(1993) 11 AHC CK 0036

In the Allahabad High Court

Case No : FAFO No. 123 of 1993

Arya Samaj (Ganesh Ganj), Lucknow, through Its Prashasak	APPELLANT
Vs	
Manmohan Tewari And Others	RESPONDENT

Date of Decision : 11-11-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 41 Rule 22
Societies Registration Act, 1860 — Section 25, 3
Specific Relief Act, 1963 — Section 34

Citation : (1993) 11 AHC CK 0036

Hon'ble Judges : Brijesh Kumar, J and B.C.Saksena, J

Final Decision : Allowed

Judgement

Brijesh Kumar, J.—This First Appeal From Order has been preferred against the order dated 3151993, passed by the Civil Judge, Lucknow, rejecting the application moved by the plaintiffappellant under Order XXXIX Rules 1 and 2 CPC for grant of interim injunction during pendency of Regular Suit No. 162 of 1993.

2. The case of the plaintiffappellant is that the Arya Samaj Lucknow, (Ganeshganj), is affiliated with the U.P. Arya Pratinidhi Sabha, which is an apex body. The different units of Arya Samaj work under its supervision. The U.P. Arya Pratinidhi Sabha has superseded the governing body of the Arya Samaj Lucknow, (Ganeshganj), and has appointed Shri Bhuwan Tewari its Administrator (Prashasak), by means of resolution dated 7111992. The defendantrespondent No. 1 Sri Man Mohan Tewari, who was the Manager in the superseded committee, is alleged to be interfering with the functioning of the Administrator (Prashasak). The other defendants No. 2 to 5 are the Banks in which the plaintiff has its accounts. Injunction has been prayed for on the facts and circumstances mentioned above.

3. The prayer for interim injunction was resisted on behalf of the respondent No. 1 on several grounds. The case of the defendant respondents is that Sri Bhuwan

Tewari has no concern with the Arya Samaj, Lucknow (Ganeshganj), nor the suit could be filed through him. The Arya Samaj Lucknow (Ganeshganj) is a registered society and there is no affiliation of the said society with the U.P. Arya Pratinidhi Sabha which is also a registered society under the Societies Registration Act. According to the Regulations of Arya Samaj Lucknow (Ganeshganj), only the elected Secretary has right to manage the educational institutions. U.P. Arya Pratinidhi Sabha has no right or jurisdiction to appoint an Administrator (Prashasak). It is also the case of the defendants that there is no provision for appointment of an Administrator in the Regulations of Arya Samaj Lucknow (Ganeshganj). The suit was also pleaded to be not maintainable by virtue of the provisions contained under Section 25 of the Societies Registration Act. It is also submitted that in view of Section 13A of the Societies Registration Act, the governing body could not be superseded except as provided under that provision; the application is, therefore, liable to be dismissed.

4. The trial court while holding that prima facie there was no substance in the objection raised by the defendants that the Arya Samaj Lucknow (Ganeshganj) is an independent institution and has no concern whatsoever with the U.P. Arya Pratinidhi Sabha, but rejected the application, observing that Shri Bhuwan Tewari had no right to maintain the suit in view of the provisions contained under Section 6 of the Societies Registration Act and a reference should have been preferred under Section 25 of the Act; therefore, no relief of injunction could be granted under Section 41 (h) of the Specific Relief Act.

5. Learned counsels for the parties have advanced arguments at length at this stage itself and since it was felt that same amount of time would be required for disposal of the application for interim relief as would be required for final hearing of the matter, the learned counsels for the parties requested that the matter may be heard finally. We are, therefore, after full hearing, disposing of this matter finally.

