

(2009) 11 CAL CK 0007
In the Calcutta High Court
Case No : C.O. No. 1375 of 2009

The St. Xavier's School and Others

APPELLANT

Vs

Subhra Kumar Kundu and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2009) 11 CAL CK 0007

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : Bidyut Kumar Banerjee and Ms. Sila Sarkar, for the Appellant; S.P. Roychoudhury , Mr. Hiranmoy Bhattacharjee and Mr. Amalesh Roy for the Opposite Parties, for the Respondent

Judgement

Tapan Kumar Dutt, J.—This Court has heard the learned senior advocates for the respective parties. The petitioners as plaintiffs have filed a suit being O.C. Suit No. 296 of 2008 inter alia challenging the election held on 21.09.2008 for reconstitution of the Governing Body of the school concerned (the St. Xavier's School, Malda) for the period 2008-11 since according to the petitioners the said election was held in violation of the injunction order dated 10.09.2008 passed by the learned Civil Judge (Senior Division, Malda) in O.C. Suit No. 268 of 2008 which was brought by the opposite party No.12 (Rajkumar Prosad Jaiswal). According to the petitioners the opposite party No.12 instituted the said O.C. Suit No. 268 of 2008 after the final publication for the list of guardian voters and such suit was filed against the petitioner Nos. 1 and 2 wherein it was prayed that a decree be passed that the said opposite party No.12 has the right to be a voter and was entitled to get his name incorporated in the voters' list in connection with the election of the members of the governing body for the period 2008-11 which was scheduled to be held on 21st September, 2008. In the said O.C. Suit No. 268 of 2008 the opposite party No.12 made an application for injunction and after a contested hearing the learned trial Court by order dated 10th September,

2008 allowed the said application for injunction and restrained the petitioner Nos.1 and 2 herein from holding the elections which was due to be held on 21st September, 2008 till the disposal of the said suit. It further appears that by letter dated 15th September, 2008 the petitioner Nos. 1 and 2 brought to the notice of the District Magistrate, Malda about the aforesaid injunction order dated 10th September, 2008 and further informing the District Magistrate that in compliance with the learned Court's order the election of the Governing Body of the said school is cancelled in all respect and all the proceedings of the said election which was scheduled to be held on 19.09.2008 (for T.R. and Non T.R. members) and 21.09.2008 (for Guardian Members) are withdrawn. The petitioner Nos. 1 and 2 requested the District Magistrate, Malda to restrain the S.D.O. Malda Sadar from conducting the said election as a Presiding Officer. It also appears that the learned advocate for the opposite party No.12 also wrote a letter dated 17.09.2008 to the S.D.O. Malda Sadar who was supposed to be the Presiding Officer of the said Election bringing it to the notice of the latter that the aforesaid order of injunction has been passed against the defendants in the said O.C. Suit No. 268 of 2008 and the defendants have been restrained from holding the election till the disposal of the suit. The said learned advocate also stated in the said letter dated 17.09.2008 that if the election is held in spite of the aforesaid order of injunction then it will be a direct violation of the Court's order and as such the election is required to be cancelled. The said learned advocate also requested the said S.D.O., Malda Sadar to cancel the said election in view of the aforesaid order of injunction passed by the learned Court. It further appears that a copy of the said injunction order was annexed with the said letter. The petitioners' case is that the said S.D.O., Malda Sadar, in spite of the aforesaid information, by order dated 19th September, 2008 issued an order bringing it to the notice of all concerned that following the aforesaid order of injunction, the opinion of the learned Government Pleader was obtained, and the said order further stated that since the Presiding Officer has not been restrained from holding election to the Governing Body for electing guardian representative on 21.09.2008 the said election is to be held as usual on 21.09.2008. A copy of such order has been annexed as annexure-D to the application under Article 227 of the Constitution of India. The petitioners' case is that they actually did not participate in the said election in view of the said injunction order dated 10th September, 2008 but since the said S.D.O. concerned purportedly published results of the said election and steps were being taken for holding election, of office bearers of the Managing Committee of the said School, the petitioners brought the said suit being O.C. Suit No.296 of 2008. The petitioners filed an application for injunction and by an order dated 24th September, 2008 the learned trial Court directed issuance of notice upon the defendants/opposite parties and passed an ad interim order of injunction restraining the defendants/opposite parties from disturbing the petitioner Nos. 2 to 4 in the matter of discharging their duties and functioning as office bearers of the school concerned till a certain date. The opposite party No.1 made an application for stay of operation of the said order dated 24th September, 2008 and the learned trial

