

(1998) 04 CAL CK 0017

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 3247 of 1997

Amal Chakroborty

APPELLANT

Vs

V.S. Lall and Another

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115, 151

Citation : (1998) 2 CALLT 257

Hon'ble Judges : Sidheswar Narayan, J

Bench : Single Bench

Advocate : Mr. Asoke Banerjee and Mr. Madhusudan Sur, for the Appellant; Mr. I.R. Chatterjee and Mr. Promode Kr. Drolia, for the Respondent

Judgement

S. Narayan, J.—The instant revisional petition relates to the matter of temporary injunction in Title Suit No. 55 of 1997 of the Court of Civil Judge, Senior Branch, at Bankura, wherein the learned trial court did allow an application under Order 39 Rules 1 and 2 read with section 151 of the CPC and directed both the parties to maintain the status quo in respect of the plaintiff-Executive Committee and its functioning till the disposal of the suit, but subsequently, the said order was set aside by the impugned order dated 16.12.97 of the Appellate Court i.e. Additional District Judge, 1st Court, Bankura. Soon after the institution of this revision, the parties were again directed to maintain the status quo pending hearing before this court.

2. Be it recorded as a backdrop that the Church of North India has got its own Constitution and guiding policies with bye-laws. It operates through its Synod Dioceses and Pastorates and it functions through its Executive Committee with its Head Office in Delhi, The Durgapur Diocese is one of the regional organisations of the Church of North India (hereinafter referred to as CN1) and it has jurisdiction over Churches, Schools, Colleges etc. the District of Bankura, Purulia, Midnapur, Burdwan, Birbhum, Malda North and South Dinajpur organised and administered by the Christian Missionaries. The plaintiff being the secretary of the

Diocese of Durgapur was Informed by the Pastorate incharge by his letter dated 21.4.97 that Durgapur Executive Committee has been dissolved in the meeting of Church of North India Synod Executive Committee held on 15--17 April, 1997 and an ad hoc Committee has been appointed. Thereupon, the plaintiff being the Secretary of Durgapur unit filed the suit-in-question for declaration of the resolution as illegal, un-constitutional and inoperative and also for injunction. Thereupon, the two orders as referred to above were passed one after the other by the courts below.

3. The relevant extract of the resolution of the Executive Committee of the Synod is as follows:--

"The Executive Committee, therefore, having been fully satisfied that there was a prima facie case of gross malfunctioning at the Diocesan administrative structure and based on the provision of the Constitution of Church of North India, it was RESOLVED to:

Dissolve the Diocesan Council of Durgapur Diocese, and all its Standing Committees and the Executive Committee with effect from 21 April, 1997."

4. Obviously, the resolution was passed by the Executive Committee of the Synod and such power of passing resolution did vest in the Executive Committee of the Synod but it had to be exercised in accordance with the constitution and bye-laws of the CN1 as contained in Clause 8 of section X of chapter IV of Part II of the Constitution of the Church of North India.

5. The dispute between the parties thus centres around the interpretation of the provision under Clause 8, referred to above; and the simple question posed for a decision is whether the dissolution of the Durgapur Diocese was in-confirmity of (he provision contained in the Constitution of CNI. For convenience sake, therefore, Clause 8 is extracted as below:--

"Clause 8. : if in the opinion of the Executive Committee of the Synod, a Dlocean Council or a Synodlcal Board or any Standing Committee or Commission is not functioning in accordance with the provision of the Constitution, the Executive Committee shall have the authority to inquire into its affairs through a Commission or a Committee of its own. Then in consultation with the body concerned the Executive committee shall take such action as the situation may demand. The action taken in a joint meeting as stated above shall be final and binding on the body concerned." (Emphasis put)

6. The emphasis as Indicated through the underline is on the point whether the Executive Committee of the Synod took the resolution under challenge in consultation with the body concerned i.e. the Diocese of Durgapur. The plaintiff being the Secretary of the said Diocese of Durgapur has emphatically asserted laying allegations that there was no such consultation made as per the mandate of clause 8.

7. I was, therefore, taken through the copy of the minutes of the CNI Synod

Executive Committee being 59th meeting held from 15--17 April, 1997 at the CNI Bhavan, New Delhi, filed along with the supplementary affidavit on behalf of the defendant-O.P. the counsel for the defendant-O.P. has drawn my attention at serial No. 22 of the members, who attended the meeting of the Executive Committee of the Synod. It gives the name of Mr. A. K. Roba. It was contended on behalf of the O.P. with reference to clause 4(A) in E.C. 59, 97, 81 of the draft minutes that Mr. A. K. Roba represented the plaintiff unit i.e. the Diocese of Durgapur (CNI) for the purpose of consultation as required under Clause 8 referred to above.

8. In order to rebut the above assertion of the defendant-O.P., the counsel for the plaintiff-petitioner has rightly asserted that Mr. A.K.Roba had no authority to represent the Diocese of Durgapur. In this context, my attention was drawn to the constituent body of Diocese of Durgapur with reference to the minutes of the Executive Committee Meeting, Diocese of Durgapur, which Indicated that Mr. A. K. Roba was ex-Secretary of the Diocese of Durgapur and once on 16.8.95 he had attended the meeting of the Executive Committee of the Diocese of Durgapur only by way of an invitee. The members of the Executive Committee of the Diocese of Durgapur consisted of the followings:--

1. Rt. Rev. O. K. Tirkey -- Chairman and Bishop 2. Rev. J. Hansda -- Vice-Chairman 3. Mr. A. K. Chakraborty -- Diocesan Secretary 4. Mr. Sujit Kr. Mondal -- Hony. Treasurer 5. Mr. S. B. Kalindi -- Member 6. Mr. D. Coral -- " 7. Mr. A. Blswas -- " 8. Rev. P. N. Darmon -- " 9. Mr. S. Nag -- " 10. Rev. A. Singha -- "

9. On behalf of the defendant-O.P. It could not be pointed out that any one of the aforesaid members of the Committee of Durgapur Unit was present in the meeting of the Executive Committee of Synod, held at Delhi for the purpose of consultation in compliance with the provision as contained in clauses 8, referred to above. There was no letter of authority also produced on behalf of the defendant-O.P. to convince, even prima facie, that Mr. A. K. Roba, ex-Secretary, who is said to have been consulted by the Executive Committee of the Synod, had been authorised by the Unit of Durgapur.

10. Obviously, therefore, there was violation of the directives as given in Clause 8, referred to above. That being as such, the resolution passed by the Executive Committee of the Synod dissolving the present Executive Committee of Diocese Unit with the Secretary being the plaintiff-petitioner is shadowed and there appears to be a prima facie case made out in favour of the plaintiff-petitioner so as to challenge the resolution. Even on other grounds like balance of convenience and irreparable loss I do feel inclined so as to uphold the order of temporary Injunction in the nature as granted by the trial court. The impugned order dated 16.12.97 passed by the appellate court in Miscellaneous Appeal No. 19 of 1997 is thus set aside. I may, however, request the learned trial court to go for a speedy trial of the pending suit and dispose of the same with expedition without being influenced by the observation of this court, which would be limited for the purpose of disposing of the injunction matter. The revisional petition thus

succeeds. There shall be, however, no order as to costs.

11. Petition succeeds