

S/L 2
15.9.2022
Court No.652
SD

CO 1481 of 2021
With
CAN 1 of 2022

Dr. Nanigopal Ray
Vs.
Mrs. Dhruba Gupta & Ors.

Mr. Srijib Chakraborty
Mr. Aditya Mondal

...for the Petitioner.

Mr. Uday Narayan Betal
Mr. S. Chatterjee

...for the Opposite Parties.

CAN 1 of 2022:-

The petitioner has prayed for passing an order allowing the petition mentioned persons to be added as proforma respondents in the present application, which is formal in nature as petitioner have not sought for any relief against them in this proceeding.

The prayer is innocuous and it is allowed.

CAN 1 of 2022 is disposed of.

Department is directed to incorporate the necessary changes in the cause title of the revisional application.

C.O.1481 of 2021:-

Being aggrieved and dissatisfied with the order dated 03.10.2020 and all orders thereafter passed in proceedings in connection with Miscellaneous Appeal No.6 of 2020 now pending before the learned Civil Judge (Senior Division) at Arambagh, the present revisional application has been preferred.

The petitioner has contended that the flat owners of Punnya Brajo Dham, Lahabazar, Kamarpukur have formed an association for looking after administration and governance of the flats situated therein and the petitioner herein is also the owner of a flat in that Dham. The petitioner amongst others was appointed as various office bearers and executive committee members in the Annual General Meeting (AGM) dated July 7, 2019.

The erstwhile Executive Committee members were taking care of the Punnya Brajo Dham for the last ten years. Since the founding of the said association proper elections were never held. The opposite parties took arbitrary decision and were apparently unscrupulous and non-transparent in dealing with the finances of the society. It is due to the reason that a majority of the flat owners wanted a change in the composition of the executive committee of the association.

The election was conducted with the support of 90% of the general members who wanted a change in the management of the affairs of the society. The newly elected committee assumed charge of the association but the new committee members are repeatedly asked to resign, for reasons best known to the opposite parties. After assuming charge and going through the records, the petitioner and the new committee found huge anomaly in the accounts of the association and most of the expenses shown therein appears to be inflated.

The present committee had appointed an auditor to conduct a thorough audit of the accounts of the association and also to submit a report but the opposite parties raised objection and threatened auditor and work of audit got stalled.

The opposite parties thereafter filed present suit for declaration and permanent injunction against the petitioner being Title Suit No.95 of 2020 before the learned Civil Judge (Junior Division), 1st Court, Arambagh and prayed for ad interim injunction. Learned Civil Judge (Junior Division), 1st Court, Arambagh by his order dated 19.9.2020 refused to grant ad interim order of injunction. Being aggrieved by that order dated 19.9.2020, the opposite parties herein preferred Misc. Appeal No.6 of 2020 before the learned Civil Judge (Senior Division), Arambagh and the learned appellate court by his order dated 03.10.2020 was pleased to direct both the appellant/plaintiff and the defendant/respondents to maintain status quo in respect of the bank account and FDR of Punnyo Brajo Dham Welfare Association, Kamarpukur till 19.10.2020.

The petitioner herein submits that the impugned order practically has led to stoppage of the working of the association as expenses are spent from the accumulated fund of the bank account maintained in the name of Punnyo Brajo Dham Welfare Association and for the aforesaid impugned order, the petitioner and other members of the present committee are facing difficulty with respect to the financial

expenses that are accrued. Accordingly, the petitioner has prayed for setting aside the aforesaid impugned order, passed by the appellate court in Misc. Appeal No. 6 of 2020

Mr. Betal, learned advocate appearing on behalf of the opposite parties, submits that the election of the said Dham has already become due and the petitioner is not interested to conduct election. Moreover, they have created a separate bank account in the name of Manager of the Dham, wherefrom they are meeting expenses relating to maintenance and as such, they are not being aggrieved by the order of the first appellate court and as such, the first appellate court was justified in passing the impugned order which does not call for any interference..

Considering the submission made by both the parties and in view of the facts and circumstances of the case and the documents available on record, the impugned order dated 03.10.2020 is hereby modified to the following extent:-

That the Committee of the Punnyo Brajo Dham Welfare Association, Kamarpukur will operate existing bank account and the FDR of the Association subject to the condition that they will submit clear detailed accounts of income and expenditure before the trial court quarterly beginning from the month of October, 2022 and except maintenance expenditure whenever the committee will be in need to incur other expenditure from common fund including encashment of fixed deposits they will place it for

approval before the extraordinary general meeting following memorandum of articles. This arrangement will continue till disposal of the suit or till trial court deems it fit to change, rescind and/or modify the order, which ever will be earlier.

Accordingly, C.O. 1481 of 2021 is disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)