

24.08.2023
Sl. No.6(DL)
srm

C.O. No. 2895 of 2023

Cardiological Society of India & Anr.

Versus

Dr. Prakash Kumar Hazra & Ors.

Mr. Abhrajit Mitra,
Mr. Chayan Gupta,
Mr. Aritra Basu,
Mr. Sandip Dasgupta,
Mr. Aviroop Mitra

...for the Petitioners.

Mr. Jayodip Kar,
Mr. Rajdeep Bhattacharya,
Mr. Arindam Kund,
Mr. Souryya Ganguly

...for the Opposite Parties.

The revisional application arises out of an order dated August 1, 2023, passed by the learned Civil Judge (Senior Division) at Sealdah in Title Suit No.252 of 2023.

By the order impugned, the learned court below rejected an application under Order VII Rule 11 of the Code of Civil Procedure filed by the defendant Nos.1 and 2, on contest. By the same order, the learned court also allowed the application under Order XL Rule 1 read with Section 151 of the Code of Civil Procedure.

The primary challenge in this revisional is the part of the order dismissing the application for rejection of the plaint. The

learned court below, upon a meaningful reading of the plaint held that cause of action in the suit was based on alleged acts of violation of the regulations of the Cardiological Society, in matters relating to election of the society. Mis-representation and commission of fraud by the office bearers were the subject matters of the dispute.

The learned court further held that the contentions of the plaintiff were required to be proved by oral and documentary evidence. Unless documents were tendered in evidence and parties were allowed to adduce evidence, the maintainability of the suit could not be decided. The allegations of irregularities and the illegalities committed by the defendants jointly and severally as urged in the plaint, could only be decided at the final adjudication of the suit.

At the very nascent stage, the plaint could not be rejected as being barred by law or for non-disclosure of cause of action. The learned court held that the plaint disclosed a cause of action. The petitioner as one of the members of the society and a doctor by profession, allegedly encountered certain illegal activities of the defendants, which were likely to undermine the fame and goodwill of the institution.

Such findings of the learned court below, have been challenged in this revisional application.

Mr. Mitra, learned Senior Advocate appearing on behalf of the petitioners, submits that the plaint should be rejected for the following reasons:-

- (a) The plaint case was based on a letter dated June 3, 2023 issued by one Dr. P.B. Jayagopal. Enquiries were made by the said doctor. The plaintiff did not disclose any cause of action and locus to file the suit. The steps taken by Dr. P.M. Joyagopal, calling upon the General Secretary and the President to furnish the number of voters who had cast their votes and to furnish the number of invalid votes, were the foundation of the plaint case.
- (b) Paragraph 16 of the plaint, would disclose that the entire case was based on the queries made by Dr. P.B. Jayagopal.
- (c) In case the suit was filed as a derivative action, the prejudice caused to the members ought to have been pleaded and specific reliefs ought to have been claimed based on such pleadings. The suit was meritless and vexatious and a product of mala fide intention to stall the election process.
- (d) An election process could not be interfered with by a civil court, as the process had commenced. The law was well settled that no proceeding could be brought

in any court of law, challenging an election process.

Also, a suit relating to the internal affairs of the society, was not maintainable.

(e) That the hearing of the application under Order VII Rule 11 of the Code of Civil Procedure, had not been concluded, but the defendants came to know on a subsequent date that the order was passed on August 1, 2023.

(f) Only because a prayer was made in the application for appointment of an administrator and pleadings were available justifying the reasons for appointment of an the administrator, such pleadings could not give rise to a cause of action for the plaintiff to file the suit.

Mr. Mitra, also submits that the order of appointment of administrator, upon allowing the application under Order XL Rule 1, also suffers from various irregularities. First of such irregularity was that on August 1, 2023. No hearing was held on the said application. The order was passed behind the back of the defendant. As this Court is exercising superintending powers over all courts and tribunals, Mr. Mitra submits that this Court should take judicial notice of such fact and interfere with the order passed in the application under Order XL Rule 1 of the Code of Civil Procedure.

Mr. Mitra relied on the decision of the Hon'ble Apex Court in the matter of State of Kerala vs. Puthenkavu N.S.S. Karayogam & Anr., reported in (2001) 10 SCC 191.