6. The most contentious point in this matter has been as to whether the U.P. Arya Pratinidhi Sabha exercises any kind of control so as to appoint an Administrator on the plaintiff. According to the learned counsel for the plaintiff appellant, different units of Arya Samaj are affiliated to U.P. Arya Pratinidhi Sabha, over which the U.P. Arya Pratinidhi Sabha, being apex body, exercises its control. It has also a right to appoint an Administrator for management in any affiliated unit of Arya Samaj. In this connection, besides referring to different provisions of the Rules, learned counsel for the appellant has also referred to certain documents, one of them has been filed as Annexure21 which is a letter from one Ravindra Kumar Sharma, who was the Adhyaksha of the plaintiffappellant Arya Samaj, Lucknow (Ganeshganj) addressed to the defendant respondent No. 1 Man Mohan Tewari, informing that since the U.P. Arya Pratinidhi Subha has appointed an Administrator, the papers in connection with the Arya Samaj and the management of the institutions run by it may not be sent to him. Learned counsel has also placed some other documents to show the membership

etc. Apart from other things, the appellant also relies upon the finding recorded by the trial court that the contention raised by the defendant respondent No. 1 that the Arya Samaj Lucknow (Ganeshganj) has nothing to do with the U.P. Arya Pratinidhi Sabha, has no substance.

7. Learned counsel for the respondents has vehemently urged that the Arya Samaj Lucknow (Ganeshganj) is an independent society registered under the Societies Registration Act. The U.P. Arya Pratinidhi Sabha is yet another society registered under the provisions of the same Act. These two are independent societies and they have nothing to do with each other. It has further been submitted that a society registered under the provisions of the same Act cannot interfere with each other and can have no right to supersede the society and appoint an administrator. In support of this contention, the learned counsel has placed reliance upon a case reported in AIR (33) 1946 Bombay 516, Satyavrat Sidhantalankar and others vs. Arya Samaj, Bombay. It is no doubt laid down in this decision that a society registered under the Societies Registration Act has an independent entity and can sue or be sued, it is also held that some members of the society can sue the office bearers or the President etc. But this decision does not in any manner help the respondent and it has nowhere been laid down that a society registered under the Societies Registration Act cannot have affiliation with a bigger society having same aims and objects and covering the bigger area.

8. In our view the decision reported in AIR 1963 MP 270 Gulabchand Gupta vs. The Hitkarini Sabha, Jabalpur and others, also does not help the respondents as it mainly lays down that a society if registered under the Societies Registration Act, makes it a legal entity but its members do not hold public office and no writ under Article 226 of the Constitution would lie.

9. We again do not find that the decision reported in AIR 1970 Patna 163, K.C. Thomas vs. R.L. Gadeack helps the respondents in any manner as it also lays down that no petition would lie against a society registered under the Societies Registration Act though it is a legal entity apart from its members constituting the society.

10. In our view, the decision reported in AIR 1962 Allahabad 610, Ram Charan Agarwala and others vs. Shridhar Misra and others, is also of no help to the respondents. It has been held in this case that an individual member or members of a society may challenge, by a suit, the rules framed by the society as being invalid.

11. Reliance has also been placed upon a case reported in AIR 1962 SC 458, Board of Trustees, Ayurvedic and Unani Tibia College, Delhi vs. State of Delhi. This decision also does not help the respondents as according to this decision also, a registered society acquires the status of a legal entity, by reason of which it can sue or be used and it is a ''legal entity'' distinct from its members, but there is really no incorporation in the sense in which that word is legally understood.

12. All that can be deduced from the judgments relied upon is that a society registered under the Societies Registration Act is a legal entity and can sue or be sued. Therefore, it can certainly be argued that Arya Samaj Lucknow (Ganeshganj) and U.P. Arya Pratinidhi Sabha are two separate entities, but it is difficult to hold that a smaller body or society having same aims and objects and operating in smaller area cannot be guided or supervised or to some extent, be controlled by or be affiliated to, an apex body or society operating in the larger area. We are further of the view that it is not necessary to have any such provision to that effect under the Societies Registration Act. We are also of the view that as soon as a society is registered complying with the provisions and fulfilling the requirements as provided under the Societies Registration Act, the society so registered acquires a legal entity. In what manner, a registered society manages its affairs or accepts supervision of a larger body or suffers its interference, is not a matter which concerns the Societies Registration Act, subject of course to the condition that it is not against the provisions of the law.

