

(2025) 02 DEL CK 1078

In the Delhi High Court

Case No : First Appeal from Order (OS) No. 14 Of 2025

Dr. Rashmi Saluja

APPELLANT

Vs

Religare Enterprises Limited

RESPONDENT

Date of Decision : 06-02-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1
Reserve Bank of India Act, 1934 — Section 45
Companies Act, 2013 — Section 100, 152, 196

Citation : (2025) 02 DEL CK 1078

Hon'ble Judges : Rekha Palli, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Mukul Rohatgi, Sandeep Sethi, Sameer Rohatgi, Keshav Sehgal, Shivam Gaur, Kshitij Joshi, Aryan Kumar, Nandita Sharma, Nalin Kohli, Shankh Sengupta, Aubert Sebastian, Ribhu Garg, Arnav Doshi, Neha Dhavalikar, Anshul Malik, Shruti Agrawal, Nimisha Menon, Ayushman Arora, Dr.Abhishek Manu Singhvi, Dayan Krishnan, Abhimanyu Bhandari, Rishi Agarwal, Nirvikar Singh, Rohan Batra, Niyati Kohli, Rishabh Bhargava, Dhruv Sethi, Nidhi Choudhary, Devika Mohan, Pratham Vir Agarwal, Siddharth Seem, Pranav Badheka, Avishkar Singhvi, Siddharth Seem, Mugdha Pande, Vaibhav Thaledi

Final Decision : Dismissed

Judgement

Rekha Palli, J

CAV.68/2025

1. Since learned counsel for the respondent enters appearance, the caveat stands discharged.

CM APPL.7340-42/2025

2. Exemptions allowed, subject to all just exceptions. We may, however, note that even though the appeal was filed without a copy of the impugned judgment, a copy thereof has been handed over to us in Court and is taken on record.

3. The lengthy list of dates is taken on record.

4. The applications stand disposed of.

FAO(OS) 14/2025 & CM APPL.7339/2025(stay)

5. The present appeal under Order XLIII Rule 1 of the Code of Civil Procedure seeks to assail the order dated 04.02.2025 passed by the learned Single Judge in CS(OS) 61/2025. Vide the impugned order, the learned Single Judge has dismissed the application filed by the appellant under Order XXXIX Rule 1 & 2 being IA No.2370/2025, wherein the appellant had sought an interim injunction restraining the respondent/company from proceeding with the voting on a proposed resolution dated 15.01.2025.

6. Before dealing with the submissions of learned senior counsel for the appellant, the brief factual matrix as is necessary for adjudication of the present appeal may be noted.

7. The appellant was appointed as a Non-Executive Independent Director in the respondent company, ie., Religare Enterprises Ltd., w.e.f 20.12.2018. Subsequently, she was designated as the Non-Executive Independent Chairperson of the respondent company on 19.06.2019. Based on the recommendation dated 10.12.2019 of the Nomination and Remuneration Committee (NRC) of the respondent company, the re-designation of the appellant as the Executive Chairperson was approved for a period of three years and the appellant was further designated as a Key Managerial Personnel (KMP). This was, however, subject to the approvals from the shareholders as also of the Reserve Bank of India(RBI) in terms of the RBI Master Directions issued on 25.08.2016 (as updated from time to time).

8. It may be noted at this stage itself that before the respondent was appointed as Executive Chairperson, an approval was sought from the RBI on 11.12.2019 for the same as also for the consequential change in management of the company. The said application expressly sought approval for a three-year term without the requirement of the appellant to retire by rotation. Upon receiving the RBI's approval thereto, on 26.02.2020, the appellant was appointed as the Executive Chairperson of the respondent company.

9. On 10.08.2022, an NRC meeting was held wherein a resolution for re-appointment of the appellant was proposed and the appellant's tenure as Executive Chairperson was further extended for a period of five years from 26.02.2023. This re-appointment of the appellant was approved in the 38th Annual General Meeting(AGM) of the respondent company held on 23.09.2022, pursuant where to the appellant was issued a letter of appointment on 24.02.2023, confirming her appointment as the Executive Chairperson for a period of five years. This resolution dated 23.09.2022, like the earlier resolution dated 28.05.2020, specifically recorded that the appellant was 'liable to retire by rotation'.

