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(2011) 05 CAL CK 0097

Calcutta High Court

Case No: C.O. No. 3323 of 2010

Acharya Parameshwarananda Avadhuta	APPELLANT
Vs	
Acharya Vishwadevananda Avadhuta and Others	RESPONDENT

Date of Decision: May 20, 2011

Citation: (2011) 05 CAL CK 0097

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Ashoke Banerjee and D. Trivedi, for the Appellant;S.P. Roychowdhury and D. Chaturvedi for Opposite Party No. 1 and A.K. Ghosal and Chandramala Mukherjee for Opposite Party Nos. 2 to 5, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.
Challenge is to the order dated August 30, 2010 passed by the learned Additional District Judge, Fast Track Court -

I, Purulia in Misc. Appeal No. 28 of 2008 thereby reversing the order of temporary injunction passed by the learned Civil Judge (Senior Division),

Purulia, in Title Suit No. 138 of 2008.

2. This application has been filed by the Plaintiff. He filed a suit being Title Suit No. 138 of 2008 against the opposite parties before the learned

Civil Judge (Senior Division), Purulia praying for the following reliefs:

(a) A decree for declaration that the Defendant is not the legally elected Purodha Pramukha of Ananda Marga and he has got no legal right to

declare himself as the Purodha Pramukha of Ananda Marga and to hold the office of Purodha Pramukha be passed in favour of the Plaintiff and

against the Defendant.

(b) A decree for permanent injunction restraining the Defendant from functioning as the Purodha Pramukha of Ananda Marga, be passed in favour

of the Plaintiff and against the Defendant till he is legally elected as the Purodha Pramukha.

(c) A decree for cost

(d) Any other relief or reliefs which the Plaintiff would be found entitled to under the law of equity be also passed in favour of the Plaintiff and

against the Defendant.

3. The Plaintiff/Petitioner herein has contended that he is a Purodha of Ananda Marga. He was elected as a Member of the Central Purodha

Board of Ananda Marga on September 3, 2004 for a term of 5 years. There are rules and regulations for election of Purodha Pramukha, being the

highest portfolio in the Organisation and such rules are contained in the Charya Charya Part-1, Chapter-40. The Plaintiff was quite dark about the

appointment of Purodha Pramukha and he came to know such fact of appointment of the Defendant as Purodha Pramukha from the newspaper.

He did not receive any notice about the election of Purodha Pramukha. Similarly, some other Purodhas were quite unaware of the election of

Purodha Pramukha. So, the Plaintiff filed the said suit for declaration and permanent injunction as stated above.

4. The Defendants/opposite parties herein entered an appearance and they are contesting the suit by placing their specific stances.

5. In that suit, the Plaintiff filed an application for temporary injunction. The learned Trial Judge allowed the application for temporary injunction by

an order dated December 2, 2008 restraining the Defendant from functioning as Purodha Pramukha of Ananda Marga till the disposal of the suit.

6. Being aggrieved by such order of temporary injunction, the Defendant preferred a misc. appeal being Misc. Appeal No. 28 of 2008 and the

said misc. appeal was allowed on contest with costs on August 30, 2010. The impugned order of injunction dated December 2, 2008 passed by

the learned Trial Judge in the said title suit was set aside. Being aggrieved by such order, the Plaintiff has preferred this application.

7. Now, the question is whether the impugned order should be sustained.

8. Upon hearing both the sides and on perusing the materials on record as well as the written arguments filed by the parties, I find that the following

facts are not in dispute:

i) That the Plaintiff was a Purodha of Ananda Marga.

ii) On November 2, 1999, the Plaintiff was elected as a Member of the Central Purodha Board for 5 years.

iii) On November 2, 2004, the Plaintiff was re-elected as a Member of the Central Purodha Board of Ananda Marga for 5 years.

iv) The Purodha Pramukha is the Chairperson of the Central Purodha Board and he has a casting vote.

v) As per materials on record, the Plaintiff was suspended from Purodhaship and his certificate was cancelled w.e.f. April 25, 2007. Similarly,

some other purodhas were seized of their powers and their certificates were cancelled.

vi) On October 28, 2008 Acharya Viswadevananda Avadhuta was elected as Purodha Pramukha of Ananda Marga.

vii) The opposite party Nos. 2 to 5 filed a suit being Title Suit No. 359 of 2003 against Acharya Raghunath Prasad and Acharya Dhruvananda

Avadhuta challenging the expulsion from the membership of Ananda Marga before the learned Civil Judge (Senior Division), Purulia, and

viii) The Petitioner herein also filed another suit being T.S. No. 1 of 2010 against Ac. Rakeshananda Avadhuta and 2 others before the learned

Civil Judge (Senior Division) and he prayed for temporary injunction, praying for restraining the three Defendants from interfering with the

management of the Central Purodha Board by the Plaintiff and the proforma Defendant No. 4 till the disposal of the suit and the said application

for temporary injunction was rejected on contest.

