

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPEAL FROM AN ORDER PASSED IN
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

**APO 27 of 2025 WITH
CS 364 OF 2014
SUKHLAL CHANDANMULL (P) LTD.
Versus
HARROW HALL**

Present :

**The Hon'ble Justice Debangsu Basak
-And-
The Hon'ble Justice Md. Shabbar Rashidi**

For the Appellant : *Md. Sabyasachi Chaudhury, Sr. Adv.*
Mr. Shaunak Mukhopadhyay, Adv.
Ms. Anuradha Poddar, Adv.

For the Respondent : *Mr. Dhruva Ghosh, Sr. Adv.*
Mr. Rohit Banerjee, Adv.
Mr. Altamash Alim, Adv.

HEARD ON : 10.11.2025
DELIVERED ON : 10.11.2025

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment and order dated February 12, 2025 passed in IA GA 7 of 2022 in CS 364 of 2014.

2. By the impugned judgment and order, learned Single Judge allowed the application under Order VII Rule 11 of the Code of Civil Procedure, 1908.

3. Learned senior advocate appearing for the appellant submits that, the appellant filed a suit for eviction against the defendant. In the facts and circumstances of the present case the defendant was enjoying the tenancy under the appellant. He draws the attention of the Court to the cause title of the plaint. He submits that, the defendant is described as a society registered under the Societies Registration Act represented through its Secretary. He also draws the attention of the Court to Section 19 of the West Bengal Societies Registration Act, 1961. He submits that, under Section 19(1) of the Act of 1961, every society may sue or be sued in the name of the President, the Secretary or any office bearer authorised by the Governing Body in that behalf.

4. Learned senior advocate appearing for the appellant submits that, the word “in the name of” as used in Section 19 of the Act 1961 should be understood to mean that it refers to the office of the President, the Secretary or any Office Bearer authorised by the Governing Body. He

submits that there is no infirmity in the description of the defendant as appearing in the cause title of the plaint.

5. In support of the contention that, suit cannot be dismissed under Section 19 of the Act of 1961 learned senior advocate appearing for the appellant relies upon **(2003) 3 Calcutta High Court Notes 583 (Kalpana Sarkar vs. Ramkrishna Mission)**, and an unreported decision of the learned Single Judge dated August 28, 2023 rendered in **C.O. No. 1344 of 2023 (Salkia Vivekananda Sporting Club vs. Bankey Lal Jaiswal)**.

6. Learned senior advocate appearing for the respondent submits that, the suit as against the respondent is not maintainable in view of Section 19 of the Act of 1961. He refers to the provisions of Section 19 of the Act of 1961 and contends that the name of the natural person holding the post of President, the Secretary, or the Office Bearer of the association who is authorised by the Governing Body of the association to sue or be sued on behalf of the association, is required to be impleaded as a defendant in the suit.

7. Learned senior advocate appearing for the appellant relies upon **AIR 1977 Cal 437 (12, I.C. Bose Road Tenants' Association vs. Collector of**

Howrah & Ors.) and (2003) 8 Supreme Court Cases 413 (Illachi Devi (Dead) by Lrs. And Ors. Vs. Jain Society, Protection of Orphans India and Ors.) in support of the contention that, a society registered under the Act of 1961 does not enjoy the status of the company. It is not a juristic person.

8. Learned senior advocate appearing for the respondent relies upon **(2010) 3 Calcutta High Court Notes 755 (Sha-San Infrastructures Pvt. Ltd. vs. Thakur Corner Buabsayee Kalyan Samity & Ors. and 2009 Supreme Court Cases OnLine Cal 909 (National Council of YMCA's of India vs. Skippers Textiles Private Ltd.)** in support of the contention that, the suit by or against a registered society without the President or Secretary or Office Bearer of the society not being named, is not maintainable.

9. The appellant as the plaintiff filed a suit for eviction against the defendant. In the cause title of the plaint the plaintiff described the defendant as a society registered under the Societies Registration Act represented through its Secretary.

10. The defendant/respondent applied under Order VII Rule 11 of the Code of Civil Procedure, 1908 for dismissal of the suit on the ground that, the suit is barred by law. Section 19 of the Act of 1961 is pressed to contend that the suit as framed is barred by law.

11. Section 19 of the Act of 1961 is as follows :

“19. Suits and proceedings by and against a society. –

(1) Every society may sue or may be sued in the name of the President, the Secretary, or any office-bearer authorised by the Governing Body in this behalf.

(2) No suit or proceeding shall abate by reason of any vacancy or change in the holder of the office of the President, the Secretary or any office-bearer authorised under sub-section (1).

(3) Every decree or order against a society in any suit or proceeding shall be executable against the property of the society and not against the person or the property of the President, the Secretary or any office-bearer.

(4) Nothing in sub-section (3) shall exempt the President, the Secretary or office-bearer of a society from any criminal liability under this Act or entitle him to claim any contribution from the property of the society in respect of any fine paid by him on conviction by a criminal court.”

12. Section 19 of the Act of 1961 deals with filing of suits and proceedings by and against a society. Sub-section (1) of Section 19 allows every society to sue or to be sued in the name of the President, the Secretary or any office-bearer authorised by Governing Body in this behalf. Sub-section (2) of Section 19 clarifies that no suit or proceeding shall abate by reason of any vacancy or change in the holder of the office of the President, the Secretary or any office-bearer authorised under sub-section (1). Sub-section (3) of Section 19 provides that every decree or order against a society in any suit or proceeding shall be executable against the property of the society and not against the person or the property of the President, the Secretary or any office-bearer. Sub-section (4) of Section 19 provides that nothing in sub-section (3) shall exempt the President, the Secretary or office-bearer of a society from any criminal liability under the Act of 1961 or entitle him to claim any contribution from the property of the society in respect of any fine paid by him on conviction by a criminal court.

