

06.03.2024
S/L. No. 2
Court No. 3
Suvayan/
Sourav

**FMAT 564 of 2023
With
CAN 3 of 2023**

**Cardiological Society of India & Anr.
Vs.
Dr. Dhurjati Prasad Sinha & Ors.**

*Mr. Jaydeep Kar, Sr. Adv.
Mr. Rajdeep Bhattacharya
Mr. Sauradeep Dutta
Mr. Arindam Kundu*

...for the appellants.

*Mr. Kishore Dutta, Sr. Adv.
Ms. Reshmi Ghosh
Ms. Barnali Gantai*

...for the respondent no. 1.

*Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Dibyendu Chatterjee
Mr. Pritam Majumdar
Mr. Rahul Deb Goenka
Ms. Satabdi Das*

...for the respondent no. 2.

1. Heard Mr. Kar, learned Senior Counsel appearing for the appellants, Mr. Dutta, learned Senior Counsel appearing for the plaintiff/respondent no. 1 and Mr. Bhattacharyya, learned Senior Counsel appearing for the respondent no. 2.
2. The receipt regarding the deposit of cost is taken on record.
3. The respondent no. 2 is stated to be the apex body of Cardiological Society of India. The appellants here were not being party either in the suit or in the interim application is asserted to be a branch of the respondent no. 2 but according to bye-law of respondent no. 2, the

present appellants are registered separately; it has its own bye-law not contrary to the bye-law of the respondent no. 2 and it has its own committee, etc. The plaintiff here is stated to have been appointed as organizing secretary of the appellants' society vide order dated 19.02.2023 of respondent no. 2. On 01.04.2023 one Dr. Sunit Banerjee issued a notice convening special general body meeting scheduled to be held on 22.04.2023 which is stated to be the internal meeting of the present appellants.

4. The aforesaid notice dated 01.04.2023 was challenged in the suit. Subsequently, the application under Order 39 Rules 1 and 2 CPC was filed to stop holding of the aforesaid meeting on 22.04.2023 or any subsequent dates. The matter was taken up on 13.04.2023 and on the same day the order restraining the defendants from permitting any member of the defendant no. 1, i.e., the respondent no. 2 here to hold any Annual General Body Meeting and further they were restrained from passing any resolution or decision at the meeting to be held on 22.04.2023.
5. The aforesaid order dated 13.04.2023 has been modified subsequently on 18.04.2023 restraining the members of original defendant

no. 1 (respondent no. 2 here) through its West Bengal branch to hold any special General Body Meeting and they were further restrained from passing any resolution or decision at the meeting to be held on 22.04.2023 or on any subsequent date.

6. Mr. Kar, learned Senior Counsel appearing for the appellants submits that the West Bengal chapter of respondent no. 2 is an independent body and a juristic person itself. It has been registered under the West Bengal Society Registration Act, 1961 and it has its own bye-law which is not contrary to the bye-law/constitution of apex body i.e., respondent no. 2 here. It is fairly submitted by Mr. Kar that no doubt the appellant here is a branch of the apex body i.e., respondent no. 2 so far as administrative and supervisory methods are concerned but so far as exercise of power etc. finding of avenues of works etc. are concerned, the appellant society is completely independent from the apex body i.e., respondent no, 2 here.
7. The notice dated 01.04.2023 was a notice issued by the appellants under its own bye-law and respondent no. 2 had nothing to do with the same. It was further submitted by Mr. Kar, learned Senior Counsel for the appellants that when relief was sought for against the present

appellants in the propriety of things, the appellants should have been made a party in the suit and it should have been also made a party in the interim application. The injunction order having been passed behind the back of the appellants, the same is bad in law and not sustainable.

