

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya

And

The Hon'ble Mr. Justice Sandip Kumar De

F.M.A. No.816 of 2026

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CAN 1 of 2026

With

F.M.A. No.951 of 2026

With

F.M.A. No.952 of 2026

With

F.M.A. No.1186 of 2026

Dinesh Soni and Others

-Versus-

Pramod Kumar Pansari and Others

For the appellants	:	Mr. Sayantan Bose, Mr. Shreyaan Bhattacharyya, Ms. Dakshayani Basu, ... Advs.
For the respondents	:	Mr. Kallol Basu, Mr. Samik Sarkar, ... Advs.
Heard on	:	15.09.2026, 22.09.2026, 29.09.2026 & 05.10.2026
Reserved on	:	05.10.2026
Judgment on	:	15.10.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeals arise out of the same suit and are taken up for hearing together accordingly. The genesis of the litigation is an internal dispute between the members of the Sunrise Towers Apartment Owners Association, which is a registered Association of the apartment owners of a housing complex called "Sunrise Towers". Being aggrieved by certain allegedly unlawful activities carried out by the present respondent nos.1, 2 and 3, respectively, the Secretary, President and Treasurer of the said Association at the relevant point of time, 78 apartment owners, including the defendant nos. 2 to 5/present appellants, issued a requisition for conducting a Special General Meeting (SGM) of the Association on May 5, 2026, on several agenda, including removal of the then incumbent President, Secretary and Treasurer (respondent nos. 1 to 3 herein) and to pass a resolution for dissolution/reconstruction of the Board of Managers (BoM). Thereafter, on May 16, 2026, a reminder was given in that regard to the respondent nos. 1 to 3 and the BoM. On May 18, 2026, respondent nos. 1 to 3 gave a reply to the notice dated May 5, 2026, *inter alia*, refusing to convene an SGM.
2. On May 22, 2026, after the expiry of 15 days from the date of the initial notice, the said 78 members issued a fresh notice to convene an SGM on May 30, 2026.

3. The respondent no. 5/Competent Authority (CA) holding office under the West Bengal Apartment Ownership Act, 1972 (for short, “the 1972 Act”), issued an order on May 27, 2026, holding that the SGM requisition dated May 5, 2026 was valid and, “for convenience”, directing the agenda of the proposed SGM to be discussed at the Annual General Meeting (AGM) to be held on May 31, 2026. It was indicated that the SGM agenda would be taken up first, prior to the deliberations on the AGM agenda, and that the senior-most non-defaulting member of the Association was to preside over the meeting, since one of the agenda was the removal of the then President.
4. On May 29, 2026, respondent nos. 1 to 3, along with the respondent no. 4- Association, instituted a suit bearing Title Suit No. 1123 of 2026 in the City Civil Court at Calcutta, primarily seeking a decree of declaration that the purported notice dated May 5, 2026 and subsequent notice dated May 22, 2026 were illegal, fraudulent and *ultra vires* the West Bengal Apartment Ownership Bye-laws, 2022 (for short, “the Bye-Laws”), for a decree of declaration that the order of the defendant no. 1/respondent no. 5 (CA) dated May 27, 2026 was illegal, arbitrary, without jurisdiction and contrary to the Bye-laws, for permanent injunction restraining the defendant nos. 2 to 5/appellants and their men and agents from conducting any meeting or giving effect to the purported SGM scheduled for May 30, 2026 or any adjourned, rescheduled or subsequent meeting arising out of the notice dated May 22, 2026 to be void and *ultra vires*, as well as for permanent injunction restraining the respondent nos. 2 to 5 from giving effect to or acting upon in any manner the resolutions or other outcomes of the meeting

scheduled on May 30, 2026 and from projecting themselves as office bearers of the Association, and for other consequential reliefs.

