

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

**CO 300 of 2025
Jaydeep Chakraborty
Versus
Snehasish Bhaumik & Ors.**

with

**CO 301 of 2025
Somesankar Bhattacharyya
Versus
Snehasish Bhaumik & Ors.**

For the petitioner	:	Mr. Soumya Majumdar, Sr. Advocate Mr. Arindam Banerjee, Sr. Advocate Mr. Biswaroop Bhattacharya Mr. Deepan Sarkar Mr. Samriddha Sen Ms. Deepti Priya Mr. Aviroop Mitra
For the opposite parties:		Mr. Suman Dutta, Sr. Advocate Mr. Sabyasachi Chowdhury, Sr. Advocate Mr. Siddhartha Banerjee Mr. Rajarshi Dutta Mr. Shaunak Ghosh Mr. Sakabdo Roy Mr. Saheli Sen Mr. Rajib Mullick Ms. Ayantika Saha
Heard on	:	14.02.2025.
Judgment on	:	20th February, 2025.

RAJA BASU CHOWDHURY, J:

1. The aforesaid revisional applications have both been filed, *inter alia*,
challenging the judgment and order dated 17th January, 2024

passed by the learned District Judge, 24-Parganas (South), Alipore in Miscellaneous Appeal No. 403 of 2024 arising out of the *ex parte* interim order dated 7th October, 2024 passed by the learned Civil Judge, (Jr. Division), 4th Court at Alipore in Title Suit No. 1776 of 2024, whereby the learned District Judge had refused to interfere with the *ex-parte* order dated 7th October, 2024 and had consequentially dismissed the appeal filed by the petitioner.

2. The aforesaid suit has been filed by the plaintiffs for a declaration and injunction. The case of the plaintiffs in brief is that the proforma defendant is a society governed under the West Bengal Society Registration Act, 1961; the plaintiff no.1 is secretary whereas the plaintiff no. 2 is the Chairman of the society. The plaintiff nos. 3 to 5 are the members of the said society. According to the plaintiffs the society is regulated in terms of the Memorandum of Association (MOA) which bears the rules and regulations *inter alia* regarding holding of meetings of the society and its members. The plaintiffs claim that the MOA gives right to the governing council of the society to expend the money and funds of the society in such manner as they consider most beneficial for the purpose of the society. According to the plaintiffs, the MOA of the society authorizes the governing council to appoint bankers, and the bank accounts are required to be operated jointly by the Secretary, Treasurer, and any one member of the council as specifically resolved by the council. The plaintiffs claim that the defendant no.13, the Chief Executive Officer (CEO) of the society had been

endowed with such powers of the governing council as are necessary for the smooth functioning of the society. It is the plaintiffs' case that the defendant no.13 had been misusing his position as CEO and mismanaging the activities of the society. When the aforesaid fact came to the notice of the plaintiffs, the governing council of the society revoked the power of the defendant no.13 and further removed him from continuing as a signatory of the bank accounts of the society and also lodged a police complaint against him.

3. The plaintiffs along with the other members of the governing council held a meeting on 17th July, 2024 by which the special power given to the defendant no.13 by way of a resolution dated 1st October, 2009, was withdrawn whereunder amongst others, the power to operate the bank accounts of the society by acting as one of the signatories also stood revoked. Notwithstanding the aforesaid, the defendant no.13 continued to withdraw funds of the society, using his signature on the cheques of the bank account of the society. The matter, however, did not stop here the defendant no.13 had thereafter formed a team consisting of the defendant nos. 1 to 12 and the defendant nos. 15 to 19 with the object of ousting the plaintiffs from the society. Pursuant to the aforesaid, a requisition for holding a special general meeting by way of communication dated 31st August, 2024 was issued wherein nine points were stated as agenda for such meeting. After receiving the requisition, the plaintiffs had immediately informed the defendant nos. 1 to 12 and defendant nos. 15 to 19, that the matter was to be placed before the

governing council and the defendant nos. 1 to 12 and the defendant nos. 15 to 19 were to be informed accordingly. The governing council in its meeting held on 5th September, 2024 had decided that the issue nos. 1 to 8 of the requisition were day to day administrative issues and as such were outside the purview of the special general meeting. Accordingly, the plaintiff no.1, as the secretary of the society on behalf of the governing council had sent out a notice dated 22nd September 2024 addressed to all the members of the society for convening the special general meeting on 30th September 2024 at Rotary Sadan from 12 noon to 2 PM., on the issue no.9 as per the following agenda.

