

(1991) 02 CAL CK 0006

Calcutta High Court

Case No: Appeal from Original Order Tender No. 280 of 1991

Sreemat Bhakti Ballabh Tirtha
Maharaj

APPELLANT

Vs

Bhakti Lalit Giri Maharaj Sree
Chaitanya Gaudiya Math and
Others

RESPONDENT

Date of Decision: Feb. 27, 1991

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, 151

Citation: (1992) 2 CALLT 450

Hon'ble Judges: Sachi Kanta Hazari, J; Bhagabati Prasad Banerjee, J

Bench: Division Bench

Advocate: Saktinath Mukherjee, Asish Chandra Bagchi, Prabir Kumar Samanta, N. Ahmed, K.K. Bandyopadhyay and Nirmalya Bhattacharya, for the Appellant; S.P. Roychowdhury, Ashok Banerjee and Shyamal Sanjal, for the Respondent

Judgement

Bhagabati Prasad Banerjee, J.

This is an appeal against the order dated 21st December, 1990 passed in Misc. Appeal No. 610 of 1889 passed by Sri S. Chakraborty, Additional District Judge, 12th Court, Alipore by which the appellant who was respondent No. 3 therein was directed to maintain status quo till the hearing of the Misc. Appeal and the appellant was further directed not to proceed with the special meeting of the Governing body scheduled to be held on 28th December, 1990 until further orders.

2. The facts of this case, in short, relevant for the purpose of this appeal are as follows :-

The Sree Chaitanya Gaudiya Math (hereinafter referred to as the said Math) is a Society under the Registration of Societies Act having its registered office at 35,

Satish Mukherjee Road, Calcutta. There are Rules and Regulations for the management of the said Math and the appellant is the President Acharya of the Governing Body. The Governing body of the said Math on the basis certain allegations decided to hold a meeting; of the Governing body for anti-math action against respondent No. 1 Bhakti Lalit Giri Maharaj and respondent No. 2 Bhakti Hridya Mangal Maharaj alias Mangal Niloy Brahmachari on 23rd July, 1989. At that point of time the plaintiff respondent Nos. 1 and 2 lodged a complaint against the President of the said Math before the Registrar of Societies. West Bengal and on 6th July, 1989 the Additional Registrar of Societies, West Bengal passed an order u/s 17 of the West Bengal Societies Registration Act directing that status quo would be maintained by both the sides and the extraordinary General Meeting called by the requisitionists on 23rd July, 1989 should be kept in abeyance. Against the order u/s 17 of the Societies Registration some of the members and the devotees of the Math moved an application under Article 226 of the Constitution of India before this Court whereupon S. C. Sen, J. by an order passed in CO. 8288(W) of 1989, directed that the meeting scheduled to be held on 23rd July, 1989 should be held but the resolution might be passed would not be communicated and/or enforced in any way and should remain in abeyance until further order from this Court. On the date fixed an Extra-ordinary General Meeting was held and a resolution was passed, inter alia, that the respondent No. 1 be transferred to some other math and the respondent No. 2 be expelled from the Math. The said Civil Order ultimately came up for hearing before A. M. Bhattacharya, J., on 25th August, 1989 and His Lordship was pleased to dispose of the said Civil Order directing the interim order dated 20th July, 1989 to continue for another two months to enable the parties to initiate appropriate proceedings, if any, before the appropriate forum. The respondent Nos. 1 and 2 in the meantime filed a Title Suit No. 423 of 1989 in the 3rd Court of Munsif at Alipore praying for a declaration that the notice dated 30th June, 1989 for convening the requisition meeting on 23rd July, 1989 was illegal, inoperative and invalid in law. Further prayer was made for a decree for declaration that resolution, if any, taken, on the meeting on 23rd July, 1989 for ousting the plaintiff from the said Math was illegal, unlawful and in-operative and could not be given effect to. Before filing of the suit an appeal was preferred in this Court against the order passed in the Civil Order on 25th August, 1989 and a Division Bench of this Court presided over by the learned Chief Justice disposed of the said appeal being F.M.A.T. No. 2689 of 1989 hereby their Lordships recorded the fact that in view of the filing of the suit by the plaintiffs respondents 1 and 2, the order passed by the Additional Registrar of Societies has been nullified by reason of the interim order that was passed by the trial Court. Accordingly Their Lordships were pleased to record dismissal of the appeal and vacated all interim orders in that appeal. In the Title Suit No. 423 of 1989 the learned Munsif refused to pass any ad interim injunction but directed expeditious hearing of the matter on notice to the defendant/appellant and others. Being aggrieved and dissatisfied with the order passed by the learned Munsif refusing to grant any ad interim order of injunction during the pendency of the

