

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

% **Date of Decision: July 22, 2021**

+ **CM (M) 468/2021**

SUNIL KUMAR VAIDPetitioner

Through: Mr. Achin Mittal, Advocate

Versus

GENERAL MOHYAL SABHA (REGD.) & ORS.Respondents

Through: Mr.Devadutta Kamat, Senior Advocate with Mr. Hardhik Luthra, Advocate for Respondent No.1.

Mr. Archit Krishna, Advocate for Mr.Jawahar Raja, ASC(C), GNCTD for Respondent No.2

Mr. Rakesh Kumar Khanna, Senior Advocate with Mr. Sudhir Naagar, Advocate for Respondents No.3 to 5

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

[VIA VIDEO CONFERENCING]

ASHA MENON, J. (Oral)

CM APPL. 21657/2021 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM (M) 468/2021, CM APPL. 21658/2021 (Exemption from filing the complete record of Trial Court)

1. This petition has been filed by the plaintiff before the learned Trial

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Signature Not Verified

Signed By: MANJREET KAUR

Signing Date: 24.07.2021
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Court being aggrieved by the order dated 15th July, 2021 passed in CS No. 773/2020.

2. Mr. Achin Mittal, learned counsel for the petitioner has argued that the learned Trial Court has fixed the case for hearing on 26th July, 2021 despite having moved an early hearing application, ignoring the plea of the petitioner/plaintiff that the ballot papers could be distributed on that day. The learned counsel has relied on the report submitted by an earlier Election Observer on 16th September, 2015 (Annexure P-21), where an observation had been made that the ballot papers were not properly issued by the then Election Committee and the same situation is likely to prevail now. The learned counsel submitted that this is the reason why an application had been moved seeking appointment of an Election Observer, but the learned Trial Court did not look into the matter in the right perspective. Hence it was prayed that the order dated 15th July, 2021 be set aside and this Court appoint a Court Observer to supervise, monitor and conduct the elections of the Respondent No.1/Society.

3. Mr. Devadutta Kamat, learned Senior Counsel for the respondent No.1/Society has submitted that this was the third occasion when the petitioner/plaintiff has come before this court with the same prayer i.e., for appointment of a Court Observer to conduct the elections. The first order was dated 3rd March, 2021 (Annexure P-6) when the petitioner/plaintiff sought leave to withdraw the writ petition. The second one is dated 23rd March, 2021 (Annexure P-12) when once again the petitioner/plaintiff sought leave to withdraw the petition. Again, despite the fact that the application for appointment of an Observer is to be heard

by the learned Trial Court, the petitioner/plaintiff has come before this court. The learned Senior Counsel has also pointed out that vide the impugned order, the learned Trial Court had also fixed for consideration an application moved under Order VII Rule 11 CPC for rejection of the plaint, moved by the respondent No.1, who is the defendant No.1 before the learned Trial Court. The learned Senior Counsel urged that the present petition be dismissed with heavy costs.

4. Mr. Rakesh Kumar Khanna, learned Senior Counsel for the respondents No.3 to 5, who are the members of the Election Committee, as also for the Election Committee, has submitted that the petitioner/plaintiff had initially filed the suit without impleading the Election Committee. Subsequently, the petitioner/plaintiff moved an application under Order I Rule 10 CPC for impleading the Committee, which was allowed vide the impugned order dated 15th July, 2021. They have yet to reply to the suit as also to the application for appointment of Election Observer by the court. The learned Senior Counsel pointed out that the present Election Committee did not have any of the old members and therefore, previous observations were irrelevant. Moreover, the members of the Election Committee, namely, Rzd. K.K. Bali (respondent No. 3), Dr. Subhash Dutta (respondent No. 4) and Brig. Arun Bali (Retd) (respondent No. 5) are highly respectable persons, who were retired from important positions in the Army and Academics. Learned Senior Counsel also prayed that the petition be dismissed.

5. Having heard learned counsel and having perused the petition, this Court finds absolutely no merit in the same. An application for early

hearing had been moved by the petitioner/plaintiff before the learned Trial Court, who, in view of the various submissions made, allowed that application and preponed the date of hearing from 31st July, 2021 to 26th July, 2021. The learned Trial Court also moved expeditiously to allow the application moved by the petitioner/plaintiff under Order I Rule 10 CPC for impleading the Election Committee of the Society, which would only facilitate the passing of an appropriate order on the application for appointment of Observer.

6. Vide the impugned order, this very application for appointment of an Election Observer has been fixed on 26th July, 2021. Despite this, the petitioner/plaintiff has chosen to move this Court with exactly the same prayer. Obviously, this appears to be nothing short of “forum shopping”. The approach of the petitioner/plaintiff in repeatedly moving this Court and withdrawing the petitions with permission to move similar applications before the learned Trial Court, reflects the conduct of the petitioner in very poor light.

7. The petition is accordingly dismissed along with the pending application, with costs of Rs.5,000/- (Rupees Five Thousand only) to be deposited by the petitioner/plaintiff in the Lawyers’ Welfare Fund, Tis Hazari Courts, Delhi.

8. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

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