



CNR: KAHC010560022026

NC: 2026:KHC:44084
MFA No. 5802 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 5802 OF 2026

BETWEEN:

1. SRI. B. RAJAPPA
S/O K. BASAPPA,
AGE 71 YEARS,
OCC BUSINESS,
R/AT BASAVA SADANA,
PAMPA MAHA KAVI ROAD,
THYAGARAJANAGARA, TARIKERE,
CHIKKAMAGALURU 577 228.
2. SRI M.B. NATARAJ,
S/O LATE BASAVARAJAPPA,
AGE 63 YEARS,
OCC AGRICULTURIST,
R/AT MENASINAKAYI HOSAHALLI,
KATIGANERE POST,
AJJAMPUR TALUK,
CHIKKAMAGALURU 577 550.

...APPELLANTS

(BY SRI. MOULYAPOORNA R.,ADVOCATE)

AND:

1. NOLAMBA LINGAYATHA SANGHA (REGD.),
REGN. NO. S.197/1936-37,
REGISTERED UNDER THE MYSORE SOCIETIES
REGISTRATION ACT, 1904,
NOW GOVERNED UNDER THE KARNATAKA
SOCIETIES REGISTRATION ACT, 1960,
HAVING ITS REGISTERED OFFICE AT KAMBI
SIDDHARAMANNA VIDYARTHI NILAYA,





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NO.1/A, 1ST A CROSS, 3RD FLOOR,
4TH DIVISION, BASAVESHWARANAGAR,
BENGALURU - 560 079,
REPRESENTED BY ITS AUTHORISED
REPRESENTATIVE

2. SRI B.K. CHANDRASHEKHAR,
PRESIDENT, NOLAMBA LINGAYATHA SANGHA
(REGD.),
KAMBI SIDDHARAMANNA VIDYARTHI NILAYA,
NO.1/A, 1ST A CROSS, 3RD FLOOR,
4TH DIVISION, BASAVESHWARANAGAR,
BENGALURU 560 079.
3. THE ELECTION OFFICER,
NOLAMBA LINGAYATHA SANGHA (REGD.),
ELECTION OFFICE AT
KAMBI SIDDHARAMANNA VIDYARTHI NILAYA,
NO.1/A, 1ST A CROSS,
3RD FLOOR,
4TH DIVISION, BASAVESHWARANAGAR,
BENGALURU 560 079.

...RESPONDENTS

THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST
THE ORDER DATED 05.08.2026 PASSED ON I.A.NO.1 IN
OS.NO. 5695/2026 ON THE FILE OF THE X ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, BENGALURU, ISSUING
EMERGENT NOTICE ON I.A.NO. 1 AND SUIT SUMMONS TO THE
DEFENDANTS.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR



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ORAL JUDGMENT

Registry has raised certain objections, on the online copy of the impugned order which does not state the next date of hearing and also there is no signature of the presiding officer.

2. Learned counsel for the appellants has filed the online copy of the daily order which shows that the next date of hearing of the matter before the trial Court is on 19.08.2026.

3. Objection raised by the registry is overruled.

4. This appeal is preferred by the appellants who are the plaintiffs in OS.No.5695/2026. The appellants filed a suit against the defendants to declare the resolution dated 29.03.2026 passed by the Executive Committee of defendant No.1 society, insofar as it purports to remove /disqualify the plaintiffs from membership of defendant No.1-society and for other reliefs of declaration stated



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therein. Along with the plaint, appellants/plaintiffs filed an application - IA.No.1 under order 39 Rule 1 and 2 read with Section 151 of CPC for temporary injunction, restraining defendant Nos. 1 to 3 from denying the plaintiffs' right to vote and permitting them to caste their votes in the election, to the Executive Committee of Defendant No.1 society for the term 2026-2031.