13. Learned counsel for the appellant, in support of his contention that U.P. Arya Pratinidhi Sabha holds control over other units of Arya Samaj and has power to suspend the constitution of such local units of Arya Samaj, has placed reliance upon an unreported judgment of the Chief Court of Oudh in Second Civil Appeal No. 469 of 1946, Ganga Prasad and others vs. Anant Bihari Nigam and others. The same view, as contended by the learned counsel for the appellant, was taken by a Division Bench of the Chief Court of Oudh, consisting of Mr. Justice Ghulam Hasan and Mr. Justice L.S. Misra, by means of judgment dated 1811951.

14. On behalf of the respondents, it was argued that there was no resolution of Arya Samaj Lucknow (Ganeshganj) or order to affiliate it with the U.P. Arya Pratinidhi Sabha or to surrender its entity to be managed or controlled by it. The U.P. Arya Pratinidhi Sabha could not unilaterally control the Arya Samaj Lucknow (Ganeshganj). In this connection, reliance was placed upon an unreported judgment in Writ Petition No. 1191 of 1991, S. Chaturvedi vs. State of U.P. and others, decided by this Bench of the High Court. Besides the fact that the decision seems to have no application in the present case, learned counsel for the appellant has vehemently urged that the trial court has already recorded a finding referring a find to some documents on record, holding that the objection raised by the defendants to the effect that the Arya Samaj Lucknow (Ganeshganj) was not affiliated to the U.P. Arya Pratinidhi Sabha, has no force. It is submitted that the respondents could not go against that finding which has become binding upon the respondents. It is further submitted that if the respondents wanted to challenge that finding, they would have filed crossobjections within the time allowed for the purpose and the same having not been done, it is not open for the respondents to challenge that finding.

15. Admittedly no crossobjection was filed before 8101993. The respondents were served with the notice and a copy was also furnished to the counsel for the respondents on 571993 as caveat was filed by respondent No. 1 Man Mohan

Tewari. It is submitted that the matter was heard on different dates thereafter and counter affidavit was also filed on behalf of respondent No. 1 in reply to the application for interim relief. As indicated in the early part of the order the parties had requested that the matter be heard finally. The hearing was thus going on from daytoday on several dates. The connsel for the appellant Sri H.L. Srivastava had concluded his arguments on 691993, but the respondents'' arguments were put off on that date on the request made by their counsel. Thereafter several dates were fixed for hearing It has, therefore, been submitted on behalf of the appellant that though respondent No. 1 had been served with a copy of the notice and the matter though continuing for hearing and the arguments of the appellant having been concluded on 691993, no crossobjection was preferred until 81093 i.e. even after expiry of one month of conclusion of the arguments on behalf of the appellant.

Order XLI Rule 22 CPC reads as under :

"22. Upon hearing respondent may object to decree as if he had preferred separate appeal :

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have to been in his favour, and may also take any crossobjection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

ExplanationA respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file crossobjection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the suit, the decree, is wholly or in part, in favour of that respondent.

16. Learned counsel for respondent No. 1 has submitted that the period of one month would start from the date of admission of appeal. Since there was no order of admission of appeal, the crossobjection could not be treated as timebarred. On that question the learned counsel has placed reliance upon a case reported in AIR 1979 Calcutta 152, M/s Kantilal and Brothers vs. Ramarani Debt and others. The facts, however, appear to be different in the said case. In a matter relating to compensation under Section 110D of the Motor Vehicles Act, daughter and son of the deceased, though proper parties, were not impleaded as respondents. They filed their crossobjections when they were not parties. It was held that the appellant could not take advantage of its own fault and crossobjections could be filed within a period of one month of admission of appeal. It could not be said that the crossobjections were not maintainable. In the present case, the position was entirely different. The respondent No. 1 had

filed caveat. He was served with a copy of notice and the matter was under arguments, even then crossobjections were not filed though the arguments on behalf of the appellant had concluded more than one month before the crossobjections were filed.

