

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

CO 236 of 2023
With
CAN 1 of 2023

P.L. Jana @ Pannalal Jana & anr.
vs.
Ashish Mukherjee & ors.

For the petitioner : Mr. Soumya Majumder,
Mr. Tanmoy Mukherjee,
Mr. Amal Kumar Saha,
Mr. Sounak Bhattacharya,
Mr. Iresh Paul,
Mr. Soumyadip Panda.

For the opposite party Nos.1 & 2 : Mr. Surajit Nath Mitra,
Ms. Aditi Kumar.

For the opposite party Nos.3 & 4 : Mr. Amitabho Nayak,
Ms. Tansusree Ghosh.

Hearing concluded on: 22.06.2023

Judgment on: 22.09.2023

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated January 7, 2023 passed by the learned Additional District Judge, 7th Court at Alipore, in Misc. Appeal No.378 of 2022. The Misc. Appeal arose out of an order dated November 17, 2022 passed by the learned Additional Civil Judge (Junior Division) 3rd Court at Alipore in Title Suit No.1780 of 2022.

2. By the order impugned, the learned lower appellate court allowed the Misc. Appeal on contest. The order of refusal of the prayer for ad-interim injunction passed on November 17, 2022 by the learned Trial Judge, was set aside. By an order of temporary injunction, the petitioners as also the respondent No.3 in the Misc. Appeal, their men, agents and other associates were restrained from disturbing the plaintiffs/opposite parties in the matter of functioning of the newly appointed Central Office Bearers (for short “COB”) in the Bi-ennial General Meeting (for short “BGM”) of the South Eastern Railway Men’s Union (for short SERMU) dated September 11, 2022 and September 12, 2022, communicated to the railway authorities on September 14, 2022, till the disposal of the Title Suit No.1780 of 2022. The railway authorities were allowed to continue with the final publication of the list of COB in connection with the said BGM. The order was passed, subject to any order of stay in respect of publication of the list of COB members by the High Court or any other Hon’ble Court in the pending contempt proceeding.

3. The opposite parties were directed to submit statement of accounts of the union from time to time before the learned trial court as and when called for by the learned Court. It was made clear that all points were left open to be decided by the trial court at the time of disposal of the suit, without being influenced by the order of the learned lower appellate court.

4. Mr. Soumya Majumder, learned Advocate who appeared on behalf of the petitioners submitted that the order impugned amounted to allowing the main relief in the suit. That the plaintiff/opposite party No.1 had been removed by a proper resolution of the Board. Neither the suit nor the Misc.

Appeal was maintainable at his instance. That the injunction application which was pending before the learned trial court was rendered infructuous. The learned lower appellate court ought to have disposed of the Misc. Appeal only on the question as to whether an ad-interim order of injunction should to have been passed on the basis of the plaint case. Instead of doing so, the learned lower appellate court decided the entire injunction application. The impugned order was beyond the scope of the Misc. Appeal. Referring to an order dated March 2, 2022, passed by the learned Civil Judge (Junior Division), 3rd Additional Court at Alipore in Title Suit No.286 of 2022, Mr. Majumder submitted that the learned lower appellate court failed to take into consideration that a competent court, had already directed the parties to maintain status quo in respect of possession, nature, character and activities of SERMU. The opposite party No.1 and one Gautam Mukherjee were restrained from interfering with the functioning of SERMU. The petitioners were plaintiff Nos.2 and 3 in the suit. The said interim order of status quo was extended from time to time. In the present suit(T.S.1780 of 2022), the learned trial judge refused the ad-interim order of injunction which was prayed for by the plaintiffs/opposite parties upon considering the earlier order of status quo passed in Title Suit No.286 of 2022. The learned trial judge concluded that considering the entire facts and circumstances of the case and as it appeared that i.e., Ashish Mukherjee, the opposite party No.1 herein, was a defendant in Title Suit No.286 of 2022 in which an order of status quo had been granted, a blanket order of injunction could not be passed without hearing the defendants. Therefore, the prayer for ad-interim order of injunction was refused. The balance of convenience and