10. On 27.09.2023, during the 39th AGM of the respondent company, which the appellant also attended, the question of the appellant's re-appointment was discussed as a part of the agenda. On 15.01.2025, the respondent company issued a notice for its 40th AGM, which was scheduled to be held on 07.02.2025. As per this notice, a resolution seeking appointment of a Director in the place of the appellant has been moved, wherein it has been recorded that the appellant is liable to retire by rotation.

11. Aggrieved with this notice dated 15.01.2025, the appellant on 28.01.2025 instituted the aforesaid suit before this Court inter alia seeking permanent and mandatory injunction, alongwith an application for interim injunction restraining the respondent from voting on the proposed resolution dated 15.01.2025, insofar as it pertains to the appellant's retirement by rotation.

12. On 29.01.2025, when the suit came for preliminary consideration before the learned Single Judge, summons in the suit alongwith notice in the application were issued. A reply to the application was, accordingly, filed by the respondent and upon consideration of the same, the learned Single Judge has, vide the impugned order dated 04.02.2025, dismissed interim the application of the appellant herein. While rejecting the application, the learned Single Judge inter alia observed that since the appellant had previously in the year 2023 when she was re-appointed for five years acquiesced to the very process of her retirement by rotation and had sought re-appointment, it was not open for her to contend that the terms of her appointment were being misinterpreted and misread.

13. The learned Single Judge further observed that the appellant was not able to make out a prima facie case and in any event, the balance of convenience was not in her favour. In arriving at the aforesaid conclusion that no case was made out for granting the injunction on her termination as sought by the appellant, the learned Single Judge relied on the decisions in *Air India Ltd. vs. Aditya Beri* 2012 SCC Online Del 3014 and *Vikas Kumar vs. SDMC* 2023 SCC Online Del 274 and, therefore, observed that even if ultimately the appellant succeeds in the suit, she could always be compensated by awarding full salary for the period, she remained out of employment. Aggrieved thereby, the appellant has challenged the said impugned order passed by the learned Single Judge whereby the reliefs sought by her have been denied.

14. In support of the appeal, Mr. Mukul Rohatgi, learned Senior Counsel as also Mr. Sandeep Sethi, learned Senior Counsel for the appellant have raised three submissions. At the outset he submits that the learned Single Judge has erred in holding that there was any delay on the part of the appellant in approaching the Court. He submits that the appellant was taken by surprise by the impugned resolution/notice dated 15.01.2025 and was, therefore, required to take legal opinion before approaching this Court which she did within 13 days of the issuance of the impugned notice. He next contends that the learned Single Judge has erred in relying on the decision in *Aditya Beri* (supra) which decision, according to him, would not be applicable to the facts of the present case, where

the proposed termination of the appellant is contrary to the statutory Scheme of the RBI Act. The learned Single Judge, he contends has failed to appreciate that the termination of the appellant's directorship in the respondent company, where the appellant was also the Executive Chairperson would cause irreparable injury to the appellant not only in terms of monetary relief, but also harm her reputation and professional standing. His plea being that this was so since it was evident from a perusal of Section 45 of the RBI Act as also the Master Circular dated 25.08.2016 issued by the RBI, that no proposal so as to cut short her ensured tenure of five years, for the appellant's termination by way of retirement by rotation was permissible without the RBI's approval. He, therefore, contends that under such circumstances when it was evident the respondent had not followed the laid down procedure under the statute, it was a fit case where the learned Single Judge ought to have granted the injunction as prayed for.

15. Finally by relying on the communication dated 09.12.2024 received from the RBI, he submits that taking into account that the respondent's proposal for change of management/appointment of four proposed Directors was not accepted by the RBI, the appellant is confident that, in case, approval in her case had been sought from the RBI, in respect of the impugned resolution qua the appellant, the same would have not been granted. He, therefore, prays that taking into account the admitted position that the proposed action of the respondent in endeavouring to cut short the tenure of the appellant does not fall under any of the clauses of para 20 of the appointment letter, the impugned resolution be stayed.

16. On the other hand, Mr.Nalin Kohli, learned Senior Counsel for the respondent, who appears on advance notice seeks to oppose the appeal at the outset by urging that e-voting regarding the impugned resolution has already started on 04.02.2025 and is ending at 05:00 p.m. today.