17. The other case which has been relied upon by the respondent No. 1 is reported in AIR 1969 Allahabad 248, Shanti Sarup vs. Radhaswami Satsang Sabha, wherein it has been held that the period of limitation to file crossobjection runs from the date of admission of appeal. We, however, find no substance in the submission made on behalf of respondent No. 1. In the above noted case, the crossobjections were said to be treated as timebarred on misconception that the appeal was admitted by the Registrar soon after its filing. It was held that the Registrar could not admit the appeal ; it was the Court which was competent to pass orders of ''admission'' which were passed later on, admitting the appeal. In the present case, we have seen that the appeal was being heard finally and the arguments of the appellant had concluded more than a month before filing of the crossobjections. Therefore, we find no substance in the submission made on behalf of the respondent No. 1 that the crossobjections could not be barred by time as order of ''admission'' of appeal was not passed. There is nothing very special attached to the order containing the word ''Admit''. As indicated earlier, the respondent No. 1 had notice of filing of appeal. He had put in appearance and arguments for final hearing were going on. In these circumstances, it would be too much for respondent No. 1 to contend that crossobjections are within time. As a matter of fact, the respondent No. 1 has also moved an application under Section 5 of the Limitation Act for condoning the delay in riling the crossobjections. In this application, the respondent No. 1 is mainly harping upon the fact that no order of ''Admission'' had been passed on the appeal and the matter was being taken up for preliminary hearing. We have already made observations in this regard in the earlier part of this judgment. The arguments were being heard within the knowledge of the parties and at their instance for disposing of the matter finally. The technicality of passing the order of admission has no special significance and the respondent No. 1 cannot take advantage of it. At the risk of repetition, it may once again be pointed out that the counsel for the appellant had concluded his arguments. May be, it may have been argued during the course of arguments that the respondent No. 1 had not challenged the finding of the court below by filing a crossobjection, but that does not mean that the period of limitation to file crossobjection would start from the date raising out such arguments. There seems to be no substance in the other plea raised that under the legal advice, crossobjection could not be filed. The learned counsel for the appellant has placed reliance upon a number of decisions to oppose the application for condonation of delay. It is not necessary to deal with all those cases individually and suffice it to give only some citations, viz. AIR 1962 SC 361, AIR 1958 Orissa 260, AIR 1973 Delhi 24, AIR 1978 Goa 22, AIR 1978 Punjab and Haryana 307, AIR 1981 Delhi 14, 1969 Allahabad Law Journal 772 and 1971 Allahabad Weekly Reports 665, etc. We, therefore, decline to condone

the delay in filing the crossobjections and reject the application for condonation of delay in filing the same. The net result is that in our view, the respondent No. 1 is precluded from challenging the finding recorded by the trial court holding that there was no substance in the objection that the plaintiff Arya Samaj Lucknow (Ganeshganj) has noconcern or affiliation with the U.P. Arya Pratinidhi Sabha,

18. Learned counsel for respondent No. 1 then submitted that in any case the respondent is entitled to be heard challenging the finding recorded against him under XLI Rule 22 CPC In this context, reliance has been placed upon a case reported in AIR 1973 SC 2565, Sri Chandra Prabhuji Jain Temple and others vs. Narikrishna and another ; specifically paras 19 and 19A of the said judgment have been relied upon. It has been clearly held that a party can be allowed to address against a part of decree even though appeal has not been preferred against it, but not in such cases where the appellants seem to obtain further reliefs in appeals on the basis of the orders. This case, would, therefore, be of no help to the respondent No. 1 as no further relief is being sought by the appellant which alone would make him entitled for hearing without filing an appeal.

19. Order XLI Rule 22 CPC quoted in earlier part of this judgment, clearly provides for filing of crossobjection within one month from the date of service on a respondent or his pleader, of the notice of the date fixed for hearing the appeal. We have already indicated that after the parties agreed that the matter may be finally heard and the counsel for the appellant had concluded his arguments, it was thareafter i.e. after expiry of the period of more than a month that crossobjections were preferred alongwith an application for condonation of delay. We also find that the respondent No. 1 gets no help from the case reported in AIR 1963 SC 1516, Panna Lal vs. State of Bombay and others, dealing with a question about seeking of relief against a corespondent by one of the respondents, nor the other decision reported in AIR 1960 SC 1349, The Management of Itakhoolie Tea Estate vs. Its Workmen, where it has been held that the respondent cannot support a plea on the ground which would not be available to him as an appellant, namely, a ground which was not raised by him in the crossappeal. The other decision reported in AIR 1964 SC 1425, Virdhachalam Pillal vs. Chaldean Syrian Bank Ltd. also seems to have no application to the facts and points involved in the present case.