in-junction petition an appeal was preferred before the learned District Judge, Alipore being Misc. Appeal No. 610 of 1989 and the learned District Judge by the order dated 28th September, 1989 directed as follows :

"I hereby direct that the appellants shall remain stay in the Math but they shall not participate in any deed or act or function of the Math until further order".

This order was passed after hearing both parties and on consideration of the facts and circumstances of the case it appears that the plaintiff opposite parties did. not feel themselves aggrieved by this order and did not challenge the said order passed by the learned District Judge dated 28th September, 1989 before any other higher forum.

3. The suit is pending and the injunction matter before the learned Munsif is also pending. The appeal against refusal to grant ex parte ad interim injunction is also pending. During the pendency of the said proceedings, vacancy had arisen in the Governing Body due to demise of one of the members and due to retirement of two members and such vacancies were required to be filled up under the Rules of the Math after election and reelection and for the purpose of filling up of those vacancies in accordance with the Rules the Governing Body convened a special meeting under Rule 12(a) read with Rule 15 of the said Math to be held on 28th September, 1990. The said meeting was convened by the President Acharya of the said Math. Immediately after issuance of the said notice of the President Acharya for convening the special meeting for the purpose of election and re-election as stated above the plaintiff respondents filed two application for injunction u/s 151 of the CPC with a prayer for an interim order upon the appellants to maintain status quo till the Misc, appeal No. 610 of 1989 is disposed of. The Misc. appeal in which application were filed was transferred from the learned District Judge to the learned Additional District Judge for disposal whereupon the learned Additional District Judge by the order dated 21st December, 1990 passed an order directing the appellant who was respondent No. 3 therein for maintaining status quo till the hearing of the Misc. case and the appellant was further directed not to proceed with the special meeting of the Governing Body scheduled to be held on 28th December, 1990. The order passed by the learned Additional District Judge on 21st December, 1990 is the subject matter of this appeal.

4. Mr. Saktinath Mukherjee, learned Advocate appearing on behalf of the appellant contended in the first place that in view of the order passed in the said Misc. appeal on 26th September, 1989 whereby the learned District Judge had allowed the plaintiff opposite parties to stay in the said Math on condition that they would not participate in any deed or act or function of the Math, the learned Additional District Judge wholly wrong and acted beyond the scope of the suit and/or the appeal to pass an order which has got two parts. By the first part the learned Additional District Judge directed the appellant to maintain status quo and by the second part the appellants were enjoined from holding any meeting of the Governing Body for

the purpose for which the meeting was convened. It was submitted that the two orders were inconsistent and contradictory and since the first order had not been challenged by the plaintiff-opposite parties there was no occasion and/or jurisdiction to pass an order in the appeal. The second order was passed solely for the purpose of nullifying effectively the first order that was passed in the Misc. appeal by the learned District Judge. Both the orders were passed after contested hearing. It was submitted by Mr. Mukherjee that though the application was filed u/s 151 of the CPC on which the order complained of was passed but in form and substance the same amounts to an application for injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