9. The Plaintiff has contended that although he is a Member of the Central Purodha Board, he was kept quite in dark about the election of the

Defendant as Purodha Pramukha. No notice or information regarding the election of the said post was ever served upon the Plaintiff and other

Purodhas of Ananda Marga. Thus, the provisions of Charya Charya Part-I have not been complied with. Even no notification was made for the

election of the said post. So, the Plaintiff has filed the suit for the reliefs stated.

10. It is pertinent to mention here that in the suit filed by the opposite party Nos. 2 to 5 being T.S. No. 359 of 2003, they filed an application for

temporary injunction and that application was rejected on June 14, 2005 by the learned Trial Judge. Being aggrieved, they filed a misc. appeal

being Misc. Appeal No. 25 of 2005. At the time of disposal of the said misc. appeal, the learned Additional District Judge, Second Court, Purulia

directed both the parties to maintain status quo in respect of their respective positions in the religious organisation as on this date (i.e. on December

24, 2007) till the disposal of the suit finally.

11. Now, in order to have an order of temporary injunction, the Plaintiff is required to show that he has prima facie case to go for trial of the suit.

The Plaintiff is also required to satisfy the Court, the other essential ingredients as to suffering irreparable loss in case the prayer for injunction is

withheld and the fact that the balance in granting the injunction lies in his favour.

12. Mr. Ashoke Banerjee, learned Senior Advocate appearing for the Petitioner has submitted on various matters relating to the plaint case, the

order passed by the learned Trial Judge with regard to the disposal of the application for temporary injunction and the order of the Appellate Court

and thus, he has concluded that the impugned order passed by the Lower Appellate Court, cannot be supported. Though, the Lower Appellate

Court has appreciated the findings of the learned Trial Judge, but did not support the same. According to him, it is not permissible. He has

submitted that the Purodha Promukha shall be elected by Purodhas; so, all Purodhas must be informed before holding the election for the said

post. He has also submitted that the Plaintiff has been kept quite in dark about his suspension and the appointment of the Defendant as Purodha

Pramukha. Even the Plaintiff was not communicated as to cancellation of his name from the list of Central Purodha Board. So the order of

suspension of the Plaintiff is not proper and legal. So, the order of temporary injunction as granted by the learned Trial Judge should be restored

after setting aside the impugned order.

13. Mr. A.K. Ghosal, appearing on behalf of the opposite party Nos. 2 to 5, has submitted that the expulsion of the opposite party Nos. 2 to 5

and others was not proper and as such, the same has no effect. In view of the order dated December 24, 2007 passed by the learned Additional

District Judge, 2nd Court, Purulia in Misc. Appeal No. 25 of 2005 arising out of the Title Suit No. 359 of 2003 filed by his clients, both the parties

were directed to maintain status quo in respect of their position in the organisation as on that day (i.e. on December 24, 2007) till the disposal of

the suit. So, the order of expulsion is no more in force. He also submits that as per rules of Ananda Marga, Purodhas can only elect one of them as

Purodha Pramukha. His clients were not informed about the expulsion and as such the order of expulsion and so, the appointment of Purodha

Pramukha without knowledge of the Plaintiff and the opposite party Nos. 2 to 5 are not valid at all. These persons have the right to participate in

the election held on October 28 of 2008. Therefore, a fresh election should be held. So, the impugned order should be set aside.

14. Mr. S.P. Roychowdhury, learned Senior Advocate appearing for the opposite party No. 1 has referred to the page Nos. 46, 53, 61, 101 of

the application and he has submitted that the Plaintiff and the opposite party Nos. 2 to 5 had been expelled from the organisation and so there is no

question of service of notice upon them before election of Purodha Pramukha. The Plaintiff has suppressed the material facts. He has also

contended that the power to grant temporary injunction is the discretionary power of the Court. This power should be exercised reasonably,

judicially and on established legal principles. Injunction should not be granted lightly as it affects the other side. The Court should consider the basic

principles in granting the order of temporary injunction such as prima facie case, suffering of irreparable loss and balance of convenience and

inconvenience.

15. The above ingredients are the cardinal principles to be considered at the time of disposal of the application for temporary injunction.

16. Mr. Roychowdhury has referred to the decision of Dalpat Kumar and another Vs. Prahlad Singh and others, particularly the paragraph No. 5

of the said decision and thus, he submits that the burden is on the Plaintiff by affidavit or otherwise that there is a prima facie case in his favour

which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition

for the grant of temporary injunction. The Court further has to satisfy that non-interference by the Court would result in ""irreparable injury"" to the

party seeking relief and that there is no other remedy available to the party except one to grant injunction and that he needs protection from the

consequences of apprehended injury or dispossession. The Court has to consider the balance of convenience at the time of granting injunction.