Court by order dated 26th September, 2008 fixed a certain date for hearing of the application. The opposite party No.3 moved this Court under Article 227 of the Constitution of India challenging the said order dated 24th September, 2008 whereby an ad-interim order of injunction was granted and the said application was registered as C.O. No. 3412 of 2008. The opposite party No.1 moved this Court under Article 227 of the Constitution of India challenging the said order dated 26th September, 2008 and the said application was registered as C.O. 3411 of 2008. It also appears that the petitioners have moved an application for vacating a certain ad-interim order passed in the said C.O. No.3412 of 2008. The petitioners have stated in the present application under Article 227 of the Constitution of India that all the aforesaid Civil Orders and applications for variation and/or vacation of ad-interim order were heard and disposed of by an Hon"ble single judge of this Court by order dated 23rd December; 2008 inter alia directing the learned trial Court namely the Civil Judge, Senior Division, Malda to hear the injunction application in presence of both the parties within a stipulated period of time and till such time the injunction application is disposed of status quo as on the date prior to the date of institution of O.C. No. 296 of 2008 shall be maintained with regard to the management of the school. The learned trial Court by order dated 21st January, 2009 allowed on contest the said application for injunction by holding inter alia that it is evident from the record that the election held on 21.09.2008 was in gross violation of the order of injunction passed by the learned Court in O.C. Suit No. 268 of 2008 and the said election was illegal. The learned trial Court also observed that the candidates who have been declared elected in the said election cannot be termed as duly elected. The learned trial Court further observed that if the defendants in the suit are allowed to function as office bearers of the alleged Managing Committee then it would tantamount to putting a seal of approval on the election which was held in gross violation of the order of injunction dated 10.09.2008. The learned trial Court directed that status quo ante i.e. the status quo just prior to the institution of the said suit should be maintained for management of the school. The learned Trial Court further found that the plaintiffs/petitioners have a good prima facie case, balance of convenience and inconvenience is in favour of the plaintiffs/petitioners and that the order of injunction should be passed as otherwise the petitioners will suffer irreparable loss and injury. The Learned Trial Court restrained the defendants/opposite party No.1 to 11 from disturbing the plaintiffs/ petitioners Nos. 2 to 4 in their discharge of duties and functioning as office bearers of the said school till the disposal of the said suit. It may also be noted that the learned trial Court also observed that the question whether the plaintiffs/petitioners actually contested the election or not can only be decided after taking evidence at the time of trial.

2. The petitioners have further stated in their application under Article 227 of the Constitution of India that the defendants/opposite parties 1 to 9 preferred a Misc. Appeal in the Court of the learned District Judge, Malda being Misc. Appeal No.1 of 2009 which was assigned to the Court of the learned 3rd Additional District

Judge, Malda. It appears that the petitioners raised a question with regard to the maintainability of the said Misc. Appeal but the Learned Lower Appellate Court by order dated 2nd March, 2009 overruled the said objection and admitted the appeal. In such circumstances, the petitioners moved an application under Article 227 of the Constitution of India before this Court against the said order dated 2nd March, 2009 and the said revisional application was registered as C.O. No. 790 of 2009. The petitioners have further alleged that the defendants/opposite parties made an application for amendment of the cause title in the said Misc. Appeal but the learned Judge did not allow the said amendment application and ultimately disposed of the said Misc. Appeal by the impugned order dated 24.04.2009 whereby the said Misc. Appeal was allowed and the trial Court's aforesaid order dated 21.01.2009 was set aside. The learned lower appellate Court directed the parties to maintain status quo as on the date of the said order (i.e. 24.04.2009) relating to the day to day management of the said School till the disposal of the suit. The learned lower appellate Court also observed that the legality and validity of the election dated 21.09.2008 being disputed in the suit the learned trial Court shall dispose of the suit within two months from the date of receipt of the said order.

3. Challenging the said impugned order the petitioners have filed the present application under Article 227 of the Constitution of India. It appears from the application under Article 227 of the Constitution of India that the petitioner No.2 claims to be the Secretary, petitioner No.3 claims to be the President and petitioner No.4 claims to be the VicePresident of the said School.