inconvenience was against the order of ad interim injunction. The learned trial judge was of the opinion that, as the opposite parties were already restrained by an ad-interim order of status quo from changing the nature, character, possession of the union and also from interfering with the business of the union, hence no further order in their favour could be passed at the ad-interim stage. It had been recorded in the order dated March 2, 2022 passed in Title Suit No.286 of 2022, that the membership of Ashish Mukherjee and the other defendants in the said suit, had been cancelled by the union. The said court found that there were earlier restrain orders passed by the learned District Judge at Alipore as also by civil courts upon them. The court further held that during the lock-down, meetings were conducted on September 12, 2020 and September 13, 2020 and the list was prepared on September 15, 2020. The plaintiffs/petitioners in the said suit, were intimated about the meeting and preparation of the list only on January 21, 2022. According to the said court, the plaintiffs (petitioners in the present suit) had a strong prima facie case in their favour to go to trial and if they were not protected by an ad interim order they would suffer irreparable loss and injury. The said order was considered by the learned trial judge in Title Suit No.1780 of 2022 and in order to protect the petitioners from the subsequent effects of the alleged illegal and unauthorized meetings, the ad-interim order prayed for by the opposite parties was refused.

5. According to Mr. Majumder, during the subsistence of the order dated March 2, 2022 passed in Title Suit No.286 of 2022, the subsequent resolutions dated September 11, 2022 and September 12, 2022 as

communicated on September 14, 2022 to the railway authority were void ab initio and non-est in the eyes of law. The order impugned revived such resolutions.

6. Mr. Majumder, referred to the various records annexed to the revisional application in order to substantiate that Ashish Mukherjee and his group were defeated in an election held in the year 2016. A vague and fictitious list was prepared in the year 2016. The same was published by the railway authorities vide letter dated August 22, 2016. The said letter dated August 22, 2016 had been stayed by orders of court and the said stay continued. Similar attempts to form COBs were made by Ashish Mukherjee and his group in the year 2018 and 2020, but the petitioners were able to obtain restrain orders from the appropriate civil court. The membership of Ashish Mukherjee, i.e., opposite party No.1 had been cancelled. Misc. Appeal No.1780 of 2022, filed against the order of ad-interim injunction passed in Title Suit No.286 of 2022 was pending. Under such circumstances, the order impugned passed in Misc. Appeal No.378 of 2022, restraining the petitioners from disturbing Ashish Mukherjee and his group, was erroneous and based on incorrect appreciation of the facts and law. The ad-interim order passed in Title Suit No. 286 of 2022 was subsisting. A contempt proceeding was also pending alleging violation of the order of injunction passed in Title Suit No.286 of 2022. Learned Advocate prayed that the order passed in the Misc. Appeal, be set aside.

7. Mr. Surajit Nath Mitra, learned Senior Advocate appearing on behalf of the opposite parties denied Mr. Majumder's contention and submitted that by an order dated February 15, 2022 passed in Misc. Appeal No.34 of

2022, the District Judge at Alipore, allowed the ad-interim prayer of injunction restraining Jagannath Bandhyopadhyay and his group (petitioners) from disturbing the opposite parties from functioning as the newly formed COB in terms of the decision in BGM dated September 12, 2020 and September 13, 2020. Such Misc. Appeal arose out of an order dated February 1, 2022 passed in Title Suit No.123 of 2022.

8. Mr. Mitra further submitted that such ad-interim order was extended from time to time. Thus, the restrain order upon the petitioners continued and the resolutions passed on September 12, 2020 and September 13, 2020 had already taken effect. The ad-interim order of injunction was passed in Title Suit No.286 of 2022, on March 2, 2022, in ignorance of the ad-interim order which was passed by the learned District Judge at Alipore in Misc. Appeal No.34 of 2022. The ad-interim order dated March 2, 2022 was of no consequence in view of the order passed in Misc. Appeal No.34 of 2022. The list of the newly formed COB as decided by BGM dated September 12, 2020 and September 13, 2020, was protected by order passed in Misc. Appeal No.34 of 2022. From the said list(page no. 178 of the revisional application), it would appear that Goutam Mukherjee was elected as the Vice President and Ashish Mukherjee, plaintiff No. 2/opposite party No. 1 was elected as the General Secretary.