“AGENDA

Requisition for “Dissolution of present Governing Council and Election of new Governing Council” as made by certain members, to be placed before Society members for mandate in person.

Note to members –

1. Kindly bring one original Government Identity Proof for admittance.

2. Entry to close at 12.30 P.M.

3. Every member whose name appears in the register of members on the date of this Notice for convening the Special General Meeting is entitled to attend and participate in proceedings of the Special General Meeting in person.”

4. Incidentally on 26th September, 2024 the defendant nos. 4, 5, 6, 8, 10, 17, 18 and 19 had emailed plaintiffs that since all the issues that formed part of the requisition issued by them were not being put up in the meeting, they would reserve their right to convene a

meeting of their own. According to the plaintiffs, the meeting convened by the defendant nos. 4, 5, 6, 8, 10, 17, 18 and 19 by notice dated 29th September, 2024 for the special general meeting to be held on 30th September, 2024 was not in accordance with the MOA of the society. The requisition was made only by eight individual members. As such the special general meeting was bad in law. Having regard to the fact that the requisition to the governing council had been admittedly issued on 31st August, 2024 and admittedly as on 30th September, 2024 a period of one month had not gone by and as such as per the MOA no further requisition could have been issued. The plaintiffs' case proceeds on the premise that the meeting dated 30th September, 2024 was held pursuant to the notice dated 22nd September, 2024. That most of the members of the society were present and formed the quorum of the meeting. Such members had unanimously agreed that there was no need for dissolution of the present governing council and that there was no need for holding election of the new governing council.

5. It is also the plaintiffs' case that on 2nd October 2024 the plaintiffs had come to learn that the official website of the society had been tampered with, and the names of all the governing council members of the society had been removed from the official website of the society. Although, in accordance with the MOA of the society along with the resolution taken by the governing council of the society, the secretary of the society being the plaintiff No.1 was entitled to operate the e-mail of the society, however, on 1st October, 2024 the

plaintiff no.1 found out that he had no access to the said e-mail ID and that the password had been changed. This prompted the plaintiffs to suspect that the account has been hacked by the defendant nos. 1 to 19. The plaintiffs further apprehending that the special general meeting held after being requisitioned by eight individual members amongst the defendant nos. 1 to 12 had illegally removed the current governing council of the society in connivance with defendant no.13 and it is for such reason, such members had illegally modified the official website of the society so as to remove the names and pictures of the members of the governing council of the society from the official website.

6. According to the plaintiffs the convening of the special general meeting of the proforma defendant on 30th September, 2024 at 9.30 a.m. was a nullity in the eye of law and accordingly the above suit was filed, *inter alia*, praying for the following reliefs:

“a) Leave under Order II Rule 2 of the Code of Civil Procedure, 1908;

b) A decree of declaration may be passed declaring that the requisition issued by the defendant no.1 to 12 on 31st August, 2024 is a nullity and as such, cannot be acted upon;

c) A decree of declaration maybe passed declaring that the notice dated 29th September, 2024 calling a Special General Meeting of the proforma defendant society is a nullity and as such, cannot be acted upon;

d) A decree of declaration may be passed declaring that the minutes of the meeting of the purported Special General Meeting of the proforma defendant society held on 30th September, 2024 at 9.30 a.m. is a nullity and as such, cannot be acted upon;

e) A decree of permanent injunction may be passed restraining the defendants from giving any effect and/or further effect to the requisition issued by the defendant no.1 to 12 on 31st August, 2024;

f) A decree of permanent injunction may be passed restraining the defendants from giving any effect and/or further effect to the notice dated 29th September, 2024 calling a Special General Meeting of the proforma defendant society.

g) A decree of permanent injunction may be passed restraining the defendants from giving any effect and/or further effect to the minutes of the meeting of the purported Special General Meeting of the proforma defendant society held on 30th September, 2024 at 9.30 a.m.;

h) A decree of permanent injunction may be passed restraining the defendants from operating the bank accounts of the proforma defendant society in any manner whatsoever unless the instrument of payment, including cheque, NEFT and RTGS are signed by the Chairman of the Defendant No.1 Society, Col. Amitava Poddar;

i) Injunction;

j) Receiver;

k) Attachment before judgment;

l) Commissioner;

m) Costs;

n) Such further and/or other reliefs”

7. Since, the requisition issued by the defendant nos. 1 to 12 on 31st August, 2024 was not in accordance with the MOA of the proforma defendant society, a decree for declaration to that effect was sought for. The plaintiffs had also sought for an injunction restraining the defendants from giving effect or further effect to the requisition issued by the defendants on 31st August, 2024 and for other

consequential reliefs including a decree of permanent injunction restraining operation of bank accounts of the proforma defendant society.