20. From the discussion held above, prima facie there seems to be some substance and force in the contention of the learned counsel for the plaintiff appellant that the plaintiff is affiliated to apex body, namely, the U.P. Arya Pratinidhi Sabha. That such relationship exists between the smaller units and apex body, is evident from the material placed on record and the judgment of Chief Court of Oudh in the case of Ganga Prasad (supra). The contentions to the contrary prima facie failed to dislodge the case of the plaintiff. As a matter of fact, one of the objections of respondent No. 1 is to the effect that procedure for affiliation to U.P. Arya Pratinidhi Sabha has not properly been followed by Arya

Samaj Lucknow (Ganeshganj). We would like to observe here that we are not adjudicating upon the disputes raised in the suit by the parties finally. All these conclusions and findings have to be arrived at in the suit proceedings. We are only examining the matter to find out the prima facie case. Our conclusions and findings are not final nor would they come in the way of the trial court in appreciating the facts and recording an independent finding thereon. The learned trial court has made a mention of several documents while recording a finding against respondent No. 1.

21. We may then see as to whether Sri Bhuwan Tewari has no right to file a suit in view of the provisions contained under Section 6 of the Societies Registration Act as held by the trial court. Section 6 provides for the suits by and against societies. It says that a society may sue or 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. The management of Arya Samaj, Lucknow (Ganeshganj) has been dissolved appointing Sri Bhuwan Tewari as its Administrator. That being the position, all powers of the management etc. would vest in the Administrator. Therefore, it cannot be said that Section 6 of the Act would come in the way of the appellant in filing the suit and seeking the relief of injunction. The powers which would be exercised by the governing body for nominating a person, if any, under Section 6 of the Societies Registration Act if vested in the Administrator, he would naturally be authorised to exercise that powers and in case he himself chooses to file a suit, it cannot be said to, be in violation of Section 6 of the: Societies Registration Act.

22. So far as the view of the trial court that the matter should be referred under Section 25 of the Societies Registration Act, is concerned, we find it to be not correct. A whole reading of Section 25 would indicate that it provides a machinery to resolve the election disputes or doubts about continuance of officebearers in office. In the present case, it is not the question of continuance of an officebearer, nor any such doubt or question of continuance or discontinuance has arisen because of any election dispute. The dispute in hand is entirely of a different nature. Here we are concerned with the dissolution of a committee of management by an apex body. Section 25 enumerates the grounds upon which an election can be set aside and as to what is the meaning of corrupt practices etc. On a bare perusal of the provision, it is evident that the same is not attracted in the facts and circumstances of the case in hand.

23. Learned counsel for the appellant has placed reliance upon two cases, one reported in AIR 1962 Allahabad 172, Meerut Collegiate Association vs. Arvind Nath Seth and others, wherein it has been held that proceedings under Section 25 of the Societies Registration Act are of summary nature and they provide for resolving the dispute relating to election and continuance of an officebearer in office, and the other case, reported in 1978 Allahabad Law Journal 672, Prabhat Misra and others vs. Jai Shankar Tripathi and others, where it has been held that Section 25 of the Act does not take away the jurisdiction of civil court to

adjudicate a dispute relating to election of office bearers of a society. It has further been held that Section 25 does not provide any remedy to an individual. The emphasis is that the proceedings are of a summary nature.

24. In view of the discussion held above, we don''t think that Section 25 of the Registration Act can be said to be a bar for a regular civil suit or an alternative remedy. The trial court, therefore, was not right in refusing to grant the interim relief on the aforesaid grounds.