4. The opposite parties 1 and 3 have filed an affidavit-in-opposition wherein they have stated that on 02.07.2008 the petitioners had filed a suit being O.C. Suit No. 124 of 2008 wherein it was prayed that a decree be passed declaring that the petitioner No.2 herein and the petitioner No.4 herein be declared as the Secretary and Vice President, respectively, of the said School and that they have a right/authority to continue in their office till the reconstitution of the new Governing Body and also a decree for permanent injunction restraining the defendant Nos. 1 and 2 in the said suit from interfering with the work of the plaintiffs in the said suit till the reconstitution of the new Governing Body. It has been further alleged by the said opposite parties that the plaintiffs of the said O.C. Suit No.124 of 2008 moved an application for injunction and initially the learned trial Court granted an ad-interim order of injunction but the plaintiffs of the said O.C. Suit No. 124 of 2008 failed to comply with the requirements of Order 39 Rule 3(a) and (b) of the CPC and the Learned Trial Judge by order dated 18.07.2008 vacated the ad-interim order of injunction dated 02.07.2008. It has been further alleged by the said opposite parties that in the O.C. Suit No. 268 of 2008 the opposite parties have not been impleaded as parties. The said opposite parties have also alleged that:

(a) On 10.07.2008 a permanent voters list was prepared and published.

(b) On 09.08.2008 the Final Voters List was published.

- (c) 25.08.2008 was fixed for filing of nomination.
- (d) 26.08.2008 was the date fixed for scrutiny of nomination papers.
- (e) On 01.09.2008 the list of final contesting candidates was published.
- (f) The Sub-Divisional Officer was not impleaded as a party in O.C. Suit No. 268 of 2008.
- (g) On 19.09.2008 the said Sub-Divisional Officer, Malda issued an order to hold the election on 21.09.2008 on the basis of the opinion of the Government Pleader, Malda.
- (h) On 21.09.2008 election was held and the petitioner Nos. 2, 3 and 4 participated in the said election and contested the same but were declared unsuccessful.

5. The learned senior advocate appearing on behalf of the petitioners submitted that the election in dispute was held in violation of the injunction order dated 10.09.2008 passed in the aforesaid O.C. Suit No. 268 of 2008 in spite of the fact that the opposite parties were fully aware of such order of injunction and the District Magistrate, Malda was requested, as aforesaid, to restrain the S.D.O. Malda Sadar from conducting the said election as a Presiding Officer. The said learned senior advocate also stressed on the fact that a letter was written to the said S.D.O. Malda Sadar who was the presiding officer of the said election bringing it to the notice of the said S.D.O. Malda Sadar that the aforesaid order of injunction dated 10.09.2008 has been passed in the said O.C. Suit No. 268 of 2008. The learned senior advocate submitted that the highhanded act on the part of the said S.D.O. Malda Sadar and the opposite parties concerned in holding the election in dispute is in direct violation of the Court's order and such disputed election is absolutely invalid and illegal. The said learned senior advocate further submitted that the parties should be directed to follow the order passed by the Learned Trial Court in O.C. No. 296 of 2008, as already indicated above.

6. The said learned senior advocate also referred to clause 11 of the relevant memorandum of association which governs the said school and submitted that it has been stipulated in the said clause that the governing body will have a term of office for a period of three years and the governing body will continue in office till the formation of a new governing body.

7. The said learned senior advocate referred to a Full Bench decision reported at Century Flour Mills Ltd. Vs. S. Suppiah and Others, In the said reported case the Hon'ble Full Bench of the said Court by an order dated 12.09.1974 had directed that the convening of the General Body Meeting of the respondent (in the said reported case) on 14.09.1974 be stayed pending further orders on the petition concerned. But the meeting as notified was allowed to take place. The only question which came up for decision in the said reported case is whether the resolutions passed at the meeting on 14.09.1974 can validly stand,