5. In connection with the said suit, the plaintiffs/respondent nos. 1 to 4 filed an application for temporary and ad interim injunction under Order XXXIX Rules 1 and 2, read with Section 151, of the Code of Civil Procedure, 1908 (for short, "the CPC"), for temporary and ad interim injunction restraining the defendant no. 1/CA from giving effect to or acting upon its order dated May 27, 2026, injunction restraining the defendant nos. 2 to 5/present appellants from convening, holding or conducting any SGM scheduled for May 30, 2026 or any adjourned, rescheduled or subsequent meeting arising out of the notice dated May 22, 2026, as well as injunction restraining the appellants and their men and agents from giving effect to or acting upon the resolutions or decision taken in the meeting scheduled on May 30, 2026 or to act in furtherance thereof, as well as from projecting themselves as office bearers of the Association.
6. On May 29, 2026, the ad interim injunction prayed for in connection with the aforesaid application was refused by the learned Trial Judge, on the observation that the CA may have considered the contentions raised by the appellants before passing its order dated May 27, 2026 and that since the CA was a party, Section 80(2) of the Code of Civil Procedure was required to be complied with.
7. On May 31, 2026, the AGM of the Association was held. In it, the proposed SGM agenda were taken up first and, *inter alia*, the respondent nos. 1 to 3 were removed from their offices of Secretary, President and Treasurer

respectively in the BoM and resolution was taken to resume the election process.

- 8.** On June 1, 2026, respondent nos. 1 to 4 filed another application for injunction, captioning the same under Section 94(e) read with Section 151 of the CPC, seeking a restraint order on the appellants from granting any recognition, legitimacy or giving any operational effect to any resolution, election or minutes “purportedly passed at the fractured assembly” on May 31, 2026.
- 9.** Vide order of even date, the learned Trial Judge granted injunction restraining the defendants from conducting any meeting in connection with the respondent no. 4-Association till June 26, 2026. The said order has been extended from time to time by subsequent orders.
- 10.** FMA 816 of 2026 has been filed against the parent order of ad interim injunction dated June 1, 2026 and the other appeals filed against the subsequent extension orders.
- 11.** Learned counsel for the appellants argues that at least 78 members of the respondent no. 4-Association signed on the notices dated May 5, 2026 and May 22, 2026, calling for an SGM. Each of the requisitionists, it is contended, ought to have been made a party to the suit since the reliefs claimed in the suit, if granted, would affect the rights of all of them. Thus, the suit is bad for non-joinder of necessary parties and no effective injunction order could be passed in the absence of the other signatories to the said notices. It is submitted that the plaintiffs’ assertion regarding ineligibility five requisitionists on various grounds, including disqualification

for not being members, for having withdrawn their signatures or on account of their co-owners already being in the Board, even if accepted, would leave 73 signatories. The quorum for calling a requisition meeting as per the Articles of the concerned Association is 64, that is, one-third of the total number of 192 members. Thus, even if five are omitted, there still remain 73 requisitionists who formed a valid quorum for calling an SGM.

- 12.** The plaintiffs have argued that 51 out of the signatories to the impugned notices ought to be disqualified only on the ground of default in payment of common expenses to the Association. However, it is argued that there is no bar against defaulting members from calling an SGM for removal of the Managers of the Association from their offices.
- 13.** Learned counsel places reliance on Bye-law (BL) 10 of the Bye-laws, which provides for removal of Managers. As per Clause (a) thereof, a Manager may be removed from office at any SGM of the Association by a vote of the majority apartment owners present in the meeting. A successor to the position of the removed Manager, as per the said provision, is to be elected within 6 weeks through a separate Special Election.
- 14.** On the other hand, BL 11 provides for disqualification for being Managers, as per which such disqualification applies to members defaulting in making contribution towards the common expenses assessed by the Association. However, such disqualification is extended only in respect of voting in any election of the Managers and to seek election for the office of the Manager, and not to the removal of a Manager.

- 15.** Although the plaintiffs/respondent nos. 1 to 4 have argued that BL 13 provides for removal of office bearers from such office, including the President, Secretary and Treasurer, such provision operates in a separate and distinct field than Clause 10. Whereas BL 13(2) contemplates the removal of the office bearers from such offices only, BL 10 pertains to removal of the Managers from such office. It may very well be that a person is removed as an office bearer but not from the office as Manager. Thus, the two provisions cannot be confused with each other.
- 16.** It is next argued that, in terms of BL 6(2) of the Bye-laws, an SGM can be called on the requisition of one-third members of the Association to consider the subjects specified to be the business of an AGM as well as any other business of general importance in the interest of the Association and within the scope of the 1972 Act and the Bye-laws. Since serious allegations were levelled against the President, Secretary and Treasurer, which touch upon the interests of the functioning of the Association as a whole, the notices issued by more than one-third members seeking removal of the said office bearers comes within the ambit of BL 6(2).
- 17.** Thus, the argument of the plaintiffs/respondents, that the power to remove an office bearer lies only with the Board (BoM) but not in the general body, is contrary to the Bye-laws.
- 18.** The appellants next contend that the challenge by the plaintiffs to the order of the Competent Authority dated May 27, 2026 is watered down since the plaintiff themselves relied on the same in respect of the direction that the senior-most non-defaulting member would have to be appointed as