17. Taking the same into account as also for the reasons stated hereinbelow, we do not find any infirmity in the impugned order, we do not deem it necessary to call upon Mr.Kohli to make submissions on merits.

18. In order to examine the submissions of the learned senior Counsel for the appellant, which we find are primarily a reiteration of the submissions made before the learned Single Judge, it would be apposite to begin by noting the relevant extracts of the impugned judgment as contained in para 34, 35, 41, 44, 46, 47 & 49:-

"34. Applying this principle to the present case, the relief sought by the plaintiff effectively amounts to a stay on her purported re-election and apprehended termination by requiring the defendant-company to retain her in the position of Executive Chairperson until the final determination of the suit. However, as established in Air India Ltd, such relief should only be granted where the situation is irretrievable. In the present case, even if the plaintiff is not re-appointed as a director in the 40th AGM, and if the Court ultimately finds that

her removal was unlawful due to the overriding effect of Section 196 over Section 152 of the Companies Act, as well as the contractual rights, the grievance of the plaintiff can still be adequately redressed through compensation based on her letter of appointment and various other judicially determinable factors, thus balancing the equities. This approach would also ensure that the principles of Corporate Governance are upheld.

35. The principle enunciated in aforementioned judicial precedents concerning private employment disputes is that where monetary compensation can provide full restitution, an injunction preventing termination is unwarranted. Therefore, as the Court should be hesitant in interfering with corporate governance decisions, particularly where alternative remedies in the form of monetary compensation remain available, applying this principle to the facts of the instant case, even if the plaintiff succeeds in the suit, the relief at best available to her would be in the form of financial compensation.

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"41. Assuming, for the sake of argument, that the plaintiff is not required to resign and is not subjected to retirement by rotation by the operation of law, such a contention remains prima facie unsustainable for the following reasons:-

i. The Board Meeting dated 10.08.2022 expressly recorded that the plaintiff, in accordance with the provisions of Section 152 of the Companies Act, 2013, shall be subject to retirement by rotation.

ii. The AGM held on 23.09.2022 reaffirmed the resolution passed in the Board Meeting dated 10.08.2022, explicitly recognizing the obligation of the plaintiff to retire by rotation.

iii. In the AGM held on 27.09.2023, which took place subsequent to the issuance of the letter of appointment under which the plaintiff currently holds office, the plaintiff voluntarily subjected herself to the process of retirement by rotation and was re-elected in accordance with the extant regulatory framework.

iv. The grievance of the plaintiff had emanated on 28.05.2020, where the election of the plaintiff was done through the vote by ballot.

44. With respect to the balance of convenience, it is a well-settled principle that every shareholder of a company has the right, subject to statutory procedures and requisite numerical thresholds, to participate in the affairs of the company. This participation is essential to uphold the principles of corporate democracy and to maintain transparency in corporate governance. The shareholders must be allowed to regulate and determine the affairs of the company through General Meetings, which serve as the primary forum for decision-making within a corporate entity. Given this framework, the jurisdiction of the Court in such matters is limited, and judicial interference in the internal management of a company should be exercised with caution. Courts have consistently maintained that unless there is a clear violation of statutory provisions or principles of

natural justice, they should refrain from intervening in the internal governance of a company. Reliance can be placed on the decision of this Court in the case of Ravinder Sabharwal v. XAD INC²⁰. The relevant portion of the said decision reads as under:-

"12. A perusal of the above Articles show that the continuation of Directorship of the Plaintiffs till they resign, is not unequivocal but is 'subject to the provisions of the Companies Act'. The power of appointment of Directors in a company vests with the subscribers. In any event, such a power is one which vests purely with the share holders of the company and can be decided in an EGM. Calling of an EGM is the power of the share holders and a perusal of the notice dated 30th June, 2018 clearly shows that the said notice has been issued under Section 100 of the Companies Act. The notice clearly specifies the resolutions that are intended to be passed. The EGM was originally scheduled for 24th July, 2018 but was thereafter postponed. The Plaintiff herein objected that the EGM notice did not give the 14 days' notice period which was required to be given as per law. The question as to whether an injunction can be passed against holding of an EGM has been settled by the Supreme Court in the decision of Life Insurance Corporation (supra) The Supreme Court in the said judgment has categorically held that the power to appoint Directors is with the holders of the majority of the stock. No injunction can be granted to restrain the holding of such a meeting

13. As per this binding dictum, there can be no injunction restraining holding of an EGM. The majority share holders have the power to appoint Directors and the power to regulate them by passing a resolution for removal. The reasons for passing of a particular resolution need not be disclosed in the notice calling for the EGM. Also, passing of the resolution and the reasons thereof are not subject to judicial review. Thus, in the present suit what the Plaintiffs only intend to seek is an injunction against calling of the EGM.

