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

% Judgment delivered on: 23.12.2022

+ CM(M) 1476/2022

MUKESH JAIN

..... Petitioner

versus

RAJENDER PRASAD JAIN & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Anuj Jain and Mr. Mani B. Jain,
Advs.

For the Respondents : Mr. Ajay Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 56500/2022 (for exemption).

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM(M) 1476/2022 & CM APPL. 56499/2022 (for stay)

3. With the consent of the parties, the petition is being taken up.
4. Notice is accepted by Mr. Ajay Jain, learned counsel for the respondent Nos. 1 to 7 and 9 to 14. The petitioner challenges the order dated 29.11.2022 passed by the First Appellate Court whereby the First Appellate Court has refused to interfere in the elections which are proposed to be held on 25.12.2022.
5. Learned counsel submits that the learned Trial Court *vide* order

dated 16.04.2019 had refused to restrain elections from being conducted on the ground that the amendments to the byelaws by the respondent no.9 society was *prima facie* valid since the same were registered by the Registrar of Society. He submits that the Trial Court as well as the First Appellate Court did not appreciate the fact or law arising in this case.

6. Mr.Jain, learned counsel for the respondent no.9 society supports the reasoning of the learned Trial Court as well as First Appellate Court in the impugned order.

7. On perusal of the page 449 of the paper book, it appears that respondent no.9 *vide* its meeting dated 30.11.2014 and by resolution No.5 decided that the life members from Sectors 5, 6 and 7, Rohini, New Delhi would also be permitted to cast their votes in the elections.

8. In view of the fact that the elections are notified to be conducted on 25.12.2022, it is not appropriate for this Court to injunct the elections from being held.

9. This Court is also of the considered opinion that from the *prima facie* reading of the documents as well as the impugned order, resolution No.5 detailed at Page No.449 of the paper book was not taken into consideration by either the learned Trial Court or the First Appellate Court while passing the impugned orders.

10. In view of above, the learned Trial Court is directed to re-hear the application under Order XXXIX Rule 1 and 2 CPC, keeping in view the above observations regarding Resolution No.5, as also other grounds and contentions which the parties are open to urge before it and pass appropriate orders after hearing the parties.

11. To balance equities, this Court is of the considered opinion that

the elections be held, and the result thereof would be subject to the outcome of the application under Order XXXIX Rules 1 and 2 CPC to be decided by the learned Trial Court.

12. Once the results are declared, the office bearers would be permitted to take general decisions, however, no policy decision impacting the byelaws rules & regulations would be taken by the newly elected body.

13. This direction would subsist only till the learned Trial Court decides the application under Order XXXIX Rule 1 and 2 CPC.

14. The learned Trial Court is directed to take up the application under order XXXIX Rule 1 and 2 CPC on 25.01.2023 and expeditiously dispose of the same, not later than four weeks from 25.01.2023.

15. Petition stands disposed of.

TUSHAR RAO GEDELA, J .

DECEMBER 23, 2022/neelam