

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

266

CR No.5039 of 2019

Date of Decision: 03.09.2019

**DARSHAN VIHAR WELFARE MAINTENANCE SOCIETY
(REGD.) AND ANR**

.....Petitioners

Versus

COL.BALBIR SINGH AND ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Amit Jhanji, Advocate
for the petitioners.

Mr.Akshay Bhan, Sr.Advocate with
Mr.Santosh Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

Notice of motion was issued on 22.8.2019 after
noticing some incriminating facts on record.

Vide order dated 24.7.2019, Additional Civil Judge
(Sr.Divn.), Mohali took cognizance on three facts i.e. (a) the
election be conducted by AWH, New Delhi within a period of one
month, (b) the election be conducted as per the rule of the
society and (c) the election be conducted as per list submitted
by the plaintiff. The statement of defendant No.1 Balbir Singh

was recorded and the case was adjourned to 4.9.2019.

Against the aforesaid order, defendant No.1 filed review application under Order 47 Rule 1 CPC. Para No.7 of the review application reads as under:-

"That it is mentioned in the order by this Hon'ble Court that statement has been suffered by Defendant No.1 Balbir Singh that he has no objection if the election for the society be conducted by AWH New Delhi within a period of one month as per the rule of the society and as per the list submitted by the plaintiff". It is respectfully prayed that Balbir Singh' Defendant No.1 agreed for conducting the elections but did not agree as per list submitted by the plaintiff. He is agreed for conducting the election as per the list submitted by Col. Balbir Singh Defendant No.1. It is also pertinent to mention here that the plaintiff had objected only with regard to 7 members of the list submitted by defendant No.1 Balbir Singh. It is eligible for casting their vote because they are also members of the society- and owner of the flats of Darshan Vihar Society. It is also mentioned in the rules and regulations and bye laws that whoever is the owner of the flat is entitled for casting their votes. For kind perusal of this Court a complete list submitted by defendant No.1 Colonel Balbir Singh, proof of 7 members ownership of flats and list submitted by plaintiff, and order dated 24.07.2019 are attached again for kind perusal of this Hon'ble Court."

The aforesaid application is still pending before the trial Court and has not been decided so far. In the meanwhile, petitioners also filed an application under Section 151 CPC seeking directions to the defendants to give details of the amount collected from the members with reference to the date on which the same was received. Trial Court passed the impugned order on the aforesaid application on 9.8.2019.

At the time of issuance of notice of motion, following order was passed on 22.8.2019:-

“Learned counsel for the petitioners contends that on 24.07.2019, defendant No.1 Col. Balbir Singh suffered a statement before the Additional Civil Judge (Senior Division), Mohali that the election of the Society be conducted by Association, AWHO, New Delhi within one month as per rule of the Society and as per list submitted by the petitioners. Thereafter, election schedule was fixed on 01.08.2019 and the election is scheduled to be held on 25.08.2019 as per bye-laws of the Society.

Feeling aggrieved against the order dated 24.07.2019, a review application was filed by the defendants on 29.07.2019 but the said application has not been decided till date. The impugned order has been passed on the application under Section 151 CPC filed by the plaintiff-petitioners for directing the defendant to give the details of amount collected by different members with reference to the date on which the same was received. The trial Court has

mis-directed itself by reviewing the order dated 24.07.2019 without any rhyme and reason, particularly when the application under Order 47 Rule 1 CPC is still pending before the trial Court.

Notice of motion for 02.09.2019.

Dasti as well.

In view of aforesaid facts, it would be just and appropriate to direct holding of the election as per total strength of members, but the result be not declared till further orders of this Court. The aforesaid exercise shall be without prejudice to the right of the petitioners to claim that the election has to be held as per order dated 24.07.2019, if the same is not lawfully reviewed.”

After hearing learned counsel for the parties, it appears from the record that while passing the impugned order, contents of application under Order 47 Rule 1 CPC have been taken notice of. Both the parties are *ad idem* that there is some ambiguity in the impugned order and the impugned order be set aside and be remanded to the trial Court to revisit the issue in the application under Section 151 CPC filed by the plaintiff and also to decide pending application for review within ten days from the date of receipt of certified copy of this order or soon thereafter. In any case, both the applications are required to be decided before holding of elections on 29.9.2019. It would be appreciated that if the decision in both the applications is given one week prior to holding of elections so as to enable both the

parties to avail their legal remedies in accordance with law (if at all required).

Petition stands disposed of accordingly.

September 03, 2019
anita

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No