

Item No. 15
22.09.2023
Court. No. 19
GB

C.O. 3424 of 2023

Ulpi Gupta & Ors.
Vs.
Diamond City North Residents Association & Ors.

Mr. Bikash Ranjan Bhattacharya,
Mr. Dibyendu Chatterjee,
Ms. Reshmi Ghosh,
Mr. Rahul Deb Goenka,
Mr. Mainak Singha Barman

...for the Petitioners.

Mr. Sandip Kumar De,
Mr. Abhik Chitta Kundu

...for the Caveators.

The only issue to be decided in this revisional application is whether the learned Civil Judge (Senior Division), 2nd Court at Barasat was justified in passing the order dated September 18, 2023 in Title Suit No.602 of 2019.

By the order impugned, an application under Section 151 of the Code of Civil Procedure, filed by the plaintiffs seeking permission to cast their vote during the pendency of the suit, was rejected. According to the learned court below, the application was outside the purview of the civil suit.

The civil suit pertains to an earlier Election Circular of the Diamond City North Residence Association of 2019. During the pendency of the suit, tenures of the association expired. At present, an election is due to be held on September 24, 2023 for constitution of the body and office bearers of the association, for the year 2023-24. In the pending suit, an application was filed by the petitioners seeking orders to cast their vote. Such application was rejected.

Mr. Bhattacharya, learned senior advocate appearing on behalf of the petitioners submits that an opportunity should be given to the plaintiffs to cast their vote as they are all residents of Diamond City North. It was their democratic right. They had also paid majority of the maintenance charges. 70% of the dues were paid as per the direction of a civil court. The petitioners do not accept the claim of the association towards maintenance charges and the quantum were disputed.

Mr. De, learned advocate appearing on behalf of the opposite parties submits that the petitioners cannot vote until and unless all the dues towards maintenance charges, are clear. The Articles of Association of the Association, does not allow defaulting members to cast their vote. It is further submitted that the suit was with regard to the previous Election Circular of 2019. The petitioners could not have filed an application, inviting the Court to invoke inherent power and allow them to cast their vote. The prayer was completely beyond the scope of the suit and could not be granted by the learned trial judge. Hence, the learned trial judge rightly rejected the application.

Admittedly, the Articles of Association mentions that maintenance charges have to be paid for a member to be eligible to cast his vote. It is also not in dispute that some amount is still due from the petitioners. Thus, unless the petitioners pay their individual dues as on date, they shall not be entitled to participate in the election by casting their vote. The question as to whether the dues have been

legitimately claimed by the association or not, will be decided in the pending suits. Payment will be made without prejudice to their rights and contentions in the pending civil suit or any other proceeding. Payment shall be tendered within 6 PM of September 23, 2023. If payments are made by each of the petitioners, they will be allowed to cast their vote. The payments shall be invested by the association in a short-term interest bearing, auto renewal fixed deposit with a nationalized bank. The fate of the fixed deposit shall be subject to by the ultimate decision in the pending suits. If the petitioners are successful in proving their case and in justifying the irregularity in the maintenance charges claimed from them and deposited pursuant to the order of this court, necessary orders will be passed by the suit court upon final adjudication of the dispute. This order only pertains to the dues upto date. The future claim towards maintenance charges, shall not be governed by this order.

Within 4 p.m. today, each of the petitioner will be intimated by the Vice President of the association, the amounts due till date.

Accordingly, the revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order as also on the learned advocate's communication.

(Shampa Sarkar, J.)