9. Mr. Mitra, further submitted that BGM of SERMU was held every two years and the suits in the past, all related to resolutions of BGMS having two years validity. Once the term expired, the suits became infructuous. Thus, the meeting of the union, formation of COBs in 2016, 2018 and consequent

orders passed in the earlier suits, should not have been taken into consideration by the learned trial judge while refusing the ad-interim order.

10. The notice of the BGMs held on September 11, 2022 and September 12, 2022 which are the subject matter of dispute, in the present suit, was issued on August 5, 2022, by the General Secretary of SERMU, Ashish Mukherjee/opposite party No.1. At the relevant point of time, the authority of Ashish Mukherjee to issue such notice had not been challenged by the petitioners. Ashish Mukherjee was recognized as the General Secretary of SERMU, who had notified the members of the union about the BGM to be held on September 11, 2022 and September 12, 2022. The notice had been accepted by all the members, including the petitioners. The petitioners waived their right to challenge the same after the meetings were held. Ashish Mukherjee's authority to issue the notice remained unchallenged.

11. Further reference was made to the plaint in Title Suit No.1780 of 2022 and the pleadings therein. It was pointed out that the opposite parties/plaintiffs had categorically stated that the membership of Ashish Mukherjee and his associates had been renewed after 2014, but those of the defendant Nos. 1 and 2(petitioners) had not renewed and the railway authority did not publish any list containing the names of the petitioners. Apart from the plaintiff No.2/opposite party No.1, none other had the eligibility to call the BGM.

12. Reliance was placed on the notice issued by an authorized member of the Union dated September 14, 2021, asking Ashish Mukherjee, the opposite party No.1, to show cause as to why his membership from SERMU shall not be cancelled. Upon receipt of the show cause, SERMU had

unanimously decided that the membership of Ashish Mukherjee would not be cancelled and accordingly, by letter dated January 25, 2022, such decision was communicated to Ashish Mukherjee. The notice and extract of the resolution, have been annexed to the revisional application, which from part of the record.

13. What falls for decision by this court is whether the learned Additional District Judge, 7th Court at Alipore, acted illegally and with material irregularity in passing the order dated January 7, 2023.

14. The facts as available are that the opposite party Nos.1 and 2 filed a suit for declaration and permanent injunction against the petitioners. The said suit was registered as Title Suit No. 1780 of 2022. A prayer for declaration was made to the effect that the newly formed COB, with the plaintiff no. 2 Ashish Mukherjee and the other honorary members as per the list of September 11, 2022 prepared in the BGM, were entitled to function, according to the constitution, rules and bye laws of SERMU. Mandatory injunction was prayed directing the railway authority to publish and circulate the list of COB in its meeting held on September 11, 2022, for the year 2022-24.

15. Initially, the election of Central Executive Committee was conducted on September 14, 2014 under the guidance of a Special Officer Sardar Amjad Ali, learned Advocate appointed by the High Court. By letter dated September 14, 2014, the General Manager, South Eastern Railway, had handed over charge of SERMU to the respective office bearers. The plaintiff no. 2/opposite party No.1 was elected as the General Secretary for the period between 2014-2016 and then in the subsequent terms in 2016 and

2018. Title Suit No. 2076 of 2014 was filed by one non-member of SERMU before the learned Civil Judge (Junior Division) 3rd Additional Court at Alipore, challenging the BGMs dated August 11, 2018 and August 12, 2018. An application for injunction was also filed. Another Title Suit No. 1446 of 2019 was filed before the learned Additional Civil Judge, (Junior Division), 3rd Court at Alipore by South Eastern Railway Men's Trinamul Congress and others and the learned Trial Judge by an order of injunction dated September 27, 2018 restrained the South Eastern Railway Men's Congress and South Eastern Railway Men's Union from participating in the official meeting to be held by the railway. Misc. Appeal No.268 of 2018 was preferred and vide order dated January 31, 2019, the Misc. Appeal was allowed on the ground that as the annual return for the year 2011 and all dues had been cleared up, the purpose of injunction had been fulfilled. BGM of SERMU was held every two years. Accordingly, a BGM was held on September 12, 2020 and September 13, 2020. The list of newly elected members was communicated to the railway authority vide letter dated September 15, 2020. As the railway authority neglected to circulate the list of COB and refused to act in sync with the decision taken in the BGM, SERMU sent a communication on December 7, 2020 and January 21, 2020 to the railways for publication of the list. The railway authority again refused to publish the list.