15. A perusal of the Articles of Association clearly shows that the Plaintiff No. 1 is a non-rotational Director and can remain so long as he does not voluntarily resign. However, this Article is subject to the provisions of the Companies Act which permits the removal of a Director by majority share holders in a lawfully requisitioned EGM. Article 17 of the Articles of Association cannot therefore be treated as having precedence over the provisions of the Companies Act.

16. No injunction from calling the EGM can therefore be granted. The resolutions sought to be passed in the EGM have already been circulated. The hearing, if any, that the Plaintiffs seek can only be granted at the EGM and not before. The EGM having not been held, the suit is not maintainable and is also premature.

17. The injunction in respect of the EGM does not deserve to be granted. No other relief is pressed or arises. Thus, the present suit is not maintainable and is

therefore dismissed. All pending I.As. also stand disposed of.”

46. In the present case, the relief sought by the plaintiff, in effect, challenges the proposed re-election of the plaintiff as a Director in the 40th AGM and thus, seeks her continuation in her current position. However, there is no allegation that the proposed Resolution to be placed in the AGM itself is contrary to any specific provision of law or has been placed in violation of any established procedure. The contention of the plaintiff primarily rests on the assertion that the legal provisions governing her appointment have been misinterpreted and misapplied, particularly the understanding that her appointment was for a fixed term of five years without being subject to rotation.

47. However, the factual matrix indicates that in the year 2023 itself, the appointment was made, and subsequently, the plaintiff subjected herself to retirement by rotation and sought re-appointment without any objection or protest. This sequence of events clearly demonstrates that the plaintiff had, at the relevant time, acknowledged and accepted the requirement of rotation. Therefore, at this stage, it is not open for the plaintiff to contend that the terms of appointment are being misinterpreted or misread, particularly when she had previously acquiesced to the very process she now seeks to challenge.

49. Any interim direction restraining the defendant-company at this stage may lead to uncertainty and confusion among the shareholders, which would not serve the larger public interest. If the majority shareholders of the company decide to re-appoint the plaintiff, whether as the Director or in any other capacity, they must be allowed to exercise their discretion freely, subject to extant rules and regulations. The scales of convenience do not favor the plaintiff, as granting an injunction at this stage would significantly disrupt the preparations already underway for the scheduled AGM. On the contrary, such an injunction would not only cause considerable inconvenience to the defendant-company and its shareholders but would also amount to unwarranted judicial interference in a democratic and statutory exercise of corporate governance. The proposed course of action of the defendant-company is, *prima facie*, in consonance with the procedure followed during the earlier re-appointment of the plaintiff, and no apparent legal infirmity has been demonstrated. The challenge of the plaintiff to the Proposed Resolution is primarily based on the alleged misinterpretation of the terms of her appointment, and on these grounds, as noted earlier, a *prima facie* case justifying the grant of an injunctive relief has not been established.”

19. From a perusal of the aforesaid, what emerges is that the learned Single Judge has not only considered the question of irreparable loss and injury, but has also categorically observed that no *prima facie* case was made out in favour of the appellant for which purpose he has specifically referred to her re-appointment in the year 2023 which was by subjecting herself to retirement by rotation. The learned Single Judge also noticed the fact that though now it was the respondent’s specific case that the clause of ‘retirement by rotation’, as she

was aggrieved thereby, however, it was very much the part of the resolutions in the earlier AGMs as well and qua which resolution the appellant had never raised any grievance.