8. Simultaneously with the filing of the suit, an application under order XXXIX rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the “Code”), praying for an *ex parte* ad-interim order of injunction was moved. The learned Judge by order dated 5th October 2024 by noting that though the plaintiffs had stated that the defendants had called a special general meeting, separate from the meeting called by the governing council and such meeting was scheduled to be held on 30th September 2024 at 9:30 a.m., just before the scheduled meeting of the governing council and despite the plaintiffs having sought for an order restraining the defendants from giving effect to such meeting, since nothing was found on record, wherefrom it would be apparent that any such meeting was held, was of the view that an order of injunction cannot be granted against any such meeting, the existence whereof is not clear. Accordingly, the learned judge had refused to pass any *ex parte* order of injunction in favour of the plaintiffs. Subsequently, on 7th October, 2024 an application was filed on behalf of the plaintiffs under provisions of Section 151 of the Code. By such application the plaintiffs asserted that after the order of injunction was refused, on 6th October, 2024 the plaintiffs and the other members of the governing council of the proforma defendant had held and circulated the minutes of the meeting held by them on 6th October 2024 and in

response thereto, the plaintiff nos.1 and 2 had received an email dated 6th October, 2024, wherein a letter dated 6th October, 2024 was attached. By such letter it was communicated by the defendant no.4, masquerading as the secretary of the proforma defendant that the purported governing council had decided to suspend the plaintiff no.1. Since from the aforesaid, it became evidently clear that the plaintiffs had been removed as members of the governing council of the society by the purported special general meeting held on 30th September 2024, at 9:30 AM and the defendants were trying to take steps to defalcate the funds of the society, the plaintiffs had moved a further application for temporary injunction under the provisions of section 151 of the Code. On such application being moved, the learned Court by an order dated 7th October, 2024 restrained the defendants from giving effect to the email notice dated 6th October, 2024 and the minutes of the meeting held on 30th September, 2024, and also from obstructing the functioning of the proforma defendant society by the existing governing council as also from operating the bank accounts of the society till 12th November, 2024. Although, an appeal had been preferred from such order, the Appellate Court by the order impugned had refused to interfere.

9. By consent of the parties both the aforesaid revisional applications are taken up for final hearing together. Mr. Majumdar, learned senior counsel appearing in support of the applications has placed before this Court the requisition notice dated 31st August, 2024 and *Page D Clause 13* of the MOA read with *Page F, Clause 17A* thereof, in

support of his contention that if the governing council despite being requisitioned by the members for convening a special general meeting fails to convene such meeting within a period of one month of receipt of such notice a right accrues in favour of the requisitionists to hold a meeting and that the quorum for such meeting would be 1/3rd of the members of the society appearing from the Register of members. Although, the special general meeting was sought for by the petitioners along with other requisitionists on nine several agenda points, since, by communication dated 22nd September, 2024 the governing council had refused to hold special general meeting on all the agenda points, a right had accrued in favour of the requisitionists in terms of *Clause 13* of the MOA to hold a special general meeting by themselves. The intention to hold a special general meeting was notified to the plaintiff no.1 by a communication dated 26th September, 2024 and pursuant to the notice dated 29th September, 2024, a special general meeting was held on 30th September, 2024 at 9.30 a.m., at hotel 'The Sojourn' on the following agenda:

- “1. Termination of Ajit Karar*
- 2. Communication for closure of Calcutta Rescue by Governing Council*
- 3. Demoralization of staff*
- 4. Inconsequential misuse allegation by Hony Secretary*
- 5. Irregular appointments to CR*
- 6. Conflict of interest on tendering for renovation of 14 Tara Sankar Sarani*
- 7. Restoration of CEO's delegation of authority & bank signatory*

8. *Refusal by Governing Council to talk with Chairman Emeritus, Dr. Jack Preger, Support Group donors & CR staff*
 9. *Dissolution of current Governing Council & election of new Governing Council.”*