notwithstanding the fact that the meeting was held in violation of the inhibitory orders. In paragraph 9 of the said reports Their Lordships were pleased to hold that inherent powers of the Court u/s 151 CPC are wide and not subject to any limitation. Their Lordships were pleased to observe that where in violation of a stay order or injunction against the party, something has been done in disobedience; it will be the duty of the Court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. Their Lordships were also pleased to observe that even apart from section 151 "as a matter of judicial policy, the Court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the Courts' orders". In the said reported case it was argued on behalf of the respondent (in the said reports) that the aforesaid view of the court would prevail only as between the parties in Court but when third parties have acquired right by reason of something happening though it is in contravention or in disobedience of the order of Court, the legal position would be different. The Hon'ble Full Bench was pleased to observe that "the question of third parties' rights being affected does not arise in the context. We are concerned with the meeting which had been prohibited and not with what happened at the meeting. If the meeting was held in violation of the Court's order and the parties affected approach this Court and ask for relief on the ground that what happened at the meeting would be destructive of their standpoint, this Court on a consideration of the entire circumstances and facts will have to put back the parties in the same position as they stood prior to the holding of the meeting". The said Hon'ble Court was pleased to hold that since the meeting was prohibited but all the same it was held in violation of the Court's order, the Court would refuse to recognize the holding of such meeting as a legal one. It also appears that it was contended for the respondents (in the said reports) that the conduct of the appellants (in the said reports) and the circumstances of the case showed culpable negligence on the part of the appellants (in the said reports) and on that basis the appellants should be regarded also as wrongdoers and should be prevented from deriving a benefit out of their own wrong conduct. The Hon'ble Court was pleased to observe that such argument is adding insult to injury because having obtained an interim order of stay of the meeting and also having served a copy of the order at the Registered Office the appellants could not be expected to attend the meeting and warn the shareholders at the meeting against passing any resolution contravening the order of the Court. The Hon'ble Court was pleased to observe that there was no substance in such contention of the respondent. The Hon'ble Court was pleased to declare, in conclusion, that the parties are put back in the same position as they stood immediately prior to the service of the stay order of the Court which means that the meeting that was held on 14.09.1974 and the resolutions passed at such meeting would have no effect whatsoever.

8. The learned senior advocate referred to another decision reported at Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another,

and referred to paragraphs 19, 20 and 21 of the said reports wherefrom it appears that the Century Flour Mills Ltd.'s case (supra) was considered along with a Division Bench Judgment of this Court, namely, Sujit Pal Vs. Prabir Kumar Sun and Others, . In paragraph 20 of the said reports the Hon''ble Supreme Court has been pleased to observe that in Sujit Pal Vs. Prabir Kumar Sun and Others, the Division Bench of this Court has taken the same view as that of the Madras High Court in Century Flour Mills Ltd.'s case (supra). In paragraph 21 of the said reports the Hon''ble Supreme Court has been pleased to observe that such salutary rule (as indicated in paragraphs 19 and 20 of the said reports) has to be applied and given effect to by the Hon''ble Supreme Court, if necessary, by overruling any procedural or other technical objections.

9. The learned senior advocate for the petitioners submitted that the impugned order should be set aside and the learned trial Court's order should be restored and the parties should be directed to follow the order passed by the learned trial Court.

10. The learned senior advocate appearing on behalf of the opposite parties concerned submitted that the petitioners wanted to continue with the management of the said school taking undue advantage of clause 11 of the aforesaid memorandum of association. The said learned senior advocate submitted that the opposite party No.12 has not come forward to challenge the election in dispute even though the fact remains with the aforesaid order of injunction dated 10.09.2008 was passed in O.C. Suit No. 268 of 2008 filed by the opposite party No.12. The said learned senior advocate submitted that since the opposite party No.12 has not come forward to challenge the election in dispute, the petitioners cannot be permitted to challenge the said election. According to the said learned senior advocate for the opposite parties concerned, the petitioners themselves participated in the election in dispute and having lost in the election the petitioners have now challenged the said election. The learned senior advocate for the opposite parties has submitted that having lost the election the petitioners are now attempting to prevent the new governing body from discharging their duties and functions. It was further submitted on behalf of the opposite parties concerned that in O.C. No. 296 of 2008, the petitioners have suppressed the fact regarding O.C. No.124 of 2008. The learned senior advocate for the opposite parties concerned referred to paragraph 4 of the affidavit-in-opposition of the opposite party Nos. 1 and 3 and submitted that the petitioners were fully aware of the different dates indicated in the said paragraph and the petitioners participated in the said election in dispute but lost the same and thereafter the petitioners have challenged the elections concerned. The said learned senior advocate submitted that the petitioners cannot be permitted to complain against the election since they have participated in such election. According to the said learned senior advocate if at all any person who could have alleged that he is aggrieved by the election in dispute is the opposite party No.12 but the opposite party No. 12 has not come forward to challenge the election in dispute. The said learned senior advocate submitted that an order of injunction

acts in personam and the petitioners do not have even any prima facie case. According to the said learned senior advocate for the opposite parties concerned the decisions cited on behalf of the petitioners are distinguishable on facts and such reported decisions are not applicable in the facts and circumstances of the present case.