25. The next finding which has been recorded by the trial court is that prima facie it has not been proved that Sri Bhuwan Tewari had taken charge of the management from the respondent No. 1. On this question too, in our view, the approach of the trial court does not appear to be correct. In the matters relating to management, it has been contended by the learned counsel for the appellant, the question of physical possession or taking over charge would not be very material. The learned counsel has placed reliance upon certain decisions in support of his contention; one is reported in AIR 1972 Punjab & Haryana 245 (FB) D.A.V. College, Hoshiarpur Society vs. Sarvada Nand Anglo Sanskrit Higher Secondary School, wherein it has been held that a person claiming management need not bring a suit for actual possession of the property as distinguished from the possession of the management which can be enforced only by preventing the other party from interference. The Full Bench has followed AIR 1961 SC 808 and (1904) ILR 28 Bombay 567. The other cases relied upon are reported in AIR 1958 Allahabad 371, Sankatha Pandey vs. Brij Mohan Pandey, AIR 1960 Bombay 463, Yamunabai vs. Ram Maharaj Shreedhar Maharoj Pandit, AIR 1975 J&K 57, Mir Ghulam Hasan Shah Geelani vs. Mir Maqbool Singh Geelani, AIR 1955 Assam 177, Giribala Choudhury vs. Ushangini Debi All these cases have been cited for the proposition that in the matters relating to management of a trust, Math or society, it is not necessary to ask for the relief of possession, nor the relief can be refused on the ground that the plaintiff is not in possession. The relief is of a declaratory nature about the management of the society or the trust and a suit for injunction restraining others from interfering in management can always be filed.

26. It has next been submitted that the U.P. Arya Pratinidhi Sabha could not pass the order appointing the Administrator after dissolving the management. The argument is based on Section 13A of the Societies Registration Act, which reads as under :

?13A Power of Registrar to apply for dissolution.

(1) Where in the opinion of Registrar, there are reasonable grounds to believe in respect of a society registered under this Act that any of the grounds mentioned in clauses (a) to (e) of subsection (1) of Section 13B exists, he shall send to the society, a notice calling upon it to show cause within such time as may be specified in the notice why the society be not dissolved.

(2) If on or before the date specified in the notice or within such extended period

as the Registrar may allow, the society fails to show any cause or if the cause shown is considered by the Registrar to be unsatisfactory, the Registrar may move the Court referred to in Section 13 for making an order for the dissolution of the society".

27. Section 13B of the Societies Registration Act provides that on the application of the Registrar or by onetenth of the members of the society or under Section 24 of the Act, an order for the dissolution of society can be passed on the ground that the society has contravened any provision of the Act or of any other law for the time being in force and it is just and equitable that she society should be dissolved. The other grounds given are that if the number of the members of the society is reduced to less than seven, or the society has ceased to function for more than three years, or the society is unable to pay its debts or the activities of the society are opposed to public policy. The above provisions clearly indicate that they provide for dissolution of a society. It is important to note that in the present case, the society has not been dissolved. It is only the management which has been dissolved and an Administrator has been appointed to properly administer the society. Section 13A of the Societies Registration Act is, on the face of it, inapplicable.

28. It has next been submitted that appointment of the Administrator is against the scheme of administration and the provisions of Section 16A and 16D of the Intermediate Education Act. In this connection, relianne has been placed upon a case reported in 1983 UPLBEC 629, Managing Committee, Arya Knnya Madhyamic Vidyalaya vs. Regional Inspectress of Schools. In that case, a particular clause of the scheme of administration framed under Section 16D of the Intermediate Education Act. In this connection, reliance has been placed upon a case reported in 1983 UPLBEC 629, Managing Committee, Arya Kanya Madhyamic Vidyalaya vs. Regional Inspector of Schools. In that case, a particular clause of the scheme of administration framed under Section 16D of the Intermediate Education Act was found violative of the provisions of Section 16A. It is quite understandable that a scheme which is framed under a provision of law, has to be in conformity with that provision. In the present case, no provision of the scheme of administration has been mentioned which can be said to be violative of any provision of the Intermediate Education Act under which it has been framed. The U.P. Arya Pratinidhi Sabha and the Arya Samaj Lucknow (Ganeshganj) have got their own rules and byelaws which have not been framed under any of the provisions of the Intermediate Education Act. Therefore, no reliance can legally be placed upon the above noted decision in support of the contention raised on behalf of respondent No. 1.