10. According to him, in the said meeting it was resolved to dissolve the current governing council of the proforma defendant and a new governing council was elected. The new governing council is competent to represent the society and manage its affairs. He would submit that in this case the learned judge by an order dated 5th October, 2024 had refused to pass any *ex- parte* ad-interim order by holding that he does not find any strong *prima facie* case in favour of the plaintiffs for trial. Having thus, refused to grant *ex- parte* order of injunction by observing as aforesaid, the subsequent order granting *ex-parte* injunction on 7th October, 2024 that too on an application under section 151 of the Code is an abuse of process of law. The learned judge had also in the order dated 5th October, 2024 recorded that on the basis of the allegations made in the petition, the civil court was not an appropriate forum. Having regard thereto, the grant of *ex-parte* injunction on the subsequent date apart from being manifestly illegal is an outcome of material irregularity committed by the learned judge. Although, the petitioner had preferred an appeal, the learned District Judge without deciding the contentions raised by the petitioner has returned a finding that on 26th September, 2024, eleven members (out of which membership of three signatories have been disputed) send a letter to the secretary Snehasish Bhaumik, rejecting the contention of the

existing governing council as eight out of nine agenda had been turned down and so they will not attend the special general meeting as proposed by the existing governing council to be held on 30th September, 2024. According to Mr. Majumdar, the aforesaid finding is not supported by pleadings and as such, the order passed by the learned District Judge is based on no evidence and is perverse. He would submit that in the facts noted hereinabove, this Court should set aside the *ex parte* ad interim order and permit the petitioner to file written objection so that the injunction application can be heard out.

11. *Per contra*, Mr. Chowdhury, learned Senior advocate has submitted that though the requisitionists had sought for a special general meeting by notice dated 31st August, 2024 by proposing nine agenda, since, in the opinion of the governing council only agenda raised in serial no. nine of the letter was worthy of being referred before the members for their mandate, by notice in writing dated 22nd September, 2024 the governing council had decided to convene a special general meeting on such agenda only. He would submit that due clarification had been provided in the notice as to why the other proposed agenda noted under serial nos. 1 to 8 were not being referred to in the special general meeting. That the notice dated 22nd September, 2024 was given in accordance with *Clause 13* and *31* of the MOA which requires a notice of at least 7 days to be given for convening a special general meeting. Although, he does not deny the right of the requisitionists to convene a special general

meeting if no special general meeting is convened by the governing council, however, in this case since a special general meeting was convened on agenda no.9, the requisitionists could not have convened a special general meeting at least on the agenda put up in the special general meeting convened by the governing council of the society. Alternatively, he would submit that even if a special general meeting could be convened by the requisitionists, the same could not have been convened without adhering to *Clause 31* of the MOA of the Society. The purported notice dated 29th September, 2024 for holding the meeting on 30th September, 2024 does not constitute adequate notice to the members and consequentially, the meeting as well as the decision taken are *nonest*, illegal and non-enforceable. By referring to the minutes of the meeting held by the requisitionists on 30th September, 2024, he would submit that such meeting is otherwise bad since, the requisitionists did not have the quorum for such meeting. Going by the list of members forwarded by the petitioner in his capacity as CEO of the Society to the office of the Registrar of Firms, Societies, and Non-Trading Corporations, West Bengal dated 11th September, 2024, it would transpire that there are 32 members, and 1/3rd of such 32 members would be at least 11 members. Having regard thereto, since the meeting held on 30th September, 2024 was called by less than 1/3rd of the members and there was no quorum for such meeting, the same was not a valid meeting. He would lastly submit by drawing attention of this Court to the email communication dated 29th September, 2024 that less

than 13 hours notice was given to the members for holding such special general meeting on the following day at 9.30 a.m. In the facts as noted above, there is no irregularity in the order passed by the learned Civil Judge, and the learned District Judge had rightly refused to intervene.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record. From the facts noted hereinabove, it would transpire that prior to 30th September, 2024 there is no dispute that a governing council of the society was in place. The notice dated 31st August, 2024 is counter-signed by 13 requisitionists and is addressed to the governing council with a request to hold the special general meeting to discuss the agenda indicated therein.

13. The governing council of the society by notice dated 22nd September, 2024 conveyed that a special general meeting is to be held on 30th September, 2024 at Rotary Sadan from 12 noon to 2.00 p.m. to discuss the agendum raised in serial no.9 of the requisition notice dated 31st August, 2024. Insofar as the issue nos.1 to 8 are concerned, such issues according to the governing council was administrative in nature and outside the purview of the special general meeting. The requisitionists did not accept the stand of the governing council in refusing to include the 8 proposed agenda in the special general meeting being serial nos. 1 to 8 as referred to in their requisitioned letter dated 31st August, 2024. This fact was notified to the plaintiff no.1 in his capacity as the secretary of the

