

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.M.A.T 276 of 2025
IA No: CAN 1 of 2025

Colonel M Sanjeev,
Secretary of the Calcutta Swimming Club
Vs.
Sardar Shahin Imam and others

For the appellant : Mr. Abhrajit Mitra
Mr. Sarvapriya Mukherjee
Mr. Chayan Gupta
Mr. Yasho Vardhan Kochar
Ms. D. Mukherji
Ms. Priyanka Garain

For the respondent no.1 : Mr. Sudhasatva Banerjee
Mr. Debangshu Dinda
Mr. Rachit Lakhmani
Mr. Tamoghna Saha

Heard on : 17.07.2025

Judgment on : 17.07.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred at the behest of a defendant in a declaratory suit wherein an amendment to the

Rules of the concerned Association/Club has been challenged and consequential relief of permanent injunction restraining the defendant from conducting AGM/e-voting of elections to be held on July 5, 2025 has been sought.

2. In the said suit, a temporary injunction application was filed, in connection with which the impugned order of *ad interim* injunction dated July 4, 2025 has been passed.
3. In the temporary injunction application, the plaintiff/respondent no.1 had prayed that the defendants, their men and agents and/or servants and/or each one of them are restrained from performing and/or conducting AGM and/or the email voting system of elections to be held on July 5, 2025.
4. By the impugned order, the learned Trial Judge granted *ad interim* injunction in terms of the said prayer.
5. Upon hearing learned senior counsel for the appellant as well as learned counsel for the plaintiff/respondent no.1, we find that the present appeal has been rendered infructuous, since the *ad interim* order of injunction was restricted to the prayer in the temporary injunction application, which pertained exclusively to the elections to be held on July 5, 2025.
6. However, certain important issues have been sought to be flagged by the parties.

- 7.** Learned senior counsel appearing for the appellant submits that in the event the impugned order is permitted to be sustained, the logic in the same shall be relied on by the plaintiff/respondent no.1 in trying to forestall future notices and AGMs as well as elections on the self-same ground.
- 8.** Learned senior counsel submits that in terms of the amended Rules, in particular Rule no. 35(d), of the Association/Club-in-question, the responsibility of holding the elections was vested with the National Securities Depositories Limited (NSDL) which is in charge of holding elections for several reputed companies as well as other organizations of note.
- 9.** Learned senior counsel places reliance on the Rules of conduct of virtual elections of the NSDL, which was also intimated to the plaintiff/respondent no.1 by e-mail, as annexed to the present application.
- 10.** It is submitted that the said Rules categorically provide that the User ID furnished for the purpose of voting will be the primary even number, followed by membership number registered with the Club, for the purpose of casting e-votes.
- 11.** Alternatively, members can also select Login type as “OTP”, in which case the Login will be done by the OTP (One Time

Password) received on the registered mobile number and/or e-mail ID of the concerned voter.

- 12.** It is further stressed that the said Rules of the NSDL also provide that it is strongly recommended not to share the password/OTP of the voter with any other person and take utmost care to keep the password/OTP confidential.
- 13.** It is submitted by learned senior counsel appearing for the appellant that as per the said Rules, physical voting has not altogether been ruled out.
- 14.** However, in the event a member of the Association casts their vote both in virtual and venue voting (in physical mode), it is the virtual vote which would be cancelled.
- 15.** Thus, in the event of repugnancy, it is argued, it is the physical vote which would prevail over the virtual vote.
- 16.** Thus, it is contended that primacy has been conferred upon physical voting in case of a conflict between the two modes.
- 17.** Learned senior counsel contends that there is no lack of transparency in the voting process and, hence, the apprehensions expressed by the plaintiff/respondent no.1 are misconceived.
- 18.** Learned counsel arguing for the plaintiff/respondent no.1 specifically contends that the mode in which the virtual election

is sought to be conducted by the NSDL will give a premium to proxy voting, which is specifically barred in respect of elections of the concerned Association.

- 19.** Learned counsel places reliance on an order of a learned Single Judge of this court dated September 23, 2021 passed in connection with IA No: G.A. 1 of 2021 in C.S. 189 of 2021 where the learned Single Judge had, *inter alia*, expressed the apprehension that the procedure/mode of holding e-voting of NSDL as would appear from the instructions given to members for attending the AGM is that members would be required to be Login to the e-voting website and join the link for the meeting, which would be an open-field procedure which would admit of sharing of user IDs and passwords.
- 20.** The learned Single Judge expressed observed that, hence, there is a distinct possibility of the e-voting being thrown open to the outsiders, non-members and even to the public at large who would be able to participate in the elections without being a member of the Club who is eligible to do so.
- 21.** The learned Single Judge held that the idea behind voting in a social club is a personal interest on the part of the member to elect his/her chosen candidate.