16. SERMU filed a suit for declaration and injunction before the learned Civil Judge (Senior Division) 6th Court at Alipore being Title Suit No.123 of 2022. An application for injunction was also filed. A prayer for ad interim injunction was made. The learned trial judge refused to grant the prayer for

ad interim injunction by order dated February 1, 2022. Against the said order dated February 1, 2022, SERMU preferred a Misc Appeal before the learned District Judge at Alipore being Misc Appeal No.34 of 2022. The learned District Judge, by an order dated February 15, 2022 held that in view of the facts and circumstances and the orders passed by the High Court as also by the trial courts in several litigations, SERMU could not be stopped from functioning for time immemorial. Accordingly, an ad-interim order of injunction was passed restraining the petitioners (defendants/respondents therein) and the their men and agents from disturbing the opposite party No.1 and his men and agents in the matter of functioning of the COB as per the BGMs dated September 12, 2020 and September 13, 2020 of SERMU, till March 8, 2022. The said ad-interim injunction was extended from time to time. The order dated February 15, 2022 was communicated to the petitioners by SERMU. A suit for declaration and injunction being Title Suit No.286 of 2022 was filed by the petitioners in the Court of the learned Additional Civil Judge (Junior Division) 3rd Court at Alipore. The order dated February 15, 2022 passed in Misc Appeal No.34 of 2022 was not mentioned in the plaint of Title Suit No.286 of 2022 (plaint copy annexed to the revisional application). The learned trial court allowed the prayer for ad-interim injunction in the form of status quo, directing the parties to maintain status quo in respect of possession, nature, character and activities 'as on that date' and the petitioners were restrained from interfering with the functioning of the union. Challenging the order passed in Misc Appeal No.34 of 2022, a revisional application was filed before the

High Court, being C.O. No.381 of 2022, which is still pending. No interim order had been passed.

17. It is a matter of record that the notice of the BGM was circulated on August 5, 2022, by Ashish Mukherjee as General Secretary. The BGM was held on September 11, 2022 and September 12, 2022. On November 9, 2022 the plaintiff No.2/opposite party No.1 went to the office of the railway authority, i.e. the General Manager, South Eastern Railway and the Principal Chief Personnel Officer, seeking circulation of the list. The defendants/opposite party Nos. 3 and 4, refused to publish the list and expressed their inability. The petitioners went to the office of the plaintiffs/opposite party Nos.1 and 2 and instructed the members not to act and/or function according to the decision adopted in the BGM dated September 11, 2022. The members were threatened. Owing to such threat by alleged non-members and the obstructions created by them, the plaintiffs/opposite party Nos.1 and 2 filed Title Suit No.1780 of 2022, out of which this revisional application arises.

18. The learned trial judge refused to pass any ad-interim order of injunction upon giving an active consideration to the ad-interim order of injunction dated March 2, 2022 passed in Title Suit No.286 of 2022. Both the parties were directed to maintain status quo and the plaintiffs/opposite party Nos.1 and 2 were restrained from interfering with the functioning of SERMU.

19. The order of refusal dated November 17, 2022 was challenged before the learned lower appellate court. The lower appellate court, upon

considering the entire fact situation and all the orders passed in the multiple suits filed by the parties, came to the following findings:-

(a) The opposite party Nos.1 and 2 had made out a prima facie case to go to trial.

(b) The list of office bearers as published in 2014 by the railway authority was prepared under the supervision of a learned special officer appointed by the High Court and thereafter in terms of Section 33 of the Constitution of SERMU. The BGMs were held after expiry of every two years.

(c) The list of officer bearers was lastly published on December 1, 2022 in terms of BGM held on September 11, 2022 and September 12, 2022.

(d) The suits which were still pending in respect of publication of the list of office bearers of SERMU, related to specific terms. In the order dated February 15, 2022 passed by the learned District Judge at Alipore in Misc Appeal No.34 of 2022, the men and agents of the petitioners were restrained from disturbing the opposite party Nos.1 and 2 in the matter of functioning of the newly formed COB as decided in the BGM dated September 12, 2020 and September 13, 2020.