society by letter dated 26th September, 2024 whereunder, the requisitionists reserved their right to hold a special general meeting in terms of *article 13* of the MOA of the society. I find that although, Mr. Chowdhury had attempted to make out a case that it was for the governing council to decide whether or not to include the issues referred to by the requisitionists in their letter in the agenda of the special general meeting, I am unable to accede to the same since *Clause 13* of the MOA confers a specific power on the members of the society to call for special general meeting. On such score I am in view that the decision of the requisitionists to reserve their right to hold a special general meeting cannot be faulted as noted in their letter dated 26th September, 2024. However, at the same time since the governing council had proposed to hold a special general meeting on the issue referred to in serial no.9 of the notice dated 31st August, 2024, such issue in my view could not be referred to by the requisitionists in a separate Special General Meeting. There is another aspect of the matter, although, Mr. Majumdar has attempted to make out a case that seven days notice provided in *Clause 13* of the MOA for convening a special general meeting is only confined to the governing council and is not applicable to the requisitionists for holding a special general meeting, I am unable to accede to the same. Having regard to the language used in *Clause 31* of the MOA, it would appear in no uncertain terms that a notice of at least seven days shall be given for holding a special general meeting or an extraordinary general meeting in the manner provided

for. Admittedly in this case, although, the requisitionists had reserved their rights to hold a separate meeting, no such meeting was convened with at least seven days' notice to the members. The letter dated 29th September, 2024 gives less than 13 hours notice to the members and that too on the same date, when the meeting convened by the governing council was scheduled to be held at a different venue. There appears to be another difficulty, from the minutes of the meeting held by the requisitionists which has been placed before this Court, only eight members had signed the same. As rightly pointed out by Mr. Chowdhury, the eight members *prima facie* did not constitute the quorum for holding a special general meeting. Having regard thereto, I have no hesitation in concluding that the meeting was not held in accordance with rules. There was no adequate notice, there was no adequate quorum. Issue no.9 which was included in the meeting dated 30th September, 2024 vide notice dated 22nd September, 2024 could not have been included in the meeting of the requisitionists.

14. I find that the learned Civil Judge (Junior Division), 4th Court, Alipore by considering the rules had concluded that the special general meeting held pursuant to the notice dated 29th September, 2024 dissolving the existing governing council of the society is *prima facie* in violation of the MOA of the Society. I do not find any irregularity in the same. The only other contention raised by Mr. Majumder is that the learned Judge at the first instance having failed to pass any *ex-parte* ad interim order by noting that

the plaintiffs had failed to make out a strong *prima facie* case ought not to have passed the *ex parte* ad interim order on 7th October, 2024. Having considering the order dated 5th October, 2024 I find that the primary consideration for disallowing the relief in favour of the plaintiffs was based on the plaintiffs not being able to support their case by documentary evidence. It appears that when the order dated 5th October, 2024 was passed, the plaintiffs could not place before the learned Court the minutes of the meeting held on 30th September, 2024 ousting the governing council. The learned Court in fact records that although, the plaintiffs had sought for an order restraining the defendants from giving effect to such a meeting, however, nothing is found from the record showing any such meeting other than the minutes of the meeting disclosed by the plaintiffs. Following the same the Court proceeded to conclude that an order of injunction against the meeting, the existence whereof is not clear, cannot be granted. Thus, the foundation for refusing the *ex parte* order of injunction was the failure of the plaintiffs to disclose the existence of the meeting by which the plaintiffs had been removed. This apart although, it has been submitted that the learned Court having recorded that civil court was not the appropriate forum for having the issues adjudicated, no further order of injunction could be passed, I, however, find that such observation of the learned Judge is directed against the acts of the defendants in relation to the plaintiffs' e-mail being hacked.

15. Since admittedly, the subsequent application filed by the plaintiffs was based on the subsequent disclosure of the minutes of the meeting held on 30th September, 2024 at 9.30 a.m. by the defendants, I do not find any irregularity having been committed by the learned Judge in passing the order of *ex parte* injunction.
16. The learned District Judge while deciding the appeal also did not commit any irregularity in refusing to interfere with the order passed by the learned Civil Judge (Junior Division), 4th Court, Alipore.
17. Since the petitioner has also not been able to identify any jurisdictional error or any irregularity, I am of the view that no interference is called for. The observations made herein are however, *prima facie*. Noting that the matter pertains to disputes relating to governing council of the society, I am of the view that the learned Court should expeditiously hear out and dispose of the injunction application preferably within three months from the date of the communication of this order.
18. The revisional applications are accordingly disposed of.
19. There shall be no order as to costs.
20. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)