Chairman of the AGM. Thus, the plaintiffs cannot approbate and reprobate, by relying on the order dated May 27, 2026 of the CA on the one hand, and disputing the other part of the same, whereby the notice for holding SGM was declared valid and the SGM agenda were directed to be taken up in the AGM to be held on May 31, 2026.

- 19.** Learned counsel for the appellants further argues that in view of the refusal of ad interim prayer in respect of the application filed under Order XXXIX Rules 1 and 2 of the CPC, the subsequent application, captioned under Section 94(e) of the CPC, was not maintainable.
- 20.** Learned counsel submits that the subsequent order of the CA dated August 6, 2026, despite the CA having full knowledge of the pendency of the suit and that the disputes dealt with by it were sub judice, was unlawful. In any event, it is submitted that the CA does not have the power or the authority to invalidate otherwise valid resolutions taken in an SGM/AGM.
- 21.** In reply, learned counsel for the plaintiffs/respondents argues that the suit primarily challenges the action of the CA, a statutory authority, and is not limited to mere intra-member disputes. Thus, the argument of non-joinder of the other signatories to the impugned notices is not tenable in law, keeping in view the manner in which the suit has been couched.
- 22.** Alternatively, it is argued that non-joinder is a curable illegality at the worst and does not preclude the court from granting ad interim injunction. Even if no prior leave is granted under Order I Rule 8 of the CPC, it is argued, the court is not powerless to grant ad interim injunction. In support of the said proposition, learned counsel cites a judgment of the Hon'ble Supreme Court

in the matter of *Dr. Vimal Sukumar v. D. Lawrence*, reported at 2025 INSC 622.

23. Learned counsel for the plaintiff/respondents next argues that the court has the power under Section 151, read with Section 94(e) of the CPC, to exercise inherent jurisdiction and grant injunction, when the irregularity complained of does not fall squarely within the four corners of Order XXXIX Rules 1 and 2 of the CPC. Section 94 of the CPC, it is contended, is the source of the Court's power to grant interim relief, only to be exercised in accordance with the prescribed rules when the circumstances of the case falls within them. Otherwise, the court can grant injunction in exercise of its inherent jurisdiction. In support of such argument, learned counsel cites *Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal*, reported at AIR 1962 SC 527, and *Vareed Jacob vs. Sosamma Geevarghese and Others*, reported at (2004) 6 SCC 378.
24. Learned counsel appearing for the plaintiffs/respondents next argues that the order of the CA dated August 6, 2026 is independently under challenge by the present appellant no. 1 in a writ petition bearing WPA 25112 of 2026. Thus, the Civil Court does not have the power to judge such issue at this stage.
25. Moving on to the interplay between the Bye-laws, learned counsel for the plaintiffs/respondents submits that the appellants seek to conflate two distinct questions – where ultimate authority decides under Bye-law 4 (in a general body, exercised through a general meeting) and whether a particular purported exercise of that authority was lawfully convened.

- 26.** The plaintiffs have never made out a case that the BoM is supreme over the general body in the abstract. The case of the plaintiffs is that the will of the general body was never validly expressed in the meeting dated May 31, 2026, since the senior-most non-defaulting member, Sri Shreekant Gupta, was forcibly ousted from the Chair by the appellants, contrary to the order of the CA dated May 27, 2026, and only 49 of the 192 members of the Association signed the attendance registrar against the statutory quorum of 64 (1/3rd) under BL 6(5).
- 27.** It is next argued that BL 6 governs the general right of one-third of the members to requisition an SGM and does not contain any provision for removal of an office bearer, which specific power is reserved by BL 10. As per the BL 10, it is the BoM which is to convene an SGM for such removal.
- 28.** BL 13, it is argued, is a specific and exclusive provision for removal of the office bearers. In the present case, plaintiff nos. 2, 3 and 4 (respondent nos. 1 to 3) held the offices of Secretary, President and Treasurer respectively, as distinct from ordinary Managers of the Board. Thus, the SGM in question was to be held within the contemplation of BL 13, if at all. BL 13 requires that at least two-third of the Managers must vote in the meeting and that the meeting shall be convened by the President, on the requisition of at least one-third of the Managers. In view of non-compliance of the same, the impugned notices as well as the resultant meeting were bad in law.
- 29.** It is reiterated that BL 10 itself requires the SGM to be convened on the requisition of the BoM and not of apartment owners as under BL 6.