Mr. Kar, learned Senior Advocate appearing on behalf of the plaintiff submits that the order does not suffer from any perversity. The order impugned has been supported on the following grounds:-

- (a) In pages 2 and 3 of the order impugned, the learned court below had categorically recorded the reasons for arriving at the conclusion that the plaintiff had a cause of action to file the suit.
- (b) The court also dealt with the contentions of the defendants with regard to the locus of the plaintiff to file the suit. That the Court rightly held that the averments in the plaint against the defendants, were matters of trial and required to be decided on oral and documentary evidence.
- (c) The suit was not *ex facie* barred by any law.
- (d) That the order dated July 27, 2023 clearly recorded that August 1, 2023 had been fixed for hearing the applications under Order VII Rule 11 of the Code of Civil Procedure as also the application under Order XL Rule 1 of the Code of Civil Procedure.

(e) That the defendants themselves have annexed the written notes of arguments which was filed before the learned trial judge. This indicates that the hearing of the application for rejection of the plaint was complete and written notes were submitted before the learned court. The learned court referred to the written notes of arguments filed by the petitioners.

(f) That the application for hearing of the application under Order XL Rule 1 on August 1, 2023 was filed by the plaintiff by mistake. The application was withdrawn on detection of the mistake. By order dated July 27, 2023, the court had already fixed August 1, 2023 for hearing of both the applications.

Mr. Kar, submits that the learned court had exercised jurisdiction as per law and had arrived at a correct conclusion that the plaint was not liable to be rejected at its initial stage. Pointing out to the relevant paragraphs of the plaint, Mr. Kar submitted that a member/doctor of the society, the plaintiff had every right to ensure that the society functioned as per the regulations and the bye-laws of the society. In matters relating to the elections of office bearers of a registered society, the plaintiff had every right to file the suit for the reliefs claimed. Discrepancies and illegal acts committed in the past, by the

earlier office bearers, were the foundation of the suit and the prayers indicate that the plaintiff wanted to ensure free and fair election. Allegations have been made that the office bearers had misrepresented themselves and had taken advantage of their position. There was a categorical averment that the updated list of voters had not been made available. Hence, the plaint read as a whole disclosed a cause of action. Reference to Dr. Jayagopal and his actions, would not take away the right of the plaintiff to file the suit with similar allegations. Mr. Kar further urged that the West Bengal Societies Registration Act, 1961 did not bar any suit and Section 9 of the Code of Civil Procedure empowers the learned trial judge to entertain the said suit.

Mr. Kar relied on the decisions of the Hon'ble Apex Court in the matter of Liverpool & London S.P. & I Association Ltd. vs. M.V. Sea Success I & Anr. reported in (2004) 9 SCC 512.

Further reference was made to a decision of this court in the matter of Cardiological Society of India & Ors. vs. Dr. Soumitra Kumar & anr. dated December 9, 2020 passed in C.O. No.1522 of 2020. The purpose of referring to the decision was that on the earlier occasion, a similar suit was filed by another member seeking reliefs in respect of election of the society, and

the learned trial court had passed an order of injunction, which was modified by this Court.

Having heard the contentions of the learned Senior Advocates for the respective parties and from the grounds pleaded in the revisional application, it appears that the said revisional application has been filed challenging the order of rejection of the plaint. None of the grounds taken, indicate that the order appointing an administrator has been assailed in this revisional application. It has only been stated that the order disposing of the application under Order XL Rule 1 of the Code of Civil Procedure was passed in the midst of the hearing of the application under Order VII Rule 11 of the Code of Civil Procedure.

The said ground is quoted below:-

“vi. FOR THAT the Learned Judge in the midst of the hearing of the Order VII Rule 11 application has passed the order impugned.”

It does not indicate that the application under Order XL Rules 1 and 2 of the Code of Civil Procedure was taken up without the knowledge of the defendants and behind their back. As per the provisions of the Code of Civil Procedure, the order of appointment of the administrator is an appealable order. The said order has been passed on an application filed by the plaintiff under Order XL Rule 1 read with Section 151 of

the Code of Civil Procedure. The orders dated July 10, 2023, July 13, 2023, July 20, 2023, July 27, 2023 indicate that hearing of both the applications under Order VII Rule 11 of the Code of Civil Procedure and Order XL Rule 1 of the Code of Civil Procedure, were fixed on the said dates. Lastly, by order dated July 27, 2023 the learned court fixed August 1, 2023 for hearing of the applications under Order VII Rule 11 of the Code of Civil Procedure and the application under Order XL Rule 1 of the Code of Civil Procedure.

