

(2025) 05 DEL CK 0960

In the Delhi High Court

Case No : FAO No. 153 Of 2025 & Civil Miscellaneous Application No. 33572 Of 2025

Harjeet Singh & Anr

APPELLANT

Vs

Ansai Plaza Owners Welfare Association & Ors

RESPONDENT

Date of Decision : 30-05-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)
Societies Registration Act, 1860 — Section 6

Citation : (2025) 05 DEL CK 0960

Hon'ble Judges : Dharmesh Sharma, J

Bench : Single Bench

Advocate : Ankur Chawla, Akshay Ringe, Prerna Mahajan, Smriti Tripathi, Ishanee Kapoor, Raghav Sabharwal, Ayush Shrivastava, Harsh Vardhan, Abhishek Shandilya

Final Decision : Disposed Of

Judgement

Dharmesh Sharma, J

CM APPL. 33572/2025 IN FAO 153/2025

CM APPL. 33574/2025 IN FAO 154/2025

1. Notice of the present appeals, preferred by the appellants under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 (CPC), assailing the impugned order dated 24.05.2025, passed by the learned District Judge-06, South East District, Saket Courts, Delhi, has been served upon the respondents.

2. Having heard the learned counsels for the parties in some detail and on perusal of the record, the long and short of the present matters is that the respondent/Ansai Plaza Owners Welfare Association ('APOWA'), through its Secretary (not named but who happens to be Mr. Vivek Rakyen) is the plaintiff in a suit instituted by it for seeking declaration and injunction against the

appellants and others claiming that a meeting was held by the appellants, namely, Sh. Harjeet Singh and Mr. Ashok Nijhawan in a illegal manner on 21.02.2025 and on which date instead of taking a decision with regard to the electricity dues, certain decisions were taken as if a General Body Meeting had been convened by the APOWA, and thereafter, the process of election has been initiated contrary to the byelaws of the plaintiffs' association.

3. It is pertinent to mention that the appellants earlier filed FAO No.108/2025 which was disposed of vide order dated 24.04.2025 by this Court, wherein they had assailed an order dated 17.04.2025, passed by the learned District Judge, South East District, Saket Courts, Delhi and it would be apposite to reproduce the previous order passed by this Court:-

5. In a nutshell, the respondent No.1/plaintiff-Association has instituted a suit challenging the election of the new Executive Committee purportedly representing the members of the Ansal Plaza Mall, New Delhi, and has sought the following interim reliefs in its application under Order XXXIX Rules 1 and 2 of the CPC:

"1. Restraining defendants from declaring any election results concerning APOWA until further orders of this Court.

2. Restraining defendant from taking over the management of the plaintiff association.

3. Restraining defendant from acting on behalf of the APOWA and from taking any decision in the name of APOWA.

4. Staying the operation of the resolution passed in the meeting dated 21.02.2025 and all subsequent actions of the so-called Working Committee including but not limited to appointment of Returning Officer for conducting elections.

5. Restraining from enforcing or implementing any resolutions passed in the illegal meeting dated 21.02.2025 and directing that no steps be taken pursuant to the same.

6. Staying all the actions taken by defendants so far in relation to APOWA, including but not limited to its illegal governance, financial transactions and representational decisions.

7. Restraining defendant no.4 and 5 from taking any further steps with respect to elections of the Executive Committee of APOWA."

6. On institution of the suit on 03.04.2025, although an interim ex parte injunction was declined, a notice was ordered to be issued of the application besides summons for settlement of issues to the defendants for 07.04.2025.

7. Learned counsel for the appellants has urged that the learned Trial Court, vide the impugned order dated 17.04.2025, failed to address the issue of

maintainability of the suit at the behest of the erstwhile Association. It is also contended that the learned Trial Court proceeded to pass interim directions restraining not only the newly elected Executive Committee but also respondent No.1/plaintiff -Association from managing the affairs of APOWA 'Ansal Plaza Owners Welfare Association', without first satisfying itself on the well established "trinity test". The matter is now listed for hearing on 19.05.2025 at 12.30 p.m.

8. Per contra, learned counsel for the respondent No.1/plaintiff- Association has urged that appellants have not complied with the directions passed by the Court on 17.04.2025, inasmuch as they have failed to produce the records of the elections. In view of this non-compliance, it is submitted that the learned Trial Court rightly restrained both Associations from managing the affairs of the Association. Learned counsel for the respondent No.1/plaintiff-Association also vehemently urged that elections have been held in complete contravention of Clause 17 of the bye-laws.

9. Upon a careful perusal of the order dated 03.04.2025 passed by the learned Trial Court, it is evident that it was rightly observed that the allegations of the respondent No.1/plaintiff-Association that Working Committee was unauthorizedly constituted on 21.02.2025, and that the subsequent election process is under challenge, can only be adjudicated after the issuance of notice to the defendants. It was also rightly found that since the election process had already been completed and stage was ripe for declaration of final list of candidates, ex parte ad interim injunction was declined.

10. Without going into the merits of the case, at this stage of the matter, this Court is of the view that respondent No.1/plaintiff-Association has been aware of the developments, which have taken place since 21.02.2025 and it was at the fag end of the election process that it decided to approach the Court for seeking the aforesaid reliefs. Once it is established that term of respondent No.1/plaintiff-Association has come to an end and a new Executive Committee is in-charge and capable of running the affairs of the management, there appears to be no prima facie at this stage in favour of the respondent No.1/plaintiff- Association for restraining the newly constituted Executive Committee from running the affairs of the Association.

11. If the order of the learned Trial Court is allowed to operate, it would cause irreparable prejudice to the Members concerned and there is no reason why the newly Executive Committee be not allowed to run its affairs till a final decision is taken on the application under Order XXXIX Rules 1 and 2 of the CPC after considering all the relevant material on the record, which are yet to be submitted before the learned Trial Court.