13. Sub-sections (1) to (3) of Section 19 of the Act of 1961 governs the field of civil rights and liability of a society while sub-section (4) deals with the

criminal liability of the post holder and office bearer of a society. A post holder or an office bearer can sue or be sued for the civil rights and liabilities of the society while the criminal liability is fastened on the natural person holding the post of the office.

14. It is trite law that while considering the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, the Court is required to determine on a constructive reading of the plaint, after taking the statements made in the plaint as true and correct whether the plaint is barred by law or not, in the event, provisions of Order VII Rule 11 (d) are pressed in service for rejection of the plaint.

15. In our view, Section 19 of the Act of 1961 does not place an embargo on a society being sued in its name through the President or the Secretary or any office-bearer duly authorised in this behalf. In the facts and circumstances of the present cases, the appellant as the plaintiff described the society being represented through its Secretary. The Secretary of a society is one of the office-bearers under Section 19(1) of the Act of 1961 who can be sued as such of the society concerned.

16. In the present case the name of the natural person holding the post of Secretary is not described in the cause title of the plaint. In our view not naming the natural person who holds the post of Secretary of the society concerned is not fatal to the maintainability of the suit. Section 19(1) mandates the society to be represented either by the President or its Secretary or its Officer Bearer authorised by the Governing Body in this behalf. The natural person holding the post of President or Secretary or any Office Bearer authorised by the Governing Body is not required to be named. The Governing Body of a society will identify the post, that is, President or Secretary or any other who would be authorised under Section 19 of the Act of 1961. The Authority to sue or be sued is not granted to a natural person but to the post of the Society. The personnel occupying the post concerned may change from time to time. Therefore, the authority granted by the Governing Body of the Society to sue or be sued is to a post rather than a natural person.

17. There is nothing placed before us to establish that a natural person was authorised by the respondent in terms of Section 19 of the Act of 1961 and that the appellant as the plaintiff was aware of such authority.

18. Kalpana Sarkar (supra) was rendered by a coordinate Bench. One of the issues considered in **Kalpana Sarkar (supra)** was, whether a suit filed by a society without being represented by the Secretary of the Society or any office-bearer therein authorised by the Governing Body in terms of Section 19(1) of the Act of 1961 was maintainable or not. In such context, the coordinate Bench interpreted the word “may” used in Section 19 of the Act of 1961 not to be mandatory so as to preclude the Society to sue in its own name which holds that the society can either sue in its own name or can nominate its President and Secretary for suing. It also held that, the provision of Section 19 of the Act of 1961, being permissive, allowed the society to sue or be sued in its own name. In such circumstances, it held that, the suit filed in the name of the society was competent and maintainable.

19. Salkia Vivekananda Sporting Club (supra) was rendered in the context of the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 being rejected. Learned Single Judge dismissed the revisional application after noting that, there was an application under

Order VI Rule 17 of the Code of Civil Procedure pending for amendment of the description of the defendant in such suit.

20. 12, I.C. Bose Road Tenants' Association (supra) was rendered by a coordinate Bench in the context of a writ petition. The tenant association challenged a declaration under Section 6 of the Land Acquisition Act, 1894 by way of a writ petition. In such context, it was held that, the society itself did not possess any locus standi to maintain a writ petition, as no right of the society stood infringed.

21. In Sha-San Infrastructure Pvt. Ltd. (supra), a registered society filed a suit for declaration of the lawful right of its members to the suit property and sought declaration with regard to the deed of conveyance as void, illegal, inoperative and a sham transaction. In the facts and circumstances of that case, it was found that, the plaint of the suit did not relate to the invasion of any legal right of the plaintiff association. It went on to hold that plaint was not presented by the association in compliance with the provision of Section 19 of the Act of 1961.

22. In National Council of YMCA's of India (supra), the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 was allowed on the basis of **Illachi Devi (supra)**.

23. Illachi Devi (supra) was rendered in the context of an application for probate or letters of administration of the Will of the deceased. A society registered under the Societies Registration Act was held not to be eligible to receive a grant of either probate or letters of administration of the Will of the deceased, in view of provisions of Section 236 of the Indian Succession Act.

24. The factual matrix of the present case is akin to **Kalpana Sarkar (supra)** which is a binding co-ordinate Bench decision. **12, I.C. Bose Road Tenants' Association (supra)** considers the issue of maintainability of a writ petition on the anvil of infringement of any legal right of the association and finds none to be infringed. Similar finding of no invasion of right of the association is rendered in **Sha-San Infrastructure Pvt. Ltd. (supra)**. **Illachi Devi (supra)** noted the bar to a grant under Section 236 of the Indian Succession Act, factual matrix in the authorities other than **Kalpana Sarkar (supra)** are different to those obtaining in this case.

25. In the facts and circumstances of the present case, we find there is a school running at the premises concerned using the name Harrow Hall. We are informed that there is a society named Harrow Hall, which manages the school.

26. In view of the discussion above, we set aside the impugned judgment and order dated February 12, 2025. APO 27 of 2025 is accordingly allowed.

(DEBANGSU BASAK, J.)

27. I agree.

(MD. SHABBAR RASHIDI, J.)