5. In this appeal a point was taken by Mr. S. P. Rowchowdhury, learned Advocate appearing on behalf of the respondents that this appeal against the order passed by the learned Additional District Judge is not maintainable inasmuch as there is no provision for appeal against an order passed on an application u/s 151 of the Code of Civil Procedure. This order is not appealable under Order 43 of the Code of Civil Procedure. With regard to the maintainability of the appeal Mr. Mukherjee first submitted that this objection is not tenable inasmuch as this is not a case of second appeal in connection with injunction matter. In this particular case the learned Munsif did not pass any ex parte ad interim injunction and against that a Misc. appeal was filed and in the said appeal first an order was passed as stated above and thereafter in order to stop holding of the meeting of the Governing Body for the purpose of election of certain members a fresh order was passed. This injunction application had been filed whereupon the learned Additional District Judge passed order not only to maintain status quo but also restraining the appellants from holding meeting of the Governing Body for the purpose for which it was convened. Mr. Mukherjee submitted that on an appeal the appellate Court passed a fresh order of injunction and stay and that the injunction passed within the scope and ambit of Order 39, Rules 1 and 2 of the CPC is appealable inasmuch as this is not an appellate order but an original order passed by the lower appellate Court an application filed before the lower appellate Court whereupon a fresh and original order of injunction was passed. In this connection Mr. Mukherjee had drawn our attention to the decision of this Court in the case of [Sm. Mayarani Dutta Vs. Bhupal Banerjee](#), wherein it was held by a learned Single Judge that if a prayer is made either before the trial court or before the appellate court for an order of temporary injunction and if the prayer is refused, surely that is a final order and the order is appealable and not revisable. Reference was made to another decision of this Court in the case of Gyan Singh and Ors. v. Guljar Singh and Ors. reported in 1988 CRILJ 389 wherein Samir Kumar Mukherjee, J. took a similar view. With a regard to the maintainability of the appeal Mr. Mukherjee also stated that the appellant has also filed an application for revision in the alternative if it is held that this appeal is not maintainable but Mr. Mukherjee contended that it is not necessary to press the alternative application inasmuch as, the appeal is maintainable in law. We

respectfully agree with the aforesaid judgments of this Court. In this connection, reference was made also to another decision in the case of [Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another](#), wherein an order was passed by the prescribed authority which was clearly in error and against the said erroneous order the learned District Judge entertained and set aside the order in appeal though admittedly no appeal lies before the learned District Judge and the High Court in that case declined to interfere with the said order. The Supreme Court in that case held that justice had been done and improper order had been set aside and hence no objection could be taken on this mere technical point.

6. We are of the view that in any event whether an appeal lies or revision lies, it makes little difference, inasmuch as, this Division Bench is competent to take matters which the Division Bench under the rules of this Court is entitled to take up. Determination of the Bench is an administrative act and not judicial one. The determination which is made by the Chief Justice is an administrative act and when matters which could be taken up by the Division Bench come before the Division Bench and the Division Bench can pass order even converting an appeal into revision. The scope of appeal and revision may be different. But the main factor is that a party who has come before this court for relief must get relief. When the matter was heard by this court it would be contrary to the ends of justice to entertain such technical pleas which would result in wasting public money and time which would be contrary to public interest. If the court is over-burdened with cases it would defeat the ends of justice and will defeat the very purpose for which the courts are established and maintained. If the technical plea regarding the determination of a particular Bench to take this matter or not are entertained, such thing will destroy the confidence of the people on the present judicial system. Technicalities should not be allowed to stand on the way of doing substantial justice. Litigants come before this court for obtaining relief and to get justice. The procedural laws and technicalities and/or formalities should not be given precedent and should not unjustly abridge the judicial system and if these things are allowed, in that event, the courts would be refrained from making substantial justice to the law-abiding citizens of the country. It would deny speedy and effective justice for upholding some idle and insignificant formalities.

7. In the instant Case, we can also exercise the revisional jurisdiction if it was necessary without any difficulty. But, in the facts and circumstances of the present case it was not necessary for us to exercise the revisional jurisdiction since we have held that this above appeal is maintainable.