5. The trial Court at the stage of a prayer for grant of an ad-interim order of temporary injunction prior to issuance of notice to the defendants considered the prayer so made, it came to the conclusion that the object of grant of temporary injunction will not be defeated due to delay by issuing prior notice of the application to the defendants and therefore passed an order that "it is just and proper to hear the defendants before passing any order on IA No. 1" and ordered issuance of emergent notice on IA No.1 and suit summons to the defendants, returnable by 19.08.2026 which is much prior to the date of the so-



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called elections. Appellants are aggrieved by this order dated 05.08.2026 of the learned trial judge issuing notice to the defendants before consideration of the IA.No.I filed under order XXXIX Rule 1 and 2 read with Section 151 of CPC.

6. This Court does not find the need or necessity to issue notice as this Court is not inclined to accept the appeal rather this Court is also not inclined to entertain the appeal for the reason that the appeal is not maintainable before this Court on the Order passed under Order XXXIX Rule 3, as notice is issued to the defendants for consideration of the application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. It is seen that the trial Court has not adjudicated the application -IA No.1 filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. It has not expressed any opinion on the application - IA.No.1 rather it has said that it would hear the defendants before passing any order on IA No.1 and ordered for issuance of notice. Therefore, the IA is yet to



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be disposed of. It is kept open and alive. Therefore, in such circumstances when there are no orders passed either allowing or granting an order of injunction under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, the question of appeal being maintainable under Order XLIII Rule 1 would not arise as Order XLIII Rule 1 contemplates what are the provisions which would lie for challenge to be made in appeal provision which arises out of Section 104 of CPC. Therefore, this appeal may not be maintainable here and the parties will have to be relegated to the trial Court.

7. This Court in the case of **Sri.Suresh Babu.J.N V/s Sri.Jagan mohan and others** in MFA.No.3477/2026 and connected matters dated 30.06.2026 has held as under.

"17. Having perused the judgments herein stated above,

it is seen that when an application is filed under Order XXXIX Rule 1 and 2 of CPC, the trial Court has the following options:



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(i) The first option for the Court is to issue notice under Order XXXIX Rule 3 to hear the defendant before passing any order; and

(ii) The second option would be granting an ex-parte ad-interim temporary injunction before issuance of notice to the defendant, where it feels that any delay in issuance of notice will cause hardship, inconvenience to the party and such issuance of notice would defeat the very purpose of grant of injunction as contemplated in the proviso to Rule 3 of Order XXXIX.

These are the two options available to the learned trial Judge while an application is filed and where an order is sought for grant of an ad-interim ex-parte injunction.

19. On bare perusal of the provisions of Order XLIII Rule 1 (r) as extracted herein above, it is crystal clear as to what are the provisions that would attract Order XLIII Rule 1 for an appeal to be maintainable. As can be seen, it is apparently clear and there is no ambiguity that Order XXXIX Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order XXXIX is contemplated under Order XLIII Rule 1.

20. Conspicuously, Rule 3 of Order XXXIX is not spelled out and it is evidently not available for



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an appeal remedy under Order XLIII Rule 1. The Legislature in its wisdom has clearly provided the necessary provisions to attract the relevant appeal or remedy that is available to be challenged before the appropriate forum."

8. Relying on the same, it would be appropriate for this Court to direct the trial Court to decide the application of IA.No.1 as the same is listed on 19.08.2026, in accordance to law, and on the urgency so submitted by the appellants. Accordingly, I pass the following Order.

ORDER

- 1) The appeal is ***dismissed as not maintainable.*** However, liberty is reserved to the appellants/plaintiffs to move the trial Court for seeking necessary relief either before service of notice by showing any urgency or if notice is already issued then on appearance of the defendants by hearing the defendants.



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2) It is made clear this court has not expressed any opinion on the merits of the matter. The trial Court shall make an endeavour to pass an order either way.

3) Trial Court is at liberty to pass suitable orders in accordance to law.

Hand delivery of the order is permitted

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**

RCK
List No.: 1 Sl No.: 15