(e) The present suit, namely, Title Suit No.1780 of 2022 had been filed by the plaintiffs/opposite party Nos.1 and 2 praying for a declaration that the list of newly formed COB and the honorary members of SERMU as decided in the BGM dated September 11 and 12, 2022 were entitled to function according to the constitution of SERMU and its regulations.

(f) As the petitioners were restrained from disturbing the opposite party Nos.1 and 2 from functioning as the newly formed COB in terms of BGM dated September 12, 2020 and September 13, 2020 in Misc. Appeal No.34 of 2022 and no stay had been granted in respect of the said order by the High Court, the opposite parties Nos. 1 and 2 contributed to function. It could safely be presumed that the list of COB members of September 11, 2022 and September 12, 2022 were, *prima facie*, valid.

(g) That the refusal of the prayer for ad-interim injunction by the learned trial judge on the basis of the order passed in Title Suit No.286 of 2022 was erroneous. The order of status quo which was passed in Title Suit No.286 of 2022 was on the basis of a pliant, in which the order passed in Misc. Appeal No.34 of 2022 had not been mentioned.

20. This Court finds that the dispute is between two groups of persons with regard to the control of SERMU. The plaintiffs/opposite party Nos.1 and 2 urged that the petitioners were removed from membership of SERMU, whereas, a similar claim had been made by the petitioners.

21. *Prima facie*, I find that the litigation in the past and the orders passed therein were restricted to the BGMs which were held every two years. Thus, the relevance of those proceedings at the stage of deciding whether an ad-interim order of injunction should have been passed in favour of the opposite party Nos.1 and 2 in the present suit, may be less significant than what had been urged by Mr. Majumder. Only the earlier BGM and its consequence in my, *prima facie*, view, are relevant. The learned trial judge

had been influenced by an order of status quo passed in Title Suit No.286 of 2022 in which the BGM of 2020 was under challenge. The facts reveal that the resolutions of the BGMs held on September 12, 2020 and September 13, 2020 and the list of newly elected COB, was communicated to the railway authorities vide letter dated September 15, 2020. The railway authority was reluctant to circulate the list of COB and refused to act as per the unanimous decision taken in the BGM dated September 12, 2020 and September 13, 2020. SERMU again wrote a letter on December 7, 2020 and January 21, 2020 for publication of the list, but the authority refused to do so. SERMU filed a suit for declaration and injunction before the learned Civil Judge (Senior Division) 6th Court at Alipore, being Title Suit No.123 of 2022. An application under Order 39 Rules 1 and 2, read with Section 151 of the Code of Civil Procedure had been filed along with the ad-interim prayer for injunction. The learned trial judge refused to grant the prayer for ad-interim injunction by an order dated February 1, 2022. Challenging the said order, Misc Appeal No.34 of 2022 was filed. The learned District Judge at Alipore by an order dated February 15, 2022 held that in view of the observations of the High Court and the trial courts in the various litigations regarding publication of the list of elected members, the members of the union could not be stopped from continuing their activities for time immemorial. An ad-interim order of injunction was passed, restraining the petitioners' group from disturbing the opposite party Nos.1 and 2 in the matter of functioning as the newly formed COB as decided in the BGM dated September 12, 2020 and September 13, 2020. Such ad-interim order was passed for a period upto March 8, 2022 and thereafter it was extended from time to time and

was subsisting even on the day when the order impugned was passed. The order of the learned District Judge at Alipore, was communicated to the petitioner. Title Suit No.286 of 2022 was filed before the learned Additional Civil Judge (Junior Division) 3rd Court at Alipore after the order dated February 15, 2022 was passed in Misc Appeal No.34 of 2022. The learned civil judge allowed the prayer for ad-interim injunction in the form of status quo as on the date of the order i.e., March 2, 2022 in respect of possession, nature, character and activities as on the date of the order, in Title Suit No.286 of 2022. On that day, the order dated February 15, 2022, passed in a Misc Appeal (superior forum) was subsisting and the petitioners had already been restrained from interfering with the functioning of the COB in terms of the BGM dated September 12, 2020 and September 13, 2020. The opposite party Nos.1 and 2 were already functioning. Their activities had been protected by the learned District Judge at Alipore in Misc Appeal No.34 of 2022. The order passed in Misc Appeal No.34 of 2022 has neither been modified nor set aside by a superior forum. Thus, the status, as on March 2, 2022 was that the COB formed in the BGM dated September 12, 2020 and September 13, 2020, was functioning.