8. There is another aspect of the matter that in the instant case the learned Additional District Judge had passed an interim order until further orders and it appears that the learned Additional District Judge had not finally disposed of the injunction matter. The said Misc. Appeal was filed against the refusal order passed by the learned Munsif to grant an ex parte ad interim order. But the injunction

matter was pending and secondly the lower appellate Court had not disposed of the said Misc. Appeal. If the Misc. Appeal was finally disposed of by an order in that event no appeal could lie: against the said appellate order passed in the Misc. Appeal. But, in the instant case, the said appeal is pending and during the pendency of the said Misc. Appeal a fresh interim order had been passed by the learned Additional District Judge which is not an appellate order, but an original order, but an original order passed on a pending appeal by granting an ad interim order of injunction in the manner which has been done in the instant case. Accordingly, we overrule the preliminary objection raised as to the maintainability of the instant appeal.

9. On the merits of the appeal Mr. Mukherjee, learned Advocate for the appellant contended that the subject-matter of the suit was a notice for convening a meeting on July 23, 1989 and a resolution that was adopted on July 23, 1989. It may be reiterated that the Misc. Appeal was filed against the refusal to pass an ex parte ad interim order passed by the learned Munsif and the learned District Judge on September 29, 1989 was passed an interim order until further orders protecting the interest of the plaintiff-opposite parties for their right to stay in Math in question, but they were restrained from participating in any meeting of the governing body or in any function of the Math. A second application was filed upon which the learned Additional District Judge passed an order on the footing that as by the earlier order passed by that Court the plaintiff-opposite parties were restrained from participating in any meeting of the governing body, the governing body cannot be alleged to function and the plaintiff-opposite parties in view of the injunction order are not in a position to exercise their right in the meeting of the governing body as members.

10. Our attention was drawn to a decision of this Court in the case of Indian Cable Co. Ltd. v. Sumitra Chakrabarty, reported in AIR 1985 Cal. 245. It was contended that to grant an ad interim order of injunction is not for an unlimited period, but the court is entitled to grant an interim order in a mandatory form for restoration of possession anterior to the suit in appropriate cases. Reliance was also placed to a passage of Spry on Equitable Remedies at page 485 wherein it was observed as hereunder :-

".....It will doubtless to be objected in case of this nature that an interlocutory injunction is calculated to preserve the status quo and that the granting of mandatory injunction is unnecessarily inconsistent with this purpose. This objection is not, however sound....."

11. Mr. Roychowdhury, learned Advocate for the plaintiff-opposite parties submitted on the merits of the case that the learned Additional District Judge was right in passing the order of injunction inasmuch as the plaintiff-opposite parties were restrained by an earlier order to exercise their right to function as the members of the Managing Committee. The Managing Committee cannot allow to function

without them and if the same is allowed to function in that event the plaintiff-opposite parties could not be able to exercise their right as members of the Governing Body from which they were removed and submitted that because of subsequent events it was necessary to file the application for injunction before the Court below and obtain an injunction as that their rights may be kept reserved.

12. Before a temporary injunction is granted a party applying for it must show a prima facie case in support of his right, actual or threatened invasion of that right and irreparable damage. It is well settled that an injunction order under the CPC can only be passed to protect the rights, properties or injuries of any kind of the party applying for it and it cannot be issued to destroy or take away any other person's rights or duties. It is not intended to be used to deprive others of their lawful rights or duties or to cause any impediment on their lawful rights. Interim order cannot be passed restraining the public or elected bodies at the instance of one or two members when they have been removed from the membership and on the ground that they would be deprived of their rights and as members.

13. The provisions of Section 151 of the Code could be invoked when the court is of the view that it was necessary for the ends of justice or to prevent abuse of the process of the court and this could be invoked when there was no other provision in the code to give such a relief. This is a residuary power of the court to be exercised in appropriate cases to protect the rights of the party applying for it.

