

07.09.2022
SL No.34
Court No.8
(gc)

FMA 1346 of 2015
CAN 1 of 2015 (Old No: CAN 10924 of 2015)

Amar Nath Shaw & Ors.
Vs.
Binod Kumar Singh & Ors.

The appellants are not represented nor any accommodation is prayed for on their behalf.

The appeal is arising out of an order passed in an application under Order 40 Rule 1 read with Section 151 of the Code of Civil Procedure. The application was filed in connection with the administration of the defendant No.3/society. The plaintiffs alleged gross mismanagement in the functioning of the society. The plaintiffs also alleged that the defendants are acting in a flagrant violation of the Rules and By-laws and there are allegations of misappropriation of funds. The learned Trial Judge in considering the affidavits exchanged by and between the parties, prima facie, held that the allegations are unfounded. The allegation with regard to the termination of the membership was also found to be unsubstantiated. It further transpires that one of the plaintiffs lost his membership in the year 2002 in the meeting of the Committee of the Society held in presence of the plaintiffs Nos.1 and 2. Normally, the learned Trial Judge proceeded on the basis that ordinarily the Court shall not appoint a Receiver as by reason of such appointment, the function of the Society could be disrupted unless there are manifest irregularities and illegalities in conducting the

affairs of the society. The suit was also, prima facie, found to be not for the interest of the society as the issue urged was primarily personal and not in the representative capacity.

On such consideration, the learned Trial Judge has quite elaborately discussed the issues and on the basis of the materials on record refused to exercise discretion in favour of the plaintiffs. We agree with the finding of the learned Trial Judge that it is not a fit case for appointment of Receiver on the basis of the materials on record.

On such consideration, we do not find any reason to interfere with the order of the Trial Court.

The appeal and the application, accordingly, stand dismissed.

However, there shall be no order as to costs.

In the event the suit is pending, we request the learned Judge, 8th Bench, City Civil Court at Calcutta to dispose of T.S. No.437 of 2010 as expeditiously as possible preferably within a period of one year from the date of communication of this order without granting any unnecessary adjournment to either of the parties.

The Registrar Administration (L&OM) is directed to communicate this order to the learned Judge, 8th Bench, City Civil Court at Calcutta for information and doing the needful within one week from date.

(Uday Kumar, J.)

(Soumen Sen, J.)