Thus, this revisional court, sitting in superintending jurisdiction, cannot go beyond the records to probe any deeper, by making a roving enquiry as to what actually transpired on August 1, 2023. Records reveal that the order was passed on a day when both the applications had been fixed for hearing. The correctness of the order and the findings of the learned court below are to be challenged in an appeal. This Court should not interfere with the order impugned. The order does not suffer from jurisdictional error and has not been passed in violation of the principles of natural justice. The defendants were allowed to file their objection to the application under Order XL Rule 1 of the Code of Civil Procedure. Orders which have been annexed by the defendants in this revisional application, on and from July 10, 2023 up to July 27, 2023 indicate that the applications were

running together before the learned court. Thus, as per the materials available on record, this Court does not find that the learned court below had committed gross procedural irregularity by taking up the application under Order XL Rule 1 of the Code of Civil Procedure on August 1, 2023. For the rejection of the contention of Mr. Mitra on this point, the above reasoning of this Court is sufficient. However Mr. Mitra's client shall not be prevented from availing the points urged in this regard, if any appeal is filed challenging the order allowing the application under Order XL Rule 1 of the Code of Civil Procedure. The propriety of the order and the findings of the learned court are amenable to an appeal and not a revision before this Court.

With regard to the propriety of the order rejecting the application for rejection of the plaint, the relevant provision of law requires reiteration.

In the facts of this case, the plaint could have been rejected in the following situations:

- (a) If the plaint did not disclose a cause of action.
- (b) From the averments in the plaint, the suit appeared to be barred by any law.

This Court has to now ascertain whether a meaningful reading of the plaint and not a formal reading of the same,

would indicate that the plaint disclosed a cause of action to file the suit.

For such purpose, some of the paragraphs of the plaint are quoted below:-

“7. Dispute and differences started amongst the members of the Society. Debabrata Roy, Defendant No.2 herein, forcefully and illegally posted himself as Secretary of the said Society. In fact, by his official blessings and/or man power he captured office of Secretary and he has been acting in a manner which is detrimental and against the interest of the Society. Aforesaid Debabrata Roy, in terms of the Rules laid down by the CSI Constitution, under no circumstances can act as Secretary. First consideration that he has not served the Society at least 2 years in the Executive Committee. So far as the plaintiff recapitulates that the aforesaid Debabrata Roy acted as a Member of the Executive Committee for one year and four months but not completed two years.

8. Other defendant namely Dr. Pratap Chandra Rath, the defendant no.3 herein, being the CSI President-Elect 2023 carried out certain illegal acts for which most of the Members of the said Society got frustrated. As stated hereinabove, for the post of President and Present Elect there would be election on every year. So far as the post of Vice President is concerned he shall, like the Secretary, shall serve for two years in the Executive Committee and shall be eligible to maximum two terms for two years each and perform the duties of the President also. Three Vice Presidents shall be elected

from the Members of the said Society having its standing of at least 5 years in the Society and have previously served for at least 2 years on the Executive Committee. Out of the three Vice Presidents two shall be elected on All India basis one shall be elected from Headquarter.

11. In the year 2020 there was similar election of Officer Bearers in contravention to the Rules. In fact, many irregularities were carried out by Dr. Debabrata Roy with the help of some of the present defendants and other office bearers. Moreover the eligibility of Dr. Debabrata Roy for the post of Honorary General Secretary in the CSI election 2020 has already been challenged before the court of competent jurisdiction and the same is still sub judice before the Learned Court of 2nd Civil Judge (Junior Division) at Sealdah and in spite of the same, he has conducted election in 2021 and 2022 as Convener of the Scrutinizing Committee. This fact itself brings ample amount of doubt regarding the fairness of the upcoming election of CSI for the year 2023.

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14. For the purpose of conducting a fair election and/or as an abundant caution some of the members wrote to the Chairman, Scrutinizing Committee requesting for full list of valid voters, including their respective addresses. This will help them to count and/or scrutinize the percentage of votes after the voting process as over.

16. On 25.11.2022 Dr. P.B. Jayagopal made enquiries to the Honorary and President of CSI to furnish number of

voters who casts their vote in his favour and the number of invalid votes. On that year Dr. P.B. Jayagopal joined the election process and/or General Election in the year 2023 for the posts of Vice President. No positive answer yet has been received by Dr. P.B. Jayagopal. The plaintiff requested Dr. P.B. Jayagopal to furnish him a copy of the letter dated 25.11 22 addressed to the Secretary of CSI so that he can use the said letter in the present proceeding.”

Paragraph 18 of the plaint also indicates how the action of the Chairman was biased. The Chairman had lodged a caveat against certain specific contestants and the scrutiny was only a camouflage. The Chairman nurtured bias against some of the contestants.