11. In the course of hearing, a point was raised at one stage with regard to the mis-description of the plaintiffs in the memorandum of appeal in the aforesaid Misc. Appeal No.1 of 2009 but it is not necessary for this Court to go into the details with regard to such point since the said C.O. No. 790 of 2009 was ultimately not pressed by the petitioners and as prayed for on behalf of the petitioners the said C.O. No. 790 of 2009 was dismissed for non-prosecution. In any event, the said Misc. Appeal No.1 of 2009 has, ultimately, been disposed of. The learned senior Advocate for the opposite parties concerned has referred to a decision reported at 39 CLJ 251 (Irrani Mundle & Ors. v. Naimuddin Sardar & Ors.) and drew the attention of this Court at page 254 of the said reports where it has been observed "Apart from this, as pointed out by the judicial committee in Ram Kripal v. Rup Kuari (2) and Hook v. Administrator General of Bengal (3), an order made in the course of a suit is final and cannot be retried by the judge in the course of the same litigation."

12. Reference was also made to paragraph 4 of the judgment reported at AIR 1977 SC 392 (Y.B. Patel & Ors. v. Y.L. Patil) where it has been observed by the Hon"ble Supreme Court that "principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at subsequent stage of that proceeding". Reference was also made by the said learned senior advocate to the decision reported at Dalpat Kumar and another Vs. Prahlad Singh and others, and the attention of this Court was drawn to paragraph 5 of the said reports wherein the Hon"ble Supreme Court was pleased to lay down the well established proposition of law that the Court while considering an application for injunction should take into consideration the question of prima facie case, balance of convenience and inconvenience and sufferance of irreparable injury.

13. The learned senior advocate for the petitioners submitted in reply that the O.C. No. 124 of 2008 was not brought, against the present opposite parties 1 to 11 and the said suit was against other persons. The said learned senior advocate further submitted that the election was held on the basis of the final list of candidates which was published on 01.09.2008 but the petitioner had notified their stand by letter dated 15.09.2008 as already indicated above. The said learned senior advocate for the petitioners has strongly disputed the contention of the learned senior advocate of the opposite parties concerned that the petitioners having lost the election filed the said O.C. No. 296 of 2008. The said learned senior advocate for the petitioners also submitted that the learned lower appellate Court was wrong in presuming that holding of the election

automatically meant that the new governing body has been constituted and has taken over the charge of the management of the school. The learned senior advocate referred to paragraph 11 of the affidavit-in-reply wherein it has been stated inter alia that "It is alleged that the said elected members of the school elected office bearers from amongst them of the governing body on 10th of October, 2008 but such an election was not sustained in view of the interim order granted by His Lordship Hon"ble Mr. Justice Partha Sakha Dutta on 23rd December, 2008 and your petitioners and other members of the managing committee became entitled to manage the affairs of the school."

14. The said learned senior advocate thus submitted that the impugned order should be set aside and the trial Court's order should be restored.

15. From the discussions made above it appears to this Court that the only question that requires consideration in the present case is as to whether or not the election in dispute which was held on 21.09.2008 in spite of the Court's order dated 10.09.2008 passed in O.C. No. 268 of 2008 should be allowed to be given effect to in the facts and circumstances of the present case. This Court is of the view that the decision reported in Century Flour Mills Ltd.'s case (supra) applies to the facts and circumstances of the present case. The question that arises in the present case is whether a person who was duly notified with regard to the order of injunction passed by the learned Court concerned can be allowed to ignore such order of the Court and proceed with his or her activities in gross violation of the Court's order simply on the ground that such person was not a party to the lis in which such order of injunction was passed, and even though the opposite parties 1 to 11 were not parties in O.C. No. 268 of 2008 can the opposite parties 1 to 11 be allowed to enjoy any benefit that might have accrued to them by the holding of the elections on 21.09.2008 in spite of the Court's order dated 10.09.2008, as aforesaid.

16. From the discussions made above, prima facie it appears that the aforesaid order of injunction dated 10th September, 2008 was communicated by the petitioner Nos. 1 and 2 to the District Magistrate, Malda and the District Magistrate was informed that in compliance with the Court's order the proposed election of the Government body of the school concerned is cancelled in all respect and all the proceedings of the election which was scheduled to be held on 19.09.2008 and all the proceedings of the election in dispute are withdrawn. It also prima facie appears that the said District Magistrate was requested by the petitioner Nos. 1 and 2 to restrain the S.D.O., Malda Sadar, from conducting the said election as a Presiding Officer. It further appears, prima facie, that the opposite party No. 12 through his learned advocate brought to the notice of the said S.D.O. Malda Sadar that the said order of injunction dated 10th September, 2008 has been passed. The opposite party No. 12 through his learned advocate also drew the attention of the S.D.O., Malda Sadar to the point that if such election is held in spite of the order of injunction then it will be a direct violation of the Court's order and as such the election concerned was required to be