14. In the instant case, the effect of the interim order that was passed which was the subject matter of the appeal is a prohibitory order upon the Governing Body of the Math from holding a meeting for the purpose of election of some of the members which was necessary to be elected because of the death and/or retirement of some members. In our view, the court shall not pass any interim order which would prevent the functioning of an elected body or persons resulting in creating a dead-lock in the administration of the society or body of persons. In such cases of elected body the question of personal interest or right have little significance. Individual rights cannot be allowed to be superseded the rights of the majority members by an order of the court who were not before the Court. The elected bodies should be allowed to function and exercise their lawful rights.

15. In the instant case, there was 27 members of the Governing Body of which two have been deprived of their rights because of the resolution taken by the Governing Body of the Math in question and against the action taken by the Governing Body of the Math the suit was filed. One member died and two members are going to retire and for the purpose of election and/or re-election the meeting was decided to be convened. In substance at the instance of the plaintiff-opposite parties who are two in number the rights of twenty-seven members, in our view, cannot be suspended or taken away by an interim order passed by the Court below. It should be endeavour of every court to allow the elected body to function in accordance with the rules and regulations and bye-laws under which they have governed. The Court

would be very slow and reluctant to interfere into the domestic affairs of such bodies and/or authorities.

16. The Rules and Regulations of the Society are nothing but a contract between the management and the members and the rights and duties arising out of regulations are contractual in nature. Membership under a society is merely a contractual and in such a case there is very little scope for granting injunction.

17. Considering the facts and circumstances of the case, we are of the view that the learned Additional District Judge was wholly wrong in issuing the order that was passed in the facts and circumstances of the above case. The purpose of holding election and/or re-election is not in the place and stead of the plaintiff-opposite parties, but because of death and/or retirement of some of the members to which the plaintiff-opposite parties have no connection. In our view, there is no remotest connection with the cause of action that is pending in the suit or Misc. Appeal. Subsequent events could be agitated in the suit, but when a suit is confined to a resolution passed on July 23, 1989, the Misc. Appeal is confined against the order of the learned Munsif, dated September 25, 1989 refusing to pass an ex parte interim order of injunction in respect of a resolution that was taken on July 23, 1989. Now, subsequent events which are extraneous to the suit and appeal could not be taken into consideration by the lower appellate Court and grant an injunction restraining the Governing Body from holding the special meeting with different agenda for which plaintiffs are not directly, indirectly or remotely connected. Subsequent event had no connection with the subject-matter of the appeal. In our view, in the instant case, the learned Additional District Judge was wholly wrong in passing the interim order which had resulted a deadlock in the administration of the Math which is a religious Institution governed by the Societies' Registration Act.

18. We are clearly of the view that the learned Additional District Judge passed the order on December 21, 1990 which was beyond the scope of the suit and the appeal and by that order a dead-lock has been created in the administration of the Math. Membership of one or two members might be cancelled, but at the instance of one or two members the functioning of a society cannot be put to a halt. In our view, there was no scope for passing an interim order of injunction of such nature which has been passed by the learned Additional District Judge in the facts and circumstances of the case and within the scope of the suit and Misc. Appeal.

19. Accordingly, the order, dated December 21, 1990 passed by the learned Additional District Judge in Misc. Appeal No. 610 of 1989 is set aside. But, the lower appellate Court is directed to dispose of the Misc. Appeal pending before it as expeditiously as possible so that the main injunction matter which is pending before the learned Munsif (trial Court) would be disposed of by the learned Munsif in accordance with law. The lower appellate Court is directed to dispose of the Misc. Appeal within a period of two months from date. We make it clear that we have not adjudicated any ♦ of the points which are the subject matter of the appeal and/or

Misc. Appeal and the suit in accordance with law. We are only concerned with the propriety of the order passed by the learned Additional District Judge by passing an interim order of injunction, dated December 21, 1990. The appeal is allowed to the extent indicated above.

20. There will be, however no order as to costs.

In view of the order passed in the main appeal no fresh order is passed on the application for revision which has been filed in time and in form and the same is also disposed of on the above issue.

Let a Xeroxed copy of the operating portion of the above order is given to the parties on their usual undertaking.

S.K. Hazari, J.

21. I agree.