

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

GA No. 7 of 2022

In

CS No. 364 of 2014

Sukhlal Chandanmull (P) Ltd.

Versus

Harrow Hall

Mr. Sabyasachi Choudhury, Sr. Adv.

Mr. Neelesh Choudhury

Mr. Biswanath Chatterjee

Ms. Anuradha Poddar

Mr. Shounak Mukhopadhyay

... For the plaintiff.

Mr. Dhruba Ghosh, Sr. Adv.

Mr. Rohit Banerjee

Mr. Altamash Alim

Mr. Satwik Beriwalla

... For the defendant.

Hearing Concluded On : 07.02.2025

Judgment on : 12.02.2025

Krishna Rao, J.:

1. The defendant has filed the present application being G.A. No. 7 of 2022 in C.S. No. 364 of 2014 under Order VII, Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint on the ground that the plaintiff has filed the suit against the Society, namely, Harrow Hall, through its Secretary but has not disclosed name of the Secretary.
2. Mr. Dhruba Ghosh, Learned Senior Advocate representing the defendant submits that the suit has neither been filed against the name of the President, nor the Secretary or any of the office bearers authorized by the Governing Body.
3. Mr. Ghosh submits that every suit by or against a Society, must be filed either in the name or against the name of the President, the Secretary or any office bearers authorized by the Governing Body. He submits that as per Section 19 of the West Bengal Societies Registration Act, 1961, every Society may sue or may be sued in the name of the President, the Secretary or any office bearers authorized by the Governing Body.
4. Mr. Ghosh submits that the defendant Society is a registered Society under the West Bengal Societies Registration Act, 1961 but the name of the Secretary is not mentioned in the cause title of the plaint. He submits that the plaintiff is aware that Mr. Sugata Chakraborty is the

Secretary of the defendant Society as the plaintiff has exchanged several correspondences with him but has not named the Secretary of the Society in the cause title.

5. Mr. Ghosh in support of his submissions relied upon the judgment in the case of ***Sha-San Infrastructures Pvt. Ltd. Vs. Thakur Corner Byabsayee Kalyan Samity & Ors.*** reported in ***2010 SCC OnLine Cal 1784*** and submitted that neither the name of President nor the name of Secretary has been mentioned in the cause title of the plaint nor the name of any other authorized member was mentioned in the body of the plaint, as such the presentation of plaint itself is defective.

6. Mr. Ghosh relied upon the judgment in the case of ***Illachi Devi (Dead) By Lrs. & Others Vs. Jain Society, Protection of Orphans India & Others*** reported in ***(2003) 8 SCC 413*** and submitted that the society registered under the Societies Registration Act as contradistinguished from a company registered under the Companies Act cannot sue or sued in its own name.

7. Mr. Ghosh relied upon the judgment in the case of ***12, I.C. Bose Road Tenants' Association vs. Collector of Howrah & Ors.*** reported in ***AIR 1977 Cal 437*** and submitted that the defendant is a registered Society under the West Bengal Societies Registration Act, 1961. Under Sub-Section (1) of Section 19 of the said Act every Society may sue or may be sued in the name of the President, the Secretary, or any office

bearer authorized by the Governing Body in this Behalf. In view of Section 19(1), the Society itself has no locus standi to maintain an action.

8. Mr. Ghosh relied the judgment in the case of ***National Council of YMCA's of India vs. Skipper Textiles Private Ltd.*** reported in **2009 SCC OnLine Cal 909** and submitted that Section 19 of the West Bengal Societies Registration Act, 1961 specifically provides for suits and proceedings by and against the Society being maintained in the name of its president, Secretary and any office bearer authorized by the governing body.
9. Mr. Sabyasachi Choudhury, Learned Senior Advocate representing the plaintiff submits that the plaintiff has filed the suit against the Society through its Secretary and in the cause title of the plaint, the description of the defendant is mentioned through its Secretary and it is not necessary to file the suit in the name of the Secretary of the Society.
10. Mr. Choudhury submits that if the case is filed in the name of the Secretary, every time when the Secretary or the President of the Society is change, the plaintiff has to amend the cause title of the suit on every occasion.
11. Mr. Choudhury submits that the plaintiff has made the Society as defendant represented through its Secretary and thus it is not necessary to make the Secretary of the Society by name as party.

12. Mr. Choudhury submits that the judgment relied by the defendant is not applicable in the present case as the Hon'ble Court rejected the plaint under Order VII, Rule 11(a) of the CPC and not under Order VII, Rule 11(d) of the CPC.

13. Mr. Choudhury relied upon the judgment in the case of ***Kalpana Sarkar vs. Ramkrishna Mission*** reported in ***2003 SCC OnLine Cal 277*** and submitted that the Scheme of Section 19, it appears that sub-Section (2) states 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 authorized under sub-Section (1). It was not the President or the Secretary who were the real persons to continue or maintain the suit. It is the Society, which is interested in the suit for whom the President or Secretary was acting.