17. Mr. Roychowdhury has also contended that in the instant case, as per materials placed on his behalf, the Plaintiff along with some other

Purodhas had been suspended and they had been expelled from Ananda Marga on April 25, 2007 and onwards. And as such, the question of

issuance of notice upon the expelled Members at the relevant time for election of Purodha Pramukha did not arise at all. Mr. Roychowdhury points

out the relevant portion of the documents filed by the opposite party No. 1 from which it is apparent that the certificate of Purodhaship of the

Petitioner was cancelled on April 25, 2007.

18. It is difficult to believe that the Plaintiff had no knowledge about cancellation of his certificate inasmuch as the opposite party Nos. 2 to 5

having been aware of the cancellation of this certificates filed the suit being Title Suit No. 359 of 2003 in the year 2003. There were 60 Purodhas

only in the organisation and each of them is expected to know the other. Several litigations are pending amongst them.

19. Under the circumstances, it is evident that the Plaintiff/Petitioner herein was not entitled to have any notice for election for the post of Purodha

Pramukha. So, his contention that he was kept behind at the time of election of the Purodha Pramukha cannot be accepted. In this regard, I am of

the view that the learned Lower Appellate Court has appreciated the situation and he has come to a right conclusion about the prima facie case

against the Plaintiff.

20. Further, the Plaintiff has filed the suit for declaration and injunction contending that the cause of action arose on and from October 30, 2008

when he came to know about the alleged election. Order of suspension and cancellation of his certificate on April 24, 2007 are not the causes of

action to him meaning thereby he has no grievance about his suspension and cancellation of the certificate. He has not sought for any relief about

such fact. So, it is apparent that the Plaintiff has failed to show prima facie case to go for trial.

21. So far as irreparable injury is concerned, this Bench finds that the Lower Appellate Court has concluded properly by describing the situation

that if the Plaintiff succeeds, ultimately the election of the Defendant will be declared void and a new election is to be held for the purpose of

electing Purodha Pramukha. It will not be the situation that as soon as the Plaintiff succeeds, he will succeed to the post of Purodha Pramukha. So,

the Plaintiff has nothing to suffer irreparable loss, if the prayer for injunction is withheld. But, if the Plaintiff ultimately fails, the effect will be that the

elected Purodha Pramukha would be debarred from discharging his duties, although, apparently, he was elected properly. The learned Lower

Appellate Court has also rightly concluded that the balance of convenience in refusing the order of injunction lies in favour of the

Defendant/opposite party No. 1 herein. If the order of injunction as passed by the learned Trial Judge, is maintained, it is the Defendant No. 1 who

would suffer inconvenience, though elected.

22. It is also pertinent to mention herein that Mr. Roychowdhury has submitted that Ananda Purnima Dharma Maha Sammelan is scheduled to be

held on May 27-29, 2011. The devotees from all over the world are expected to join the religious congregation and would desire to hear religious

discourses from Purodha Pramukha, the spiritual head of Ananda Marga. If the order of injunction as passed by the learned Trial Judge remains in

force till disposal of the suit, the purpose of such Maha Sammelan may be frustrated, because the Purodha Pramukha would not be able to

conduct such Maha Sammelan. The head of the organisation may not be able to discharge his functions with free mind. This factor is also to be

taken into consideration to decide whether injunction should be granted or not and in this regard, if the order of injunction remains in force, it will

be inconvenient for the opposite party No. 1 to hold the said Maha Sammelan.

23. From the materials on record, it is evident that the Plaintiff has the knowledge that his certificate and title as Purodha had been suspended and

so, unless and until, his title is reinstated by the Purodha Members with the approval of the Purodha Pramukha, he cannot claim himself as one of

the Purodhas of Ananda Marga. And so, he cannot be allowed to participate in the election of the Purodha Pramukha.

24. The order of injunction can be passed, if the Plaintiff is successful in proving his prima facie case and the fact that there is a breach of an

obligation on the part of the Defendant No. 1/opposite party No. 1 herein.

25. In that view of the matter, I am of the opinion that the Lower Appellate Court has rightly set aside the order of injunction passed by the learned

Trial Judge. There is no scope of interference with the impugned order.

26. Accordingly, the revisional application fails to succeed. It is, therefore, dismissed.

27. Considering the circumstances, there will be no order as to costs.

28. It is also recorded that the observations made above are for the purpose of disposal of this application. The learned Trial Judge shall not be

swayed away by my observations. He shall dispose of the suit on the basis of evidence as produced by the parties.

29. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.