20. The learned Single Judge further held that even otherwise if the appellant were to succeed in the suit, she could easily be compensated by way of monetary compensation and, therefore, rejected her plea that irretrievable prejudice will be caused to her in case her proposed termination by way of the impugned resolution was not stayed. The learned Single Judge held that injunction being a form of equitable relief, the same must not be granted when it is evident that the injury likely to be caused by non-grant thereof can be easily repaired through pecuniary compensation. The learned Single Judge, therefore, went on to further observe that grant of an interim injunction to the appellant at this stage, would be against the principles of corporate governance as it would amount to compelling the respondent to retain the appellant as the Executive Chairperson of the company even when her claim to cling to the post is yet to be adjudicated by the Court.

21. As already observed hereinabove, before us the appellant has primarily reiterated the very same submissions made before the learned Single Judge, which as is evident from the aforesaid extracts of the impugned judgment, have been dealt with by the learned Single Judge in great detail before rejecting them.

22. Having given our thoughtful consideration to the submissions made by Mr. Rohtagi, we find no reason to differ with the view taken by the learned Single Judge or to interfere with the discretion exercised by him in refusing the injunction prayed for by the appellant. The learned Single Judge, in our considered view, has duly appreciated the factual matrix in its entirety including the factum of the appellant having approached the Court after delay of almost two weeks barely six days before the e-voting in respect of the impugned resolution commenced on 04.02.2025. Additionally, the learned Single Judge has also taken into account the well settled legal principles qua non-grant of injunction which should not be granted unless all the three ingredients i.e. prima facie case, balance of convenience and irreparable injury are concurrently established.

23. In this regard, we may also refer to the decision in *Wander Ltd. and Anr. Vs. Antox India (P) Ltd.*, 1990(Supp) SCC 727, wherein the Apex Court summarised the principles regarding the manner in which the Appellate Court must interfere with the exercise of discretion by the Court of first instance, the relevant extract thereof as contained in para 14 of the decision reads as under:-

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had

ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

"... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

24. In this regard reference may also be made to the recent decision in *Ramakant Ambalal Choksi vs. Harish Ambalal Choksi & Ors.*, 2024 SCC OnLine SC 3538, wherein the Apex Court held as under:

"26. What flows from a plain reading of the decisions in *Evans* (supra) and *Charles Osenton* (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and

b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

27. The principles of law explained by this Court in *Wander's* (supra) have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

28. In *Neon Laboratories Ltd. v. Medical Technologies Ltd.*, (2016) 2 SCC 672 this Court held that the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view

that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

29. In *Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan*, (2013) 9 SCC 221 this Court emphasised on the principles laid down in *Wander* (supra) and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39 of the CPC.

The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

“20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the trial court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in *Wander Ltd. v. Antox India (P) Ltd.*”

(emphasis supplied)

25. Lastly, learned Senior Counsel for the appellant has also urged that in the present case, the decision to retire the appellant by rotation was contrary to the provisions of Section 45 of the RBI Act and had been taken without approval from the RBI. It was, therefore, contended by him that it is a fit case, where this Court ought to grant an injunction staying the appellant’s termination.

26. We, however, find no merit in this plea as well as it is trite law that even in the case of public servant the order of termination should not be stayed by an interim order and, therefore, we find no reason to stay the impugned resolution, which even otherwise falls in the realm of corporate governance. Furthermore, the appellant’s plea that the respondent is trying to misconstrue the terms of her appointment letter is yet to be adjudicated and, therefore, it would be premature at this stage to presume that she will, in all likelihood, succeed in the suit.

27. In this regard reference may be made to the following extracts of the decision in State of U.P. vs. Sandeep Kumar Balmiki [(2009) 17 SCC 555]-

"5. In our view, the interim order granted by the High Court staying the order of termination could not be passed at this stage in view of the fact that if such relief is granted at this stage, the writ petition shall stand automatically allowed without permitting the parties to place their respective cases at the time of final hearing of the writ petition. In this case also, the appellants have not yet filed counter-affidavit to the writ petition of the respondents.

6. That being the position and in view of the fact that the final relief could not be granted at the interim stage, we set aside the impugned order and vacate the interim order passed by the High Court."

28. For the aforesaid reasons, we find no merit in the appeal, which is, accordingly, along with the pending application stands dismissed. We, however make it clear that neither the observations made in the impugned order nor the observations made in this order will have any bearing on the appellant's claim in the pending suit, which is still pending consideration.