- 22.** It is, thus, contended that unless the temporal window of issuance of OTPs/passwords is limited rigorously to a few minutes or hours prior to the actual voting taking place, there would be scope of rampant abuse and proxy voting.
- 23.** Learned counsel next cites an example that if a voter is disinterested in participating in the election process, he or she would just have to share his/her Login ID/password with a third party, who might be anybody, including an outsider to the Association, to derail the election process.
- 24.** In such event, the entire transparency and checks and balances ensured by physical voting would be thrown out the window.
- 25.** Learned counsel, on the query of court, however, submits that the plaintiff/respondent no.1 does not have any qualms in principle with e-voting taking place. However, the long window of using the OTP/password would frustrate the entire process.
- 26.** While passing the judgment, learned counsel for the respondent no.1 draws the attention of the court and clarifies that no concession has been given by the plaintiff/respondent no.1 with regard to the e-voting process and the mode in which the e-voting is being conducted by the NSDL.
- 27.** In reply, learned senior counsel appearing for the appellant places reliance on an order passed by a coordinate Bench in an

appeal (APOT 78 of 2025), preferred in connection with the refusal of an *ad interim* order passed in a previous suit in respect of the self-same Club.

- 28.** In paragraph no.24 of the said judgment, the Division Bench reiterated that the Rules of a Social Club constitute a contract between the Club and its members as also the members *inter se* and all the members are bound by the Rules.
- 29.** However, learned counsel for the plaintiff/respondent no.1 is quick to point out that such order was passed in the context of a challenge to a suspension/expulsion of a member.
- 30.** Upon hearing learned counsel for the parties, we find that the present appeal has been rendered infructuous to the limited extent that the order impugned therein has spent its force, as the prayer for injunction was restricted to the July 5, 2025 AGM.
- 31.** However, with regard to the observations made by the learned Trial Judge, we want to put in our two pence worth of opinion on the basis of the submissions made by the parties.
- 32.** After carefully going through the order of the learned Single Judge dated September 23, 2021 passed in G.A. 1 of 2021 in connection with C.S. 189 of 2021, which has been heavily relied on by the plaintiff/respondent no.1 before us, we find that the

context of the same cannot be divorced from the findings thereof.

- 33.** In the said judgment, the learned Single Judge was considering the efficacy of virtual elections in the context of the then extant Rule 35 (d) of the Association, which has since been amended.
- 34.** Of course, the said amendment has also been challenged in the suit from which the present appeal arises.
- 35.** Be that as it may, the findings rendered therein, expressing apprehension of the learned Single Judge with regard to e-voting conducted by the NSDL, cannot be given a general and omnibus colour but has to be taken in the context of the prior observations, where it was held that such mode of voting as resorted to could not be adopted without a change in the Rules.
- 36.** Hence, the observations made in the said judgment, made in the particular context of the then existing Rules, cannot be borrowed for deciding the present case, in view of the subsequent amendment to Rule 35(d).
- 37.** We find from the amended Rule that the same permits electronic voting. To be more specific, it provides, *inter alia*, that whenever possible, the committee would make best endeavour to conduct the election of the President and Committee through electronic voting machine and in that event, the members shall exercise

their voting right by punching against the name of those members not exceeding eleven in all, for the Committee and one for the President, for whom they wish to vote.

38. The counting of votes, it is provided in the amended Rule, may be done electronically.
39. However, in case of any contingency, the manual method of counting may be adopted.
40. It has also been categorically mentioned that, however, in case of e-voting, the norms and procedures as prescribed by the statutory e-voting agency from time to time shall apply.
41. In the present matter, we do not find *per se* any allegation having been levelled against the integrity or honesty of the agency given the charge of the voting process, that is, the NSDL.
42. The apprehension of the plaintiff/respondent no.1 with regard to prior sharing of e-mail ID and password cannot be accepted by this court *prima facie*.
43. We have to keep in mind that the password and ID generated to individuals for casting their votes are unique to each of the voters.
44. Secondly, such IDs and passwords are to be sent to the voters individually, without the same being shared with anyone else.

