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

+ **CM(M) 709/2017**

SANJAY GIRDHAR

..... Petitioner

Through: Mr. Puneet Yadav and Mr. Sourabh
Gupta, Advs.

versus

DR RAMNIWAS GUPTA & ORS

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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14.07.2017

Caveat Petition No.632/2017.

1. The counsel for the caveators/respondents has appeared.
2. The Caveat stands discharged.

CM.No.24439/2017(for exemption)

3. Allowed subject to just exceptions.
4. The application is disposed of.

CM(M) 709/2017.

5. This petition under Article 227 of the Constitution of India impugns the order (dated 5th July, 2017 of Additional District Judge-03: Dwarka Courts, Delhi in CS No.501/2017 filed by the petitioner / plaintiff) of dismissal of an application filed by the petitioner/plaintiff under Order XXVI Rule 9 r/w Section 151 of the CPC seeking appointment of a Local Commissioner for convening the Annual General Meeting (AGM) of the respondent No.5 Shri Shirdi Sai Prachar Samiti (Regd.), New Delhi.
6. The counsel for the petitioner/plaintiff and the counsel for the respondents/defendants have been heard.

7. The petitioner/plaintiff has instituted the suit from which this petition arises impugning inter alia his removal as General Secretary and as life member of the respondent No.5 Shri Shirdi Sai Prachar Samiti (Regd.), New Delhi and seeking various reliefs in that respect.

8. The suit was accompanied with an application for interim stay of removal of the petitioner/plaintiff as General Secretary but the same has not been granted as yet.

9. Thereafter another application for interim relief, of restraining the respondent No.5 from holding its AGM scheduled for 18th June, 2017 was filed.

10. The said interim relief also was denied by the learned Additional District Judge.

11. Against the denial of the said interim relief, FAO 272/2017 was preferred to this Court and vide order dated 14th June, 2017 of the Vacation Judge of this Court, the respondents/defendants were restrained from holding the AGM scheduled for 18th June, 2017. However vide subsequent order dated 20th June, 2017, the said order was vacated with liberty to the respondent No.5 Shri Shirdi Sai Prachar Samiti (Regd.), New Delhi to convene AGM which had earlier been fixed for 18th June, 2017. However FAO No. 272/2017 is still pending and listed next before this Court on 23rd August, 2017.

12. After the order dated 20th June, 2017, respondent No.5 Shri Shirdi Sai Prachar Samiti (Regd.), New Delhi scheduled the AGM for 16th July, 2017.

13. The petitioner/plaintiff thereafter filed the aforesaid application before the Additional District Judge for appointment of Local Commissioner as for

convening the AGM.

14. The learned Additional District Judge has dismissed the said application holding that the apprehension of the plaintiff/petitioner of the AGM scheduled on 16th July, 2017 being not conducted in accordance with the constitution of respondent No.5 Shri Shirdi Sai Prachar Samiti (Regd.), New Delhi is baseless and the petitioner/plaintiff cannot presume that the AGM will be conducted without the consent of all the members of the respondent No.5 Shri Shirdi Sai Prachar Samiti (Regd.), New Delhi and without voting.

15. The counsel for the petitioner/plaintiff has informed that the petitioner/plaintiff preferred SLP(C) No. 17303/2017 against the order dated 20th June, 2017 of this Court in FAO No 272/2017 supra and the Supreme Court on 12th July, 2017 passed the following order:

“UPON hearing the counsel the Court made the following

O R D E R

Heard the learned Senior Counsel appearing for the petitioner.

Having regard to the facts of the case, Civil Suit No. 501 of 2017 pending before the Learned Additional District Judge, Dwarka District Court, New Delhi will be decided finally within a period of six months from today.

Meanwhile, whatever decision is taken qua the petitioner in the AGM to be held will abide by the result of what is decided by the learned Additional District Judge.

The Special Leave Petition is disposed of.

Pending application also stands disposed of.”

16. The counsel for the petitioner/plaintiff has urged that the AGM is inter alia to remove the petitioner from the post of General Secretary and the petitioner's apprehension is that no voting of the members of the respondent No.5 Shri Shirdi Sai Prachar Samiti (Regd.), New Delhi on the said agenda

item shall be held. Attention is drawn to the Clause 2(ii) (d) of the Rules and Regulations of respondent No. 5 Shri Shirdi Sai Prachar Samiti (Regd.) which inter alia provides that the general body of the respondent No.5 Shri Shirdi Sai Prachar Samiti (Regd.), New Delhi by more than two-third majority of members present and voting in its meeting can remove any office bearer of the Governing Body and that the concerned person will have a right to be heard before the General Body takes the final decision in the matter.

17. The counsel for the petitioner thus seeks appointment of a Court Commissioner to ensure that the voting is held on the agenda item for the AGM for removing of the petitioner from the post of General Secretary and that the petitioner gets an opportunity for hearing.

18. The counsel for the respondents/defendants has contended that in the application, against the dismissal of which this petition has been preferred, no basis for such apprehension has been disclosed.

19. I have enquired from the counsel for the petitioner/plaintiff that since the petitioner/plaintiff was before the Supreme Court on 12th July, 2017 i.e. after the impugned order dated 5th July, 2017, why did petitioner/plaintiff not seek the said relief from the Supreme Court.

20. The counsel for the petitioner/plaintiff states that the said relief was not sought owing to the same having not been sought in the Special Leave Petition which was filed.

21. A perusal of the order aforesaid of the Supreme Court shows that the Supreme Court has chosen not to interfere in the internal affairs and in the management of affairs of the respondent No.5 Shri Shirdi Sai Prachar Samiti

(Regd.), a Society registered under the Societies Registration Act, 1860 in accordance with the well settled principles in this regard and has not interfered with the holding of the AGM on 16th July, 2017.

22. The petitioner/plaintiff even if had not taken the said ground in the Special Leave Petition, was always entitled to seek the same from the Supreme Court in exercise of its powers under Article 142 of the Constitution of India and the Supreme Court was not bound by the technical rules of pleadings in this regard.

23. Not only so, Supreme Court, in the order dated 12th July, 2017 has ordered that the decision to be taken in the AGM, is to abide by the decision in the suit. The petitioner/plaintiff will thus have opportunity in this regard in the suit. If the petitioner is aggrieved by the proceedings of the AGM, it will always be open to the petitioner to take his remedies thereagainst.

24. It is also felt that granting of any order as is now sought would interfere with the AGM scheduled and which has already been stayed once due to interference of this court on an earlier occasion.

25. Merit is also found in the contention of the counsel for the respondents/defendants of the sole intention of the petitioner being not to allow the AGM to be held. This is evident from the petitioner/plaintiff in the application, against the order of dismissal whereof this petition is filed, seeking the relief of appointment of a Local Commissioner “to convene the AGM”.

26. No ground for interference is thus made out.

Dismissed.

Dasti under the signature of the Court Master.

RAJIV SAHAI ENDLAW, J

JULY 14, 2017
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