

**(2005) 08 AHC CK 0212**

**Allahabad High Court**

**Case No:** Special Appeal No. 938 of 2005

Committee of Management  
Baba Vishwa Swaroop  
Madhyamik Vidyalaya,  
Registered Society and Baba  
Vishwa Swaroop

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

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**Date of Decision:** Aug. 11, 2005

**Citation:** (2005) 6 AWC 5243

**Hon'ble Judges:** Ajoy Nath Ray, C.J; Ashok Bhushan, J

**Bench:** Division Bench

**Advocate:** Amit Saxena, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Ajoy Nath Ray, C.J. and Ashok Bhushan, J.

This is an application for stay in aid of appeal preferred from an order passed by an Hon"ble Single Judge dated 10.5.2005. By the said order his Lordship dismissed the writ petition of the private respondent bearing No. 47176 of 2003 and allowed the writ petition of the appellant wherein the appellant had challenged an order dated 24.2.2005 passed by the Assistant Registrar Firms, Societies and Chits, Agra.

2. The subject matter of the controversy is really very simple. It relates to the office bearers of the society and the claims to holding the post of the Manager and controlling the society. One claim is put forward by the appellant who is uncle of the private respondent and who started the Society by donating his land thereto. He was and is still a bachelor. The private respondent i.e. the nephew put, forward a case that the uncle had resigned on 28.1.2001 and upon such resignation the balance period was filled by the nephew himself in. managerial capacity and thereafter election took place and he has been elected Manager.

3. This dispute was forwarded, quite correctly and in accordance with law to the prescribed authority who gave a decision total in favour of the appellant i.e. the uncle holding that the case of the resignation of the uncle is not proved and has no legs to stand upon this decision was challenged by the respondent in the said writ of 2003 bearing No. 47176; there was no interim order in aid of the writ. By the order under appeal, the said writ has been dismissed as being without substance. His Lordship has said that disputed questions of fact like the one raised in the writ could only be the matter of a civil suit.

4. When the resignation of the uncle is an issue and proceeding after proceeding is taken on that point; it is the duty of the Court to call for an authentic copy or even better the original of the letter of resignation and if the respondent nephew cannot produce it, it would be in the interest of justice to nip all frivolous and veracious litigation in the bud. This seems exactly to be the case here.

5. The learned Single Judge however, quashed the order of the Deputy Registrar of the Firms passed on 24.2.2005 on the ground that the Deputy Registrar has no authority to decide on disputes as to rival management of the Societies but had to refer in law to the prescribed authority.

6. To that extent the writ petition of the appellant succeeded in the Court below. However, in concluding portion of the judgment his Lordship has observed that " It is apparently clear that there is a bona fide dispute in respect of the two rival elections."

7. We are of the respectful opinion, at this stage no doubt prima facie, but quite clear as on date in its prima facie nature that this finding by his Lordship was not correct. The bare claim by the nephew to be the Manager is there; but a dispute does not become a bona fide dispute merely because a dispute is raised. Unless the dispute is shown to exist in reality and can be made out, at least prima facie opinion, no bona fide dispute can be said to exist if there is no bona fide dispute of the above nature, it is the duty of the Registrar or Deputy Registrar of Firms to hold that there being no bona fide dispute, he is without jurisdiction to refer the matter at all. In our prima facie opinion this is exactly what the Deputy Registrar should have done in the instant case. Time is prayed for by the respondent to produce the records including the detailed dispute decision of the Deputy Registrar of Firms to demonstrate the existence of an arguable before us. If and when it is demonstrated, if ever at all we might take a different decision, but as on date we are quite clear that the points are hundred to zero in favour of the appellant. As such there will be a stay of operation of the order under appeal whereby his Lordship has referred the dispute to the prescribed authority for decision by him until further orders of this Court, the prescribed authority shall take no steps in the matter and the list forwarded by the appellant as office bearers of the Society shall be taken by the authorities as accepted. So far as the striking down of the order of 24.2.2005 passed by the Deputy registrar of Firms is ordered by the first Court, there will no stay of

operation of that part of the order. The private parties as well as the respondents shall proceed until further orders of the Court on the basis that the appellant is duly elected Manager of the Society and the list of the members issued by him is correct and authentic. The matter is adjourned on the prayer of the respondent for two weeks.

List after two weeks.