45. Thus, it is being ensured by the current ongoing process that the individual IDs and passwords for voting are not known publicly but by the concerned voters only.
46. We do not understand, with our limited acumen, the logic of the argument that if an OTP is generated with a short time-span or the ID is shared more proximate to the voting time, how it will prevent the sharing of the OTP or ID with someone else, in the event a particular voter is bent upon doing so.
47. The time taken to share an ID or password is not much in the present electronic age.
48. Hence, if a particular voter has a preconceived notion that he or she will share their user ID or password for a proxy voting to occur, the same cannot be prevented, however little time is given for casting of the vote.
49. Rather, too short a time, if granted, might severely affect the casting of votes by legitimate voters by themselves as well, since the voters might not, at the particular moment when the OTP or the password is sent, be in a position to immediately cast their votes for various reasons.
50. That apart, if a particular candidate or his/her stooge seeks to solicit the vote of certain particular voters, the said exercise

would be done not immediately when the password or ID is generated but much prior thereto.

- 51.** Thus, if a voter is convinced beforehand by a particular candidate to vote for such candidate, it would open to such voter to cast the vote by himself and from his own ID, using his own password, in favour of such favoured candidate.
- 52.** No useful purpose would be served in having the vote cast in the name of that particular voter through a third party, in other words via a proxy vote, which would be an unnecessarily roundabout process of casting such vote.
- 53.** The concept of “proxy vote” has different shades and connotations.
- 54.** If a person seeks to cast a vote in favour of a particular candidate but does it through somebody else, it does not make much of a difference, since it is the concerned voter who is casting the vote, by himself or through someone else.
- 55.** It is the legitimate intention of the voter to cast the vote in favour of a particular candidate which is to be looked at.
- 56.** A wider and more pervasive connotation of “proxy voting” in elections is that a disinterested person abstains from voting altogether and, in his place, someone else gives a proxy by

casting the vote in his name, which would tantamount to impersonation.

- 57.** Such element is not involved in the present case, if the voting is done by electronic mode, by generating a unique ID and password to each particular voter, for the simple reason that no useful purpose would be served by a voter asking someone else to vote for him if in the first place, the voter himself is of the opinion that the vote should be cast in favour of a particular candidate.
- 58.** In any event, as rightly pointed out by learned senior counsel appearing for the appellant, sufficient checks and balances are already in place, as evident from the Rules prescribing the modalities of conduct of electronic voting as disclosed by the NSDL in its e-mail dated June 28 annexed at page-179 onwards of the stay application filed in connection with the present appeal.
- 59.** The said Rules of the NSDL itself strongly recommend voters not to share their password/OTP with any other person and to take utmost care to keep the password/OTP confidential.
- 60.** Moreover, alternative modes have been provided, either by electronic voting through the mode of user ID and password or by generation of OTP (One Time Password).

- 61.** As per the amended Rule 35 (d) of the Association, as discussed earlier, the voting can also be done in physical mode, which has not been completely debarred but merely electronic voting has been encouraged.
- 62.** More importantly, even in the Rules of conduct of such electronic voting of the NSDL, as disclosed before us, if there is a physical voting and a virtual voting by the same person, it is the physical voting which is given primacy, thereby overruling the virtual voting, which also negates any apprehension of foul play in that regard.
- 63.** Thus, the limited prayer for injunction which was allowed at the *ad interim* stage by the impugned order cannot be converted to an injunction in the nature of a universal or dynamic injunction, restraining the concerned Association/Club from holding any future AGM/election in a blanket manner by the electronic mode.
- 64.** We, in any event, do not find any legitimate apprehension strong enough to preclude the Association from doing so.
- 65.** Accordingly, FMAT 276 of 2025 is admitted and disposed of as infructuous in view of the impugned order having spent its force, since it was restricted to the AGM dated July 5, 2025, which is already over, in the light of the above observations.

- 66.** However, nothing in this order shall preclude the concerned association/club, namely the Calcutta Swimming Club, from holding a fresh AGM and election by issuance of a notice afresh, strictly in consonance with the Rules of the Club and in terms of the Rules of the NSDL, through the NSDL and in a transparent manner in accordance with law.
- 67.** We further indicate that it will also be open to the plaintiff/respondent no.1 to raise legitimate objections in the event such fresh elections are held in violation of the above riders, without being unduly prejudiced by the above observations.
- 68.** CAN 1 of 2025 is disposed of consequentially.
- 69.** There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

AD-5
AK