14. Mr. Choudhury relied upon the unreported order passed by the Coordinate Bench of this Court in a Civil Revisional in the case of ***Salkia Vivekananda Sporting Club vs. Bankey Lal Jaiswal in C.O. No. 1344 of 2023*** dated 28th August, 2023 wherein the Hon'ble Judge has held that the Club represented by the Secretary was properly impleaded and it is sufficient to sue the club through its Secretary which was a Society under the Societies Registration Act and all members were not required to be impleaded as parties.

15. Heard the Learned Counsel for respective parties, perused the materials on record and the judgment relied by the defendant. The plaintiff has

filed the suit against the defendant for eviction, recovery of possession, arrears of rent and mesne profit.

- 16.** Section 19 of the West Bengal Societies Registration Act, 1961 reads 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.”

The plaintiff has made the Society as the defendant in the suit and in the cause title of the suit, the description of the defendant has been given as follows:

“Harrow Hall, a Society registered under the Societies Registration Act, represented through its Secretary, having office at the 2nd Floor, premises no. 27B, Park Street, Kolkata- 700 016 within jurisdiction aforesaid”.

17. In the case of ***Sha-San Infrastructures Pvt. Ltd. (supra)***, the Coordinate Bench of this Court held that *“Neither the name of the President nor the name of the Secretary has been mentioned in the cause title of the plaint nor the name of any other authorized member was mentioned in the body of the plaint. As such in my view, the presentation of the plaint is also defective and the suit at the instance of the Society without being represented by either President or Secretary in their name is not maintainable”*.

18. In the case of ***Illachi Devi (Dead) by Lrs. and Others Vs. Jain Society, Protection of Orphans India and Others*** reported in **(2003) 8 SCC 413**, the Hon’ble Supreme Court considered Section 19 of the West Bengal Societies Registration Act, 1961 and held that:

“31. A bare perusal thereof would show that a society registered under the Societies Registration Act as contradistinguished from a company registered under the Companies Act cannot sue in its own name. It is to be sued in the name of the President, Chairman, or Principal Secretary or trustees as shall be determined by the rules and regulations of the society or in the name of such person as shall be appointed by the governing body for the occasion in default of such determination. It is, therefore, not correct to contend that it is capable of suing or being sued in its own name.

50. We may state that, as noticed hereinbefore, in terms of the rules framed by the States under the Societies Registration Act, a society may sue or may be sued through its President or Secretary or in the absence of any specific provisions in that behalf, any person authorized by the society.”

19. As per Regulation of Association of the Society of the defendant “*All suits and legal proceedings by or against the Society shall be in the name of the Secretary or by such person as shall be appointed by the committee for the occasion*”
20. In the cause title, the plaintiff has described that defendant no.1 is a Society registered under the Societies Registration Act, represented through its Secretary. In the case of ***Illachi Devi (supra)***, the Hon’ble Supreme Court held that “*It is to be sued in the name of the President, Chairman, or Principal Secretary or Trustees as shall be determined by the rules and regulations of the Society or in the name of such person as shall be appointed by the governing body for the occasion in default of such determination.*”
21. In the present case, the Society is registered under the Societies Registration Act, 1961 and the Society is having its Regulation wherein it is categorically stated that under the Caption “GIFT & LEGAL PROCEEDING” that “all suits and legal proceedings by or against the Society shall be in the name of the Secretary or by such person as shall be appointed the committee for the occasion”
22. The plaintiff has filed the suit against the Society through its Secretary and not named the Secretary of the Society as defendant in the suit. If Section 19 of the West Bengal Societies Registration Act, 1961 is read with Regulation of the defendant Society, it is clear that the suit is to be

filed in the name of the Secretary of the Society or by such person as shall be appointed by the Committee.

- 23.** Considering the above, this Court finds that the suit filed by the plaintiff against the Society is not maintainable under law.

It is made clear that in the present application, this Court has only decided with regard to the maintainability of the suit on the issue whether the suit can be filed against the Society or in the name of Secretary, President or any such person appointed by the Society. This Court has not gone into merit of the suit.

- 24.** As regard to the judgments relied by the plaintiff in the case of ***Kalpana Sarkar (supra)*** and ***Salkia Vivekananda Sporting Club (supra)***, this Court finds that both the cases are distinguishable from the facts and circumstances of the present case. In the present case, the Society is having its own Regulation specifying about the legal proceedings by or against the Society.

- 25.** In view of the above, **G.A. No. 7 of 2022 is allowed. C.S. No. 364 of 2014 is dismissed as not maintainable.**

(Krishna Rao, J.)