12. In view of the foregoing discussion, the impugned order dated 17.04.2025 is hereby set-aside and, it is directed that the newly elected Executive Committee/ Body shall continue to manage the affairs of the APOWA till 19.05.2025 or till such time the application under Order XXXIX Rules 1 and 2 of the CPC moved on

behalf of the respondent No.1/plaintiff-Association is decided in accordance with the law. It is directed that the defendants in the suit shall place all the relevant record of the election process before the learned Trial Court on 19.05.2025 and the learned Trial Court shall decide the aforesaid application on or before 31st May, 2025.

13. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the case.

14. The present appeal is disposed of accordingly without prejudice.”

4. The grievance of the appellants is now that they moved an application under Section 151 of the CPC being the office bearers of the newly elected association, APOWA, and sought removal of Mr. Raghav Sabharwal as the lead counsel for the APOWA and instead appointed Mr. Anuj Malhotra to represent the APOWA. The said application came to be dismissed by the learned District Judge assigning the following reasons: -

“At the outset, it is observed that in its order dated 24.04.2025, the Hon' ble High Court of Delhi clearly stated that nothing contained in the order would tantamount to an expression of opinion on the merits of the case. Upon consideration of the materials on record and the nature of allegations and counter-allegations leveled inter se the parties, this Court finds that the validity and lawfulness of the purported elections remains to be adjudicated. At this juncture, no rights can be claimed or exercised by any party until the dispute is finally determined.

The prayer for discharge of Sh. Raghav Sabharwal is not maintainable, given that Mr. Abhishek Shandilya remains the Advocate on record for the Plaintiff Association as per the Vakalatnama executed by the authorized Secretary and filed with the plaint.

In view of the totality of facts and circumstances, this Court finds no grounds to allow the present application in favour of the applicant and against the Plaintiff Association. The application is accordingly dismissed.”

5. It is further the grievance of the appellants that the learned District Judge then called upon the parties to address the arguments inter alia providing that no other application shall be allowed to be entertained till the disposal of the interim application moved on behalf of the plaintiff association.

6. Learned counsel for the respondents has urged that the present appeals are not maintainable under Order XLIII Rule 1(r) of the CPC [1. Appeal from orders.— An appeal shall lie from the following orders under the provisions of section 104, namely: —(r) an order under rule 1, rule 2 [rule 2A], rule 4 or rule 10 of Order XXXIX] since the impugned order was passed in relation to an application under Section 151 of the CPC. Reliance is placed on the decision in the case of Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh¹⁹⁵⁸ SCC OnLine Pat 70.

7. In the opinion of this Court, the plea canvassed by the learned counsel for the respondent cannot be countenanced in law. The impugned order has been passed in relation to or arising out of the proceedings which are pending for consideration on their application under Order XXXIX Rule 1&2 of the CPC. The fundamental aspect of the 'Trinity Test' is that while showing a prima facie case it is also incumbent upon the respondent/plaintiff to demonstrate that the suit is maintainable or not. The issue of maintainability arising in the instant matter is whether the plaintiff association can sue in its name through its Secretary and thereby claim that it is still in the helm of the affairs and can manage the Association in accordance with the Articles of Association and the Byelaws, challenging the legality of a newly elected Executive Committee.

8. Learned counsel for the appellants has alluded to the paragraph nos. (1) (2), (9) and (32) of the plaint pointing out that the suit has evidently been filed by the Association, which is not permissible in terms of Section 6 of the Societies Registration Act, 1860 [6. Suits by and against societies. —Every society registered under this Act 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, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion: Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant] particularly when the term of the previous executive body expired on 11.04.2025. In this regard, he also invited the attention of this Court to the letter dated 01.04.2025 'Page 186' which was addressed to the Registrar of Societies by Mr. Vivek Rakyan to the effect that he had earlier sent a letter dated 19.03.2025 stating that the election for the Association was due on 11.04.2025.

9. Learned counsel for the respondents, on the other hand, argued that merely because the term of the executive body had expired on 11.04.2025, it has to continue till such time when there is a lawfully elected body, and in this case, no General Body Meeting has been held and he vehemently assailed the resolution passed by some so-called disgruntled individuals on 21.02.2025.

10. It is borne out from the record that the learned Trial Court vide order dated 03.04.2025, had declined interim relief against the appellants as the plaintiff had approached the Court at the fag end of the election process so much so that the election result had been declared on 01.04.2025 itself. It bears on the face of the record that there is no declaration sought for holding the election to the executive body to be null and void. There is also a question mark as to the maintainability of the suit on the ground that whether the same could be filed on behalf of the APOWA in the manner it has been done.

11. There is merit in the plea advanced by the learned counsel for the appellants that either the Secretary should have instituted it in his individual name and/or

accompanied with other office bearers, which has not been done. Evidently, there are two different factions which are laying claim to the Association but then, as of now, prima facie there is an elected Executive Committee and the appellants, being the office bearers, are entitled to continue with the affairs of the association.

12. The crux of the matter is that, so long as the validity of the election process that has resulted in a new executive Committee having taken charge of the affairs remains pending adjudication, the plea that the plaint is not maintainable at the instance of the association through its secretary requires deeper consideration.

13. Issue notice. Notice is accepted. Let a reply be filed within four weeks from today.

14. In the meantime, the impugned order dated 24.05.2025 is hereby kept in abeyance and the proceedings before the Trial Court are stayed till the next date of hearing. Resultantly, the interim order dated 17.04.2025 passed by this Court shall continue to the effect that the appellants shall continue to manage the affairs of the newly constituted association, for which they shall render true and correct accounts to the Court on the next date of hearing.

15. Renotify on 21.07.2025 for further hearing.