to be filed before the Trial court and are yet to be decided. The question as to whether Renu Gupta was the duly elected president of the Society or not is a triable issue. The impugned order has returned a positive finding that unless trial is held and evidence carried out this issue cannot be decided. Order dated 07.3.2015 was thus rightly set aside by the Appellate Court.

Impugned order in this background calls for no interference. Petition is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 10, 2016

ndn