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

% *Date of Order: 10.01.2019*

+ **F.A.O. No.581/2018**

INDIAN RADIOLOGICAL IMAGING ASSOCIATION &
ANR Appellants

Through: Mr.Rakesh Tikku, Sr. Advocate
with Mr.Mohit Gupta,
Advocate.

versus

LALENDRA UPRETI & ORS Respondents

Through: Mr.Meet Malhotra, Sr.
Advocate with Ms.Jaya Goyal,
Manpreet Kaur and
Ms.Bhagyashree Shukla,
Advocates for R1.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

C.M. No.54961/2018 (for exemption)

1. Allowed, subject to all just exceptions.

FAO 581/2018 & C.M. No.54960/2018 (for stay)

2. The impugned order dated 22.12.2018 passed by the court of learned Additional District Judge -01, South District, New Delhi ('ADJ') in CS No.1145/16 (*sic.* 1145/18) titled as *Lalendra Upreti Vs. Indian Radiological and Imaging Association and Ors.* by which injunction was granted in favour of the respondent no.1/plaintiff against the appellants/defendant no.1 and 4 under Order 39 Rule 1 and

2 read with Section 151 Code of Civil Procedure, 1908 (CPC), is the subject matter of challenge in this appeal.

3. The respondent no.1 has filed a civil suit for declaration, permanent and mandatory injunction against the appellant and respondent no.2, 3 and 5 to 9 on 18.12.2018 along with an application for grant of injunction under Order XXXIX Rules 1 and 2 read with Section 151 CPC. The learned ADJ on filing of the said civil suit and application, issued notice to the appellants and the respondent no. 2, 3 and 5 to 9 for 22.12.2018. On 22.12.2018 without giving an opportunity to the appellants and respondent no. 2, 3 and 5 to 9 to file their respective written statement and reply to the application for grant of injunction, finally disposed of the application under Order XXXIX Rule 1 and 2 CPC in favour of the respondent no.1. By impugned order, the learned ADJ not only restrained the appellants and respondent no. 2, 3 and 5 to 9 from re-polling of e-votes during the pendency of the suit but also issued a mandate to immediately declare the results of the election of Chairman and Office Bearers of the appellant-society.

4. The order passed by the learned ADJ, on the face of it, is illegal as the appellants have never been given opportunity to file the written statement under Order VIII Rule 1 CPC or at least reply to the application for grant of injunction. The learned ADJ did not grant an ex-parte injunction on 18.12.2018 and chose to issue notice of the suit and the application to the appellants and respondent no. 2, 3 and 5 to 9 for 22.12.2018. Issuance of notice is not a mere cosmetic formality. Before disposing of the application under Order XXXIX Rule 1 and 2

CPC finally, he should have given an opportunity to the appellants and respondent no. 2, 3 and 5 to 9 to file their respective written statement or at least the reply to the application under Order XXXIX Rule 1 and 2 CPC. The learned senior counsel for the appellants states that the appellants need only one week's time to file written statement and reply to the application under Order XXXIX Rule 1 and 2 CPC. In the circumstances, the order dated 22.12.2018 passed by the learned ADJ needs to be set aside with the following directions that:-

- i) the appellants/defendant no.1 and 4 shall file their written statement and reply to the application under Order XXXIX Rule 1 and 2 CPC positively on or before 18.01.2019;
- ii) the rejoinder thereto, if any, shall be filed by the respondent no.1 on 21.01.2019;
- iii) the arguments shall be heard on the application under Order XXXIX Rule 1 and 2 CPC by the learned ADJ on 22.01.2019; and
- iv) the said application shall be disposed of within a week after hearing the arguments by the learned ADJ without being influenced by the impugned order dated 22.12.2018.

5. With the above directions, the appeal along with application, being C.M. No.54960/2018, is disposed of accordingly.

(VINOD GOEL)
JUDGE

JANUARY 10, 2019
"shailendra"