29. It has next been submitted that the amendment made in the rules of U.P. Arya Pratinidhi Sabha providing for dissolution of a unit of Arya Samaj by it, was rejected by the Registrar. This factual position has been denied on behalf of the appellant. According to the appellant, the amendment was made which had also become effective. The appellant has placed on record a document showing that

byelaws of U.P. Arya Pratinidhi Sabha as amended, had been registered under the provisions of the Societies Registration Act by order dated 211992. The said document has been filed as Annexure4. There is no dispute about the fact that under the amended provision, the U.P. Arya Pratinidhi Sabha had been empowered to dissolve a unit of Arya Samaj in case of mismanagement by the governing body or in case of violation of the instructions issued the U.P. Arya Pratinidhi Sabha.

30. On behalf of the appellant, it has also been vehemently urged, in our opinion, rightly, that the respondent No. 1 never challenged the order passed by the U.P. Arya Pratinidhi Sabha and without challenging its validity or authority of U.P. Arya Pratinidhi Sabha to pass the order of appointment of Administrator, the respondent No. 1 only banked upon highhandedness and forcible resistance and interference in discharge and functioning of the plaintiff through the Administrator. Normally it was expected that in case the respondent No. 1 felt that the U.P. Arya Pratinidhi Sabha had no authority to appoint an Administrator, such an order should have been challenged.

31. In view of the discussion held above, we find that the trial court erred in refusing to grant interim injunction on the ground that the plaintiff was not entitled to file the suit through its Administrator Sri Bhuwan Tewari, in view of the provisions contained under Section 6 of the Societies Registration Act or for the reason that the dispute should have been referred under Section 25 of the Societies Registration Act. Yet another reason given by the trial court for not granting the interim relief is that the educational institutions appear to have been managed by the respondent No. 1 and that Sri Bhuwan Tewari had not assumed charge of the office from Sri Man Mohan Tewari. As it has already been discussed, the possession of the property has no relevance in the suit of the nature where right of management is involved. We are, therefore, of the view that all the reasons indicated by the trial court for refusal to grant relief are not sustainable and we hold otherwise as indicated in the earlier part of the judgment. The trial court has also observed in a very cursory manner in one line that balance of convenience is also not in favour of Sri Bhuwan Tewari as no irreparable injury is apprehended. We find no discussion or basis for that finding.

32. The next question to be considered is as to whether a case for grant of interim injunction has been made out or not. In this connection, prima facie case, likely injury to flow from refusal to grant interim injunction and balance of convenience have to be considered. The learned counsel for the appellant has cited a few decisions on the point. He has placed reliance upon a case reported in Allahabad Rent Cases 1992 (1) page 300, Dalpat Kumar and another vs. Prahlad Singh and others (Supreme Court). It has been observed in this case that exercise of the power of grant of injunction is subject to the court''s satisfaction that there is a serious disputed question to be tried in the suit and there is a probability of the plaintiff being entitled to the relief asked for. The actual legal right would be established at the trial, but it would be necessary to protect the

party from the injury likely to be caused.

33. In another case reported in Allahabad Rent Cases 1992 (1), page 392, Smt. Shefali Roy vs. Hero Jaswant Dass, a Division Bench of this Court observed that prima facie case may not be confused in prima facie success, but simply if there is serious question to be tried, the test of prima facie is satisfied.

34. Yet another case reported in the same volume is Allahabad Rent Cases 1992 (1) page 424, Bhagwat Prasad vs. Jitendra Narain and another wherein it has been observed that injury means any wrong or damage done to another either in his person, right, reputation or property. It connotes an act which harms, hurts or damages.

