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

+ **FAO 272/2017**

**SANJAY GIRDHAR**

..... Appellant

Through: Mr.Rakesh Munjal, Sr.Adv.,  
Mr.Saurabh Gupta and Mr. Abhay  
Raj Verma, Advs.

versus

**DR RAMNIWAS GUPTA & ORS**

..... Respondents

Through: Mr.S.C.Singhal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**O R D E R**

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**20.06.2017**

**C.M.No.22403/2017**

Allowed, subject to all just exceptions.

The application stands disposed of.

**FAO 272/2017**

Issue notice, returnable on 23<sup>rd</sup> August, 2017.

**C.M.No.22402/2017 (Stay)**

1. The appellant, by this application, seeks an exparte ad-interim injunction (i) staying operation of notice dated 29<sup>th</sup> May, 2017 issued by Shri Shirdi Sai Prachar Samiti (hereinafter referred to as “ the Samiti”), calling for holding of Annual General Meeting (AGM) of the Samiti on 18<sup>th</sup> June, 2017, (ii) restraining respondents from holding the said AGM on 18<sup>th</sup> June, 2017 and (iii) staying the impugned order dated 6<sup>th</sup> June, 2017 passed

by the Additional District Judge (“ADJ”).

2. As this Court had reserved orders on the present application, it was directed that, pending pronouncement thereof, the AGM be not held.

3. The present order disposes of the present application and the prayer for stay, urged by the appellant herein.

4. Before proceeding to deal with the present application, it is necessary to note a preliminary objection raised by Sh.S.C.Singhal, learned counsel appearing for the respondent, to the effect that the present appeal is not maintainable as it is directed against an order passed by the ADJ in an application moved by the appellant under Section 151 of the Code of Civil Procedure, 1908 (“the CPC”). Sh. S.C.Singhal would urge that no appeal lies, under the CPC, against an order passed under Section 151 thereof, and that the remedy of the appellant would, if at all, be by way of a writ petition under Article 227 of the Constitution of India.

5. Though it is true that the impugned order of the ADJ purports to be in an application under Section 151 CPC (wrongly referred to as Order 151”) of the CPC, it clearly states that the prayer in the application is for interim injunction, seeking stay of the notice dated 29<sup>th</sup> May, 2017 and the convening of the AGM on 18<sup>th</sup> June, 2017 consequent thereto. As such the prayers in the application are relatable to the Order 39 of the CPC. A reading of the order also reveals that the ADJ has rejected the prayer for temporary injunction on the ground that the three conditions are required to be fulfilled therefor i.e. prima facie case, balance of convenience and irreparable loss, are absent in the present case.

6. In view of the above, as the impugned order rejects the prayer of the application for ad-interim injunction against the holding of the AGM on 18<sup>th</sup>

June, 2017 pursuant to notice dated 29<sup>th</sup> May, 2017, the present appeal is prima facie maintainable. The mere omission, on the part of the appellant, to cite Order 39 in his application for ad-interim injunction filed before the ADJ, would not render the present appeal incompetent.

7. In so far as the merits of the prayer of the application before this Court for grant of stay, is concerned, it is not necessary to advert, in detail, to all facts of the case. Suffice it to state that, admittedly, by order dated 4<sup>th</sup> May, 2017 (annexed as Annexure A-19 to the present appeal), the appellant was expelled from life membership of the Samiti and consequent thereupon, from the post of General Secretary. It is emphatically asserted by Sh. Rakesh Munjal, learned senior counsel for the appellant that the said communication dated 4<sup>th</sup> May, 2017 was without jurisdiction, as the Rules and Regulations of the Samiti stipulated that the general body thereof, by more than 2/3<sup>rd</sup> majority of its members present and voting, could remove any member of the governing body, prior to which the concerned person would have a right to be heard. Sh. Munjal also draw my attention to para 3 in the written arguments/submissions filed by the appellant before the ADJ, which urges that the order dated 4<sup>th</sup> May, 2017 (supra), having been passed without hearing the appellant and in contravention of the rules and regulations of the Samiti, was ex facie illegal. He seeks to support this argument by reference to the notice dated 29<sup>th</sup> May, 2017 (supra), calling for holding of AGM on 18<sup>th</sup> June, 2017, and points out the fact that serial number 7 of the items on the agenda for the said meeting related to removal of the appellant from the post of General Secretary of the Samiti. This, in Sh. Munjal's submission, clearly indicates that the removal of the appellant from the post of General Secretary of the Samiti would become final only on its being ratified in the

meeting which was to take place on 18<sup>th</sup> June, 2017.

8. Without entering into the merits of the arguments advanced by Sh. Munjal, it is clear that the said submissions basically challenge the correctness of the impugned order of the ADJ and would, therefore, be appropriately available to be urged and considered when the present appeal is being heard. The order dated 4<sup>th</sup> May, 2017 bears the signatures of the President, Vice Present, Joint Secretary and Treasurer of the Samiti. There is no gainsaying that the said order, in terms, expels the appellant from life membership, and from the post of General Secretary, of the Samiti. Whether it was open to the said four members of the Samiti to do so, and whether the said decision was violative of the Rules and Regulations of the Samiti, have to be decided at the stage when the present appeal is heard. It is not possible for this Court, at an interlocutory stage, to restore the status quo ante, and grant ad-interim injunction as prayed for by the appellant.

9. That apart, it has to be remembered that the present appeal is itself directed against an order refusing to grant injunction against the communication dated 4<sup>th</sup> May, 2017 and the proposed AGM to be held on 18<sup>th</sup> June, 2017. Allowing the prayers in the present appeal would, therefore, amount to grant of ad-interim injunction against the communication dated 4<sup>th</sup> May, 2017 and holding of AGM on 18<sup>th</sup> June, 2017. The appellant's suit is still pending before the ADJ. Effectively, therefore, grant of the prayers urged in the present application would amount to allowing the appeal itself, which is not possible at an interlocutory stage.

10. For the above reasons, prayers for ad-interim injunction, contained in the present application, are rejected.

11. Needless to state, the consequence of such direction would be that the

Samiti would be at liberty to convene the AGM, which was earlier fixed for 18<sup>th</sup> June, 2017, at any appropriate date and time.

12. The application is disposed of accordingly.

**C. HARI SHANKAR**  
**(VACATION JUDGE)**

**JUNE 20, 2017**

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