cancelled. Thus, prima facie, it appears that the authorities concerned were fully aware of the order of injunction passed by the learned Court. It further appears that the S.D.O., Malda Sadar who was supposed to be the Presiding Officer of the election in dispute issued an order dated 19th September, 2008 bringing it to the notice of all concerned that in view of the aforesaid order of injunction the opinion of the learned Government pleader was obtained and that since the said presiding officer has not been restrained from holding the election in dispute the said election will be held as usual on 21.09.2008. This Court is of the view that the submission made by the learned senior advocate for the opposite parties concerned that since an order of injunction acts in personam there was no fault either on the part of the said presiding officer or on the part of the opposite parties concerned cannot be accepted in the facts and circumstances of the present case. In the instant case, there is a strong prima facie case in favour of the petitioners that the opposite parties concerned made an attempt to frustrate the aforesaid order of injunction passed by the learned Court. Such act on the part of the opposite parties concerned appears to be illegal and unacceptable. In *Century Flour Mills Ltd.*'s case (supra) the Hon''ble Full Bench was pleased to observe that where in violation of a stay order or injunction against a party something has been done in disobedience of such order it will be the duty of the Court to set the wrong right and not allow the perpetuation of the wrong doing. The said Hon''ble Full Bench further observed that the courts will have to put back the parties in the same position as they stood prior to the wrongful act. The relevant portion of the said reports in this regard has already been quoted earlier. The submissions made by the learned senior advocate for the opposite parties concerned to the effect that the petitioners wanted to continue with the management of the said school taking undue advantage of clause 11 of the aforesaid memorandum of association and that the petitioners having participated in the election in dispute and having lost the said election have now challenged the said election to prevent the new governing body from discharging their duties and functions are matters which can be taken into consideration at the final hearing of the suit after the parties have adduced their respective evidence in this regard. The argument made by the said learned senior advocate for the opposite parties concerned that since the opposite party No.12 has not come forward to challenge the election in dispute the petitioners cannot be permitted to challenge the said election cannot be accepted since it will appear from records that the order of injunction, as aforesaid, was communicated to the authorities concerned not only by the petitioners but also by the opposite party No.12 and the authorities concerned were requested not to proceed with such election in terms of the order of injunction. This Court is of the view that when once an order of injunction was communicated to the authorities concerned, the authorities concerned should have complied with the order of injunction and should not have held the election in dispute. To hold otherwise would result in tarnishing the sanctity of a Court's order. The mere fact that the authorities concerned or the opposite party Nos.1 to 11 herein were not parties in the said O.C. Suit No. 268 of 2008 brought by the opposite party No.12 cannot validate

the election if it was held in violation of the Court's order. Prima facie, it appears, that the said election in dispute was held contrary to the Court's order. There cannot be any dispute with regard to the proposition of law laid down in paragraph 5 of Dalpat Kumar's case (supra) as cited by the learned senior advocate for the opposite parties concerned but, as discussed above, in the facts and circumstances of the instant case there appears to be a strong prima facie case that the election in dispute was held contrary to the Court's order of injunction. The Court cannot ignore such a situation. This Court is of the view that the petitioners have satisfied all the tests for passing of an appropriate order of injunction. Since there was an order of injunction, as aforesaid, with regard to the election in dispute which was scheduled to be held on 21.09.2008, the parties in the present suit should maintain the position as it stood immediately prior to the holding of the election on 21.09.2008.

17. In view of the discussions made above, the present application under Article 227 of the Constitution of India is disposed of by setting aside the impugned order passed by the learned lower appellate Court in Misc. Appeal No.1 of 2009 and by directing the parties to maintain the position as it stood immediately prior to the holding of the election in dispute on 21.09.2008 with regard to the management of the school in question till the disposal of the suit. For the purpose of carrying out this order, if any further directions are required by any of the parties such party or parties shall be at liberty to make appropriate application before the learned trial Court concerned. Since the suit essentially involves the question of management of the school in question, the learned trial Court shall endeavour to expedite the hearing of the suit and dispose of the suit in accordance with law as expeditiously as possible without granting any unnecessary adjournment to any of the parties.

18. There will, however, be no order as to costs.

Urgent xerox certified copy of this order, if applied for, shall be given to the parties on compliance of usual formalities.