

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**THURSDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SMT JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION NO: 468 OF 2022

Petition under Article 227 of the Constitution of India aggrieved by the Order dated 17/02/2022 in OS No 149 of 2009 (Old No 322 of 2004) on the file of the Court of the XXVII Additional Chief Judge, City Civil Court at Secunderabad.

Between

Gunrock Enclave Co-Operative Housing Society Ltd, Registered no TAB 203 having its registered Office at 1 Gunrock Enclave, Secunderabad Telangana 500 009 Represented by its President Col Ranga Rao Name (Retd) S/o Late N V Naidu Aged about 78 years, occupation. Business R/o 86 Gunrock Enclave, Secunderabad Telangana 500 009

...REVISION PETITIONER/PLAINTIFF

AND

1. Army Welfare Housing Society Ltd, (registered no TAB 600) Sector A, AWHO Colony Gowtham Enclave, Sikh Road, Secunderabad-9 Represented by its General Secretary, Ltd Col V K Rao
2. The Army Welfare Housing, Organisation (AWHO) represented by its Project Director Col. H S Sethi c/o MES Office Complex, Mudfort Secunderabad

...RESPONDENTS/DEFENDANTS

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in OS No.149 of 2009 on file of Honorable XXVII Additional Chief Judge, City Civil Court at Secunderabad pending disposal of this Revision Petition.

Counsel for the Petitioner : SRI. SUNIL B GANU

Counsel for the Respondents: SRI ZEESHAN ADNAN MAHMOOD

The Court made the following: ORDER

HON'BLE Smt. JUSTICE P.SREE SUDHA
CIVIL REVISION PETITION No.468 of 2022

ORDER

1. This revision is directed against the docket order dated 17.02.2022 passed in O.S.No.149 of 2009 (Old No.322 of 2004) on the file of the learned XXVII Additional Chief Judge, City Civil Court, Secunderabad.

2. One Gunrock Enclave Cooperative Housing Society Limited-plaintiff filed suit O.S.No.322 of 2004 against Army Welfare Housing Society Limited and Army Welfare Housing Organization-defendants seeking to delivery vacant posscession of the suit schedule property to plaintiff or its authorized representative. During the pendency of the suit proceedings one Lt. Gen ARK Reddy filed an affidavit as D.W.1. stating that as a President of the Society he is acquainted with the facts of the case. The plaintiff filed a memo stating that the first defendant society approached the Deputy Registrar, Cooperative Society, Secunderabad, for winding up of the society and accordingly the Deputy Registrar appointed Mohd. Yousuf Ali, Senior Inspector, as the Liquidator of the first defendant society on 25.08.2020.

Later, the Deputy Registrar appointed one S.Ramesh Kumar, Assistant Registrar, as Liquidator of the first defendant society on 22.09.2020. Learned counsel for the defendants filed a reply memo dated 24.11.2021 along with the letter dated 15.11.2020 issued by the Office of the Liquidator of the first defendant society authorizing him to sign in legal documents like affidavits, written evidences and also depose before the Courts to protect the interest of the society. The plaintiff in the suit stated that the said authorization is bad in law and Liquidator has no power within the meaning of Sections 66 and Rule 51 of the Telangana Cooperative Societies Act, 1964 (for short, 'the Act of 1964') to authorize or to delegate his powers to anybody much less to the Ex-President of the first defendant society. Ex-President represented himself as President of the society in the affidavit filed on 23.09.2021 and that they also enclosed the Rules and requested the Court to eschew the evidence of the D.W.1 as it amounts to perjury. The copy of the order passed by the Deputy Registrar is also enclosed.

3. The trial Court after considering the arguments advanced by both the learned counsel observed that the suit is filed in the year 2009 and the Liquidator was appointed in the year 2020 and as he is already authorized the X-President of first

defendant society who filed additional written statement is having knowledge about the pleadings he is a proper person to depose in the Court to protect the interest of the society and thus permitted D.W.1 to lead evidence, received chief affidavit and posted the case for cross-examination. Aggrieved by the said order, the plaintiff in the suit filed this revision.

4. Learned counsel for the revision petitioner-plaintiff would contend that the Liquidator was appointed under Section 66 of the Act of 1964 and the same does not preclude from giving authorization and as per Rule 51 Clause (e) the Liquidator may empower any person, by general or special order in writing, to make collections and grant valid receipts on his behalf and except the said Clause there is no other Clause permitting the Liquidator to delegate any office bearer. Moreover, D.W.1 stated himself as President of the Society, though as per the letter dated 15.11.2020 he was shown as Ex-President. Learned counsel would also contend that when the Liquidator was appointed, the office bearer of the society has no role to play either in pending matters or otherwise. He would also contend that Rules 36A, 36B and 37 of Telangana Cooperative Societies Rules are not relevant and only Section 66 of the Act of 1964 and Rule 51 are relevant for the present *lis*. He would also argue

that as the members of the society requested the Registrar for winding up of the society, the Liquidator was appointed and as such permitting the Ex-President to represent the society is beyond the powers of the Liquidator and it will frustrate the process of winding up of the society and therefore requested the Court to set aside the impugned docket order dated 17.02.2022.

5. Heard the learned counsel appearing for the petitioner-plaintiff and the learned counsel appearing on behalf of the respondents-defendants. Perused the record.

6. Learned counsel for the first respondent relied upon Section 118 of the Indian Evidence Act, 1872, which reads as under:

‘All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.’

7. Learned counsel for the first respondent would argue that D.W.1 is a competent witness and he is having knowledge of the affairs of the society as he was contesting the matter since long time. He relied upon a citation reported in **GARMENT CRAFT**

V/s. PRAKASH CHAND GOEL¹ in which the scope of Article 227 of the Constitution was reiterated.

8. No doubt, any competent witness as per Section 118 of the Evidence Act can depose before the Court, but in so far as the facts of the case on hand is concerned winding up of the society was done as per the request of the members of the society and a Liquidator was appointed to take care of the affairs of the society and he cannot delegate his powers to the Ex-President and authorize him to depose. The Liquidator addressed a letter dated 15.11.2020 authorizing the Ex-President to give evidence before the Court and the said authorization is not proper. Under Section 66(1)(a) of the Act of 1964 the liquidator is only authorised to institute and defend suits and other legal proceedings on behalf of the society by the name of his office and he can delegate powers to any other person as Rule 51(e) of the Rules of 1964, which reads as follows:

'51(e) The liquidator may empower any person, by general or special order in writing, to make collections and to grant valid receipts on his behalf.'

¹ (2022) 4 SCC 181

9. Though the revision petitioner has raised an objection before the trial Court, the trial Court in a routine manner observed that D.W.1 is having knowledge about the affairs of the society and he is a proper person to depose before the Court and permitted his chief-examination and the said appreciation of the facts are not on proper lines and hence the order of the trial Court is to be set aside.

10. In the result the civil revision petition is allowed and the docket order under challenge is set aside.

11. Miscellaneous Petitions, if any, pending in this revision shall stand closed in the light of this final order.

//TRUE COPY//

SD/-K.SHYLESHI
DEPUTY REGISTRAR
SECTION OFFICER

To,

1. The XXVII Additional Chief Judge, City Civil Court Secunderabad
2. One CC to SRI. SUNIL B GANU, Advocate. [OPUC]
3. One CC to SRI. ZEESHAN ADNAN MAHMOOD, Advocate. [OPUC]
4. Two CD Copies
5. One Spare Copy

SB



HIGH COURT

DATED:01/09/2022



ORDER

CRP.No.468 of 2022

ALLOWING THE CRP WITHOUT COSTS

⑥ VLV
16/11/22