8. Mr. Dutta, learned Senior Counsel appearing for the plaintiff (respondent no. 1) submits that the present appellants have no separate entity and much less it is not also a juristic person. It is simply a branch of present respondent no. 2 (original defendant). The present appellants have to work on the basis of instruction issued by the apex body (respondent no. 2 here). The plaintiff having been appointed as organizing secretary by the apex body i.e., the respondent no. 2, the State chapter i.e., the present appellants which is merely a branch of respondent no. 2 had no business to convene the general body meeting vide impugned notice dated 01.04.2023.
9. It is further submitted by Mr. Dutta, learned Senior Counsel that the plaintiff being the *dominus litis* has the discretion to implead party according to his choice and relief sought for in the suit and the present appellants neither being a necessary party nor being a proper party has not been impleaded as a party either in the

suit or in the interim application filed under Order 39 Rules 1 and 2 CPC. It is lastly submitted by Mr. Dutta, learned Senior Counsel that the appeal in its present form is not maintainable and it should be dismissed.

10. Mr. Bhattacharyya, learned Senior Counsel appearing for the respondent no. 2 though does not dispute the submissions advanced by the learned Counsel for the parties submits that for convening a special general body meeting by the present appellants, the authorization of the executive committee of the West Bengal chapter was required.
11. Perused the impugned orders dated 13.04.2023 and 18.04.2023. It is a laconic order deficient of required reasons to be furnished in an order of ad interim injunction and any laconic order is a stark violation of the principle of natural justice. It is settled in law that in a petition for injunction three things classically are required to be considered; i) *prima facie* case, ii) balance of convenience and iii) irreparable loss/injury. In course of time fourth ingredient has come to be recognised by judicial dictums and that is public interest. So far as grant of ad interim injunction is concerned, it is settled in law that the Court must record a finding regarding the urgency of grant of such injunction and further that the

delay in granting the ad interim injunction without hearing the other side may defeat the very purpose of the provision contained in Order 39 Rules 1 and 2 CPC or frustrate the prayer in the suit.

12. A bare reading of the impugned order makes us to re-think as to how such important matters are being dealt with by learned court below casually. There is no discussion about any ingredient or urgency in the impugned order and learned court below is found to have exercised discretion not judicially but mechanically. This itself makes the impugned order vulnerable. We do not say that while granting ad interim injunction, there should be thread bare discussion about every ingredients of the injunction as it should be done after hearing the parties while passing the final order. But the order though short, should be passed with all the ingredients in mind. Grant of ad interim order being a discretionary relief has to be allowed with proper care, caution and circumspection as the adversary party who shall have to suffer the order is not before the Court. Such order should be justified by reasons.
13. So far as the submission of Mr. Kar, learned Senior Counsel for the appellants and Mr. Dutta, learned Senior Counsel for the

respondent no. 1 respectively are concerned, we are not persuaded to delve deep into the matter as the learned court below may be prejudiced at the time of disposal of the injunction petition and other ancillary applications/petitions.

14. In view of such fact, the present appellants, if so advised, may file petition in the suit for imploding him as a party and such petition should be disposed of on its own merit. After order is passed by learned court below, application for injunction shall be taken up by the said court after giving opportunity to all the parties concerned to file their written objection.
15. We feel persuaded to take into note the submission of Mr. Kar, learned Senior Counsel appearing for the appellants and Mr. Bhattacharyya, learned Senior Counsel appearing for the respondent no. 2 that the captioned meeting has already been held on 7.12.2023 to 10.12.2023 and such meeting has been held at the behest of the persons nominated/selected by the present respondent no. 2.
16. In view of such fact, the impugned order is set aside. The petition if filed by the appellants for imploding them as a party shall be disposed of on merit within a period of two months from the

date of its filing after giving opportunity of hearing to all the parties concerned.

17. Accordingly, the instant appeal being **FMAT 564 of 2023** with **CAN 3 of 2023** are disposed of.
18. It is, however, made clear that the observation as made by us while disposing the instant appeal are purely limited for the purpose of disposal of the instant appeal and learned court below is hereby directed not to be influenced and/or persuaded by any of the observation made hereinabove.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)