

(2011) 04 CAL CK 0071
In the Calcutta High Court
Case No : C.O. No. 1830 of 2008

Gopal Chandra Das

APPELLANT

Vs

Malighati Dr. B.R. Ambedkar Society for Advancement of
Learning and Health

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Citation : (2011) 04 CAL CK 0071

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : A. Banerjee and R. Deb, for the Appellant; A. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the Defendant and is directed against the order dated May 28, 2008 passed by the learned Additional District Judge, Fourth Court, Paschim Medinipur in Misc. Appeal No. 57 of 2007 arising out of Title Suit No. 117 of 2007.

2. The short fact is that the Plaintiff/opposite party, a society instituted the said suit against the Defendant/Petitioner praying for a decree of declaration that the notice issued by the Defendant on May 25, 2007 is illegal and that the Defendant has no right to issue such a notice as he does not hold any office bearer of the society and that the society has every right to run the society smoothly, permanent injunction and other reliefs. At the time of filing of the suit, the society prayed for temporary injunction. A notice was issued upon the opposite party and thereafter by an order dated June 8, 2007, the learned Trial Judge dismissed the application for temporary injunction. Being aggrieved by that order, the Plaintiff preferred a misc. appeal being Misc. Appeal No. 57 of 2007. That misc. appeal was allowed. Being aggrieved, the Defendant has preferred this revisional application.

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

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that Malighati Dr. B. R. Ambedkar Society, a society for advancement of learning and health, represented by Sachindra Nath Misra, secretary of the said society is running a B. Ed. college affiliated to the Bidyasagar University, approved by the Council for Teachers' Education. The said B. Ed. college is a private one and there are many teachers, and students who obtained the B. Ed. degree in every year. Admittedly, Gopal Chandra Das, was an assistant secretary of the society for the year 2004. But, subsequently, his membership was discontinued by the resolution of the society in the General Meeting dated March 30, 2006. The Petitioner was an invitee member in the said Annual General Meeting for the year 2005- 2006 and he signed in the office note of the said meeting as an invitee member. In the subsequent year, another General Meeting was held on March 30, 2007 and at that time, Sachindra Nath Misra was elected as secretary of the society and he was entrusted to deal with the administrative matters of the society. As per resolution of the meeting dated March 30, 2006, the Petitioner has no status with regard to the society after the said Annual General Meeting held on March 30, 2006. In the subsequent years, the Petitioner is no where in relation to the said society. But the following allegations have been raised against the Petitioner:

i. The petitioner is sending letters to different authorities as such, university, bank and other organizations not to accept any proposal of the society and thus, he has been creating troubles to withdraw the money from the bank for running the said B.Ed. college.

ii. On May 25, 2007, the defendant claimed himself as an assistant secretary of the society and he issued several notices to different persons/authorities for creating much inconvenience in running the society.

iii. He filed criminal cases against the society in different manners and for that reason, the present Plaintiff, that is, Sachindra Nath Misra, failed to get interim bail.

iv. The Petitioner has raised allegation against the society that the Plaintiff has been misusing the fund of the society and that he is creating disturbances for running the college by sending separate letters to the different authorities representing himself as an assistant secretary.

5. From the above facts, it is crystal clear that the Plaintiff has filed the suit so that the said B. Ed. college might be run smoothly accordingly to the norms and regulations of the society. There is no dispute that Sachindra Nath Misra is the secretary of the society. The Defendant could not show any paper that he is connected with the society after the year 2004. Admittedly, he was an assistant secretary of the said society in the year 2004 and thereafter he has no relation with the said society and his membership has been discontinued. He was invited in the Annual General Meeting of the society held on March 30, 2006 and

thereafter he had no relation at all with the said society. The Plaintiff has shown by materials that the Defendant wrote letters on May 25, 2007 to different authorities including banks not to make payment to the society at all. The money of the society is being deposited with the bank and in case of necessity, it is withdrawn from the said bank. At present, there is no instance that any amount of the said society has been misappropriated by the Plaintiff. There is no evidence at all that after March 30, 2006 the Petitioner is anyway connected with the said society. Therefore, I am of the view that the Plaintiff has shown prima facie case to go for trial.

6. If the allegations as discussed above are kept in mind, it will be obvious that if the order of injunction as prayed for is not granted, it is the society, the concerned teachers, staff and students of the said B. Ed. college who would suffer loss and the Defendant has nothing to lose because he is nowhere in connection with the said society after March 30, 2006. If the amount is not withdrawn for payment of salaries for the professors, staff and if the payment is not made for consumption of electricity, telephone, essential establishment charges, etc., the entire administration of the society may collapse. Moreover, for want of fund if the Plaintiff is unable to run the B. Ed. college smoothly then the students will have to suffer loss which cannot be compensated in terms of money; but the Defendant/Petitioner has nothing to suffer. Therefore, I find that the balance of convenience of granting injunction is in favour of the Plaintiff society and not in favour of the Defendant. If injunction is withheld, it is the society, the professors, staff and the students of the B. Ed. college are to suffer and the Defendant/Petitioner herein has nothing to lose. Therefore, the society has the chance of suffering irreparable loss if the prayer for temporary injunction is not granted.

7. In view of the above discussions, I am of the view that the learned lower appellate Court has rightly decided the cardinal principles in granting injunction in favour of the Plaintiff. The learned lower appellate Court has rightly commented that the Defendant did not file any suit to show malpractices on the part of the society or claiming as member of the said society. The Defendant / Petitioner has failed to show that any misappropriation of fund by the society has been committed and as per the observation of the lower appellate court, everything is found correct and the fund of the society has been deposited in the bank by the society. Therefore, I am of the view that the learned lower appellate Court has rightly analysed the materials on record in disposing of the application for temporary injunction and he has rightly allowed the misc. appeal setting aside the order dated June 8, 2007 passed by the learned Civil Judge (Junior Division).

8. Mr. A. Banerjee, learned Advocate appearing for the Petitioner, has contended before this Court that the learned Trial Judge has rightly held that the Court should be reluctant in dealing with the internal administration of the college or society so that the society or college may run the society according to its own

rules and regulations. True, in internal matters, the Court should not interfere with the administration. But, if the situation reaches to such a climax that the society is unable to discharge its functions smoothly because of the unwarranted intervention of the Defendant/ outsiders/strangers, the Court should not keep itself mum without taking care of the complaint as raised by the society. In appropriate situation, the Court must rise to the occasion. It is the allegation of the society that though the Defendant is neither a member of the society nor connected in any way with the society, he is creating such troubles as noted above on the basis of political forces behind him. Under such circumstances, the Court should not pass appropriate orders to take care of the fact, so that the said society runs the college properly for the benefit of the students and the public at large.

9. Therefore, I am of the view that there is no illegality or irregularity in the impugned order. The order impugned does not call for any interference at all.

10. Accordingly, this revisional application is totally devoid of merits. It is, therefore, dismissed.

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

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