Paragraphs 20 and 21 of the plaint are quoted below:

“20. Plaintiff states that the defendants and/or their office bearers had already adopted abusive process for conducting election. They have also not published list of voters who can invoke their voting right and can send it to the appropriate authorities for counting. It may so happen that duplicate ballot papers may be published and on receipt of ballot papers from the members who exercised their voting right can be altered and/or changed. In the light of the above circumstances the plaintiff is entitled to a decree for declaration that the plaintiff and/or his agent are entitled to receive the particulars of the list of valid voters including their addresses before starting the election process. The plaintiff is also entitled to a decree for declaration that

the plaintiff and/or his agent are entitled to receive the particulars of the list of contestants including their addresses before starting the election process.

21. Plaintiff states that to check all the illegalities and irregularities an appointment of Administrator at the very first instance is necessary. In case, the defendants and/or their men obstruct and/or adopt illegal process to the election process then prohibitory order also to be passed against them to the effect that the defendants will not manipulate and/or interfere with the scrutiny of election process. Said defendants be further directed to hand over the voter list and the persons who gave the Assent forms and/or list of contestants to them. Unless the same is not produced and/or supplied to the various members having voting right, the election process ought to be delayed or stayed."

Paragraph 22 and the prayers indicate that leave under Order I Rule 8, Order II Rule 2 and Order I Rule 8 of the Code of Civil Procedure had been sought for.

The plaintiff as a member of the society, being anxious with the conduct of the election in the past, which gave rise to an earlier civil suit, filed the present suit for certain reliefs. The relevant prayers in the suit are (c), (d) and (e). The same are quoted below:

"c) Declaration that the plaintiff and/or his agent are entitled to receive the particulars of the list of valid voters including their addresses before starting the election process;

- d) Declaration that the plaintiff and/or his agent are entitled to receive the particulars of the list of contestants including their addresses before starting the election process;
- e) Alternatively, if the defendants refused to furnish better particulars and addresses of the list of valid voters and contestants then the entire election process be stayed."

A meaningful reading of the plaint would indicate that the plaintiff had reason to believe that the conduct of the election for the year 2023 would also suffer from similar irregularities, as in the past. Thus he filed the suit. The plaintiff did not try to stall the democratic process of election.

The paragraphs quoted hereinabove would indicate how irregularities and illegalities were perpetuated by the Honorary General Secretary in the Election of 2020, which was *sub judice*. The plaint discloses how there were litigations with regard to the mismanagement and inefficiency of the office bearers. Dr. P.P. Mohanan, who was the President in the year 2020 had admitted in writing, that Dr. Debabrata Roy lacked the necessary qualification to contest for the post of Honorary General Secretary.

As such, before the election process of 2023, the members requested for the updated list of voters, their addresses and names of the contestants, in order to check

future manipulation. The said request was not adhered to. The members approached the Chairman of the Scrutiny Committee. The plaintiff had apprehended that the election would not be fair and instances of the enquiry by Dr. P.B. Jayagopal, have also been narrated.

Under such circumstances, this Court finds that sufficient cause of action has been pleaded in the plaint and the plaint does not deserve to be rejected at its initial stage.

With regard to the suit being barred by law, this Court finds that the West Bengal Societies Registration Act, 1961 does not specifically bar a civil suit. The law also does not provide for a separate mechanism for conduct of elections by any other competent authority like the Election Commission etc. The election of the society is conducted as per the regulations and or bye laws of the society. No procedure to challenge the election of a society has been prescribed by a special statute, unlike Lok Sabha, Assembly, Municipal and Panchayat elections. The plaintiff as a member, in my *prima facie* view had the locus to file the suit claiming that the election be conducted in a free and fair manner and for such purpose, prayers (a) to (e) have been made. All the issues which have been raised by the defendants will be adjudicated in the suit, upon trial on evidence, including the maintainability of the suit.

The decision of State of Kerala vs. Puthenkavu N.S.S. Karayogam & Anr. (supra), is not relevant for the purpose of disposal of the revisional application as this Court has already answered that apart from the pleadings with regard to the appointment of an administrator, the cause of action had been sufficiently disclosed and the plaint cannot be thrown away at the first instance.

Reliance is placed on the decision of Liverpool & London S.P. & I Association Ltd. (supra). The Hon'ble Apex Court observed that if the cause of action as pleaded raised some questions to be decided by a Judge, the weakness of the case or chances of failure of the suit, should not be a ground for rejection of the plaint.

At the stage of a decision of an application under Order VII Rule 11, the averments in the plaint are treated to be true and correct.

Under such circumstances, the revisional application is dismissed.

The parties are at liberty to agitate all points available to them at the appropriate stage in the suit.

All the observations made hereinabove, are only for the purpose of disposal of the revisional application and shall not affect the rights of the parties in any stage of the proceedings.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)