22. Prima facie, it appears that the order passed in Misc Appeal No.34 of 2022 was not considered by the learned trial judge who passed the ad-interim order on March 2, 2022 in Title Suit No.286 of 2022. Consequently, the learned trial judge in the present suit also refused to pass the ad-interim order being influenced by the order dated March 2, 2022 passed in Title Suit No.286 of 2022. The aforementioned facts and the effect of the order dated February 15, 2022 passed in Misc Appeal No. 34 of 2022 were not

considered. By the said order dated February 15, 2022, the list as per the BGM dated September 12, 2020 and September 13, 2020 were made effective and operational. That was the status of SERMU and COB when the learned trial judge passed the order of refusal of the ad interim prayer.

23. The petitioners had been restrained from interfering with the functioning of the newly formed COB as decided in BGM dated September 12, 2020 and September 13, 2020. The said list of COB, prima facie, appears to have been valid even on September 11, 2022 and September 12, 2022. Therefore, the learned lower appellate court rightly directed that the plaintiffs/opposite party Nos.1 and 2 had been able to prove a, prima facie, case and the balance of convenience and inconvenience was in their favour.

24. The welfare of the union and its members had been sufficiently protected as the learned lower appellate court also directed that the statement of accounts of SERMU should be submitted as and when called for by the learned trial judge, from time to time.

25. Thus, this Court does not find any illegality and or material irregularity in the order impugned. The learned trial court ought not to have refused the ad-interim injunction only on the basis of the ad-interim order of status quo passed in Title Suit No.286 of 2022. The order of the learned trial court suffers from non-consideration of the materials on record. Any further probe by this court would amount to holding a mini trial at the stage of deciding whether an ad-interim injunction should be granted or not. Reference is made to the decision of **Anand Prasad Agarwalla vs. Tarkeshwar Prasad and Others** reported in **(2001) 5 SCC 568**. The

Hon'ble Apex Court held that it would not be appropriate for any court to hold a mini-trial while deciding the application for injunction.

26. The only considerations are prima facie case, balance of convenience, inconvenience and irreparable loss and injury. In my considered opinion, all such factors were taken into consideration by the learned lower appellate court. This court is not required to substitute its decision by interfering with the discretion exercised by the learned lower appellate court, as the exercise of discretion was neither arbitrary nor capricious nor perverse. Scope of interference in the supervisory jurisdiction on the decision of a fact finding forum, is limited.

27. In the decision of ***Sadhana Lodh v. National Insurance Co. Ltd.***, reported in **(2003) 3 SCC 524**, the Hon'ble Apex Court held as follows:-

“ **7.** The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

28. However, the learned lower appellate court erred in granting an order of temporary injunction till the disposal of the suit, although, the scope of Misc. Appeal was restricted to the question whether an ad-interim protection should be given to the opposite party Nos.1 and 2 or not.

29. By doing so, the learned lower appellate court had actually decided the application for temporary injunction, without leaving it to the learned

trial judge to adjudicate the application for injunction, in accordance with law, upon hearing the parties and on contest.

30. The order impugned is modified to the extent that the said order dated January 7, 2023 passed by the learned Additional District and Sessions Judge, 7th court at Alipore shall be an ad-interim order of injunction and shall continue till the disposal of the application for temporary injunction by the learned trial judge in Title Suit No. 1780 of 2022. The learned trial judge is directed to dispose of the application for temporary injunction within a period of three months from the date of communication of this order and upon receipt of LCR. On the first day, the accounts shall be submitted before the learned trial judge, by the opposite parties/plaintiffs.

31. Under such circumstances, the revisional application is disposed of; CAN 1 of 2023 is accordingly disposed of.

32. There will be no order as to costs.

33. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)