

23.12.2021
Item No. 05
Crt.No.11
b.r.

FAT 203 of 2021
with
IA No. CAN 1 of 2021

Sri Supratim Chakraborty
-vs-
Sadharan Brahmo Samaj & Ors.

(Via video conference)

Mr. Jaharlal Roy
Mr. Saptarshi Kumar Kundu
..... For the appellant.

Mr. Sayan Sinha
Mr. Suman Mukherjee
..... For the respondents.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

The plaintiff is the appellant before this Court.

The plaintiff was appointed as the Secretary of the Vote Counting Sub-Committee of the Society in issue, namely, the Sadharan Bramho Samaj (hereinafter referred to as the Society only). The Society is registered under the West Bengal Societies Registration Act, 1961 and is governed by its Memorandum of Association, Rules and Bye-Laws.

The appellant/plaintiff arrived before the Learned Trial Court with Title Suit No. 582 of 2021 with a prayer for declaration and permanent injunction connected to election of office bearers to the Society and counting ballot papers in connection thereto. The appellant

submits that as Chairman of the Vote Counting Sub Committee, he authorised deferment of the elections considering the severe Covid pandemic.

The appellant further submits that instead of acting on the advice to defer the elections and counting of ballot papers at the material point of time, i.e. April, 2021, the Defendant Nos. 2 and 3 to the suit, who are the Respondent Nos. 2 and 3 in this appeal, superseded the powers of the appellant, broke open the ballot box, counted the votes and declared the result of the so-called election.

It is submitted that the Defendant No.2 declared himself to be the Secretary of the Society after the elections were forcibly held on the instruction of the President of the Society. It is alleged that both the Defendant No.2/the Secretary and the Defendant No.3/the President no longer enjoyed powers to act as such and therefore as erstwhile Secretary and President of the Society, could not issue any direction contrary to the instruction of the plaintiff/the appellant as the Secretary of the Vote Counting Sub Committee to defer the elections.

Per contra, on behalf of the defendants/the respondents to this appeal, it is submitted that the action of the appellant/the plaintiff is *de hors* Sections 4 to 8 of the West Bengal Societies Registration Act, 1961 and also

against the Memorandum of Association, Rules and Bye-Laws of the Society. It is submitted that there is no provision in the Memorandum of Association, Rules and Bye-Laws for deferment of elections and hence the action of the appellant/the plaintiff purporting to be in the name of the Secretary of the Vote Counting Sub Committee was *ex facie* in violation of the Rules and Bye Laws. It is reiterated by the respondents that the Learned Trial Court therefore correctly decided the application of the defendants under Order 7 Rule 11 of the Civil Procedure Code (CPC) for rejection of the plaint.

Having heard the parties and considering the materials placed, from the four corners of the plaint it cannot be gathered by this Court that the appellant/the plaintiff lacked any cause of action. It is a different issue as to whether the appellant as plaintiff succeeds or fails in the suit, but to dismiss such cause of action asserted in the capacity of Secretary, Vote Counting Sub-Committee relating to the election itself as *baseless*, has resulted in irretrievable prejudice to the plaintiff.

Furthermore, this Court, from a reading of the application under Order 7 Rule 11 of the CPC (*supra*), is given to understand that the challenge thrown to the plaint by the defendants is based on the lack of conformity of the actions of the plaintiff with Sections 4 to 8 of the West Bengal Societies Registration Act, 1961.

A bare perusal of Sections 4 to 8, while providing for the manner in which registered societies are to be constituted and must function, however cannot be read in an unilateral fashion to govern a plaint which alleges action by office bearers of the Society allegedly not in conformity with the Society' Memorandum of Association, Rules and Bye-Laws.

For the foregoing reasons, this Court finds the rejection of the plaint to be contextually inappropriate.

Accordingly, the Order impugned is not sustainable. The order dated 14th of September, 2021 passed in Title Suit No. 582 of 2021 stands thus set aside.

The Learned Trial Court shall consider the Order 7 Rule 11 application afresh in accordance with law. It is made clear that this order only reflects the mind of this Court *apropo* the Order impugned dated 14th September, 2021 without assuming any persuasive role on the mind of the Learned Trial Court to decide the Order 7 Rule 11 application afresh on merits.

FAT 203 of 2021 and its connected application, being **CAN 1 of 2021**, stand accordingly **disposed of**.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)