35. AIR 1954 Patna 477 Meghu Mian vs. Kishun Ram and others, has been relied upon for the proposition that a mandatory injunction can be issued even when there is a threat of invasion over the right of the plaintiff though it would depend on the facts of each case and its merit. Their lordships in the above noted case had also placed reliance upon the observations made in a decision reported in AIR 1929 PC 132, to the effect that the court has wide powers and much beyond the provisions of law under Section 54 of the Specific Relief Act to pass a mandatory injunction where it appears to it to be just and convenient. This observation is, however, in respect of mandatory injunctions.

36. Yet another case relied upon is reported in Allahabad Rent Cases 1989 (1), page 351, Shiv Saran Goyal and others vs. M/s Kedar Nath Om Prakash and others, where it has been observed that normally in appeals against orders of temporary injunction, appellate courts do not interfere but when the order is apparently unreasonable or the discretion has been exercised arbitrarily, the appellate court, in such circumstances, is bound to interfere in the matter.

37. In the light of the law relating to grant of interim injunction, as indicated through various decisions of different Courts, while examining the facts of this case we find that there were allegations of mishandling and mismanagement of the institutions and its properties by the respondent No. 1. There was also an allegation that the properties and assets of the plaintiff were being used by the respondent No. 1 as his own personal property and serious complaints were made to U.P. Arya Pratinidhi Sabha by the Sabhasads Complaints were also made by the teachers of the educational institutions, to the U.P. Arya Pratinidhi Sabha. After enquiry into the complaints of the nature indicated above through officebearers of the U.P. Arya Pratinidhi Sabha, it passed unanimous resolution dissolving the committee of management of the Arya Samaj Lucknow (Ganeshganj) in the light of enquiry report. Sri Bhuwan Tewari was appointed an Administrator on dissolution of the committee of management of Arya Samaj Lucknow (Ganeshganj). The respondent No. 1 never challenged the resolution/ order of the U.P. Arya Pratinidhi Sabha dissolving the management and appointing Shri Bhuwan Tewari as Administrator. Its validity is being challenged in the suit filed by the plaintiifappellant. There is a serious question to be tried

regarding the resolution/order passed by the U.P. Arya Pratinidhi Sabha dissolving the Committee of Management and appointing Sri Bhuwan Tewari as Administrator. Even the trial court has found that there is no substance in the objection raised by the defendant No. 1 that the Arya Samaj Lucknow (Ganeshganj) has no concern with the U.P. Arya Pratinidhi Sabha. Before the question is tried and finding recorded by the trial court finally, it would be necessary to provide that no interference is made in the functioning of the Administrator appointed by the U.P. Arya Pratinidhi Sabha which would be in the interest of Arya Samaj Lucknow (Ganeshganj) and the institutions run by it. Since the allegations are that it was on the basis of the complaints of the teachers of the institutions and the Sabhasads of the U.P. Arya Pratinidhi Sabha that this action was taken after getting an enquiry made into the matter and despite the above facts and circumstances if respondent No. 1 is allowed to continue, it would be against the interest of the institutions. The refusal of the trial court, therefore, to grant interim injunction, on the grounds of the provisions contained under Sections 6, 13A and 25 of the Societies Registration Act is wholly unsustainable. The other respondents are only the Banks holding accounts of the plaintiff; no question of violation of their rights is involved. They are only concerned with the fact that lawful functionary should alone operate the accounts.

38. In view of the discussion above, we allow the appeal with costs and set aside the order dated 3151993, passed by the Civil Judge, Lucknow rejecting the application moved by the plaintiffappellant under Order XXXIX Rules 1 and 2 CPC in Regular Suit No. 162 of 1993 and hereby grant temporary injunction during pendency of the suit restraining the respondent No. 1, his servants, agents, assignees, nominees, attorneys and whosoever claim on his behalf, not to interfere in the functioning of the plaintiffappellant through its Administrator Sri Bhuwan Tewari, including the management of the educational institutions and other institutions run by the plaintiffappellant as enumerated in para 2 of the plaint. The defendantrespondents No. 2 to 5 shall also act accordingly recognizing Sri Bhuwan Tewari as the administrator of Arya Samaj Lucknow (Ganeshganj).