- 30.** Insofar as the bar under BL 11 is concerned, it is argued that the question as to whether such disqualification pertains only to voting and candidature in an election or also extends to a removal resolution at an SGM under BL 10 is one of the questions now sub judice in the suit. Thus, such issue ought not to be pre-decided at this stage.
- 31.** The order of the CA dated May 27, 2026, it is submitted, proceeded on the basis that a defaulter list was relevant as to who could participate in the May 31, 2026 meeting. As per the subsequent order of the CA dated August 6, 2026, defaulters were strictly prohibited from voting on any agenda item concerning election, removal or recall of office bearers. Thus, the subsequent meeting, in any event, is vitiated.
- 32.** It is further argued that there was an omnibus prayer in the application under Section 94(e), read with Section 151 of the CPC, to “pass such other or further order(s)” as the court may deem fit and proper in the interest of justice. Thus, the court was permitted to mould the reliefs to the proven facts. Accordingly, the argument that the injunction granted was beyond the prayers cannot also be accepted.
- 33.** It is argued that the subsequent application under Section 94(e), read with Section 151, CPC was on a subsequent cause of action. As such, the refusal of ad interim injunction under Order XXXIX Rules 1 and 2 could not stand in the way of allowing the same. In any event, the prior refusal was primarily on the ground of non-compliance of Section 80(2) of the CPC and not on merits.

- 34.** Learned counsel for the plaintiffs/respondents next argues that since the order of the CA dated May 27, 2026 to appoint the senior-most non-defaulting member was violated, the impugned meeting dated May 31, 2026 was bad in law.
- 35.** It is submitted that an illegitimately installed Chair vitiates the proceeding over which it presides. In respect of such contention, learned counsel cites *Sangramsinh P. Gaekwad and Others vs. Shantadevi P. Gaekwad*, reported at (2005) 11 SCC 314, where the Chairman of an AGM stepped aside and nominated another to preside, and the entire meeting and the resolutions passed thereat were held illegal and void. Again, in *Nazir Hoosein and Another vs. Darayus Bhathena and Others*, reported at (2000) 5 SCC 601, the Hon'ble Supreme Court held that once the removal of the original Chairman is found to be patently illegal, the legal basis of the new leadership collapses and all resolutions passed in a meeting at the behest of the respondents, where he presided as a Chairman, were held to be patently illegal, having no force of law.
- 36.** Lastly, learned counsel argues that this court ought not be asked, at the interim stage, to adjudicate on the validity of the SGM/AGM or the orders of the CA, since it would tantamount to pre-judging the issues involved in the suit and the writ petition challenging the subsequent order of the CA dated August 6, 2026.
- 37.** The minutes of the SGM, it is further argued, were never placed before the BoM and, thus, cannot be said to be valid.

38. Upon hearing learned counsel for the parties, the following issues acquire relevance in the opinion of the Court for a complete adjudication of the *lis* at hand;-

- (i) *Validity of the orders passed by the CA on May 27, 2026 and August 6, 2026;*
- (ii) *Validity of the impugned notices dated May 2, 2026 and May 22, 2026;*
- (iii) *Whether the impugned order was beyond the appellants' prayers;*
- (iv) *Effect of refusal of ad interim injunction in connection with the application under Order XXXIX Rules 1 and 2 on the validity of the impugned order;*
- (v) *Non-joinder of all signatories.*

39. The aforesaid issues are decided as follows:-

- (i) **Validity of the orders passed by the CA on May 27, 2026 and August 6, 2026**

40. In order to ascertain the validity and binding effect of the two orders passed by the CA, the relevant provisions of the 1972 Act and the Bye-laws are required to be considered. Under the paradigm of the said Act and the Bye-laws, there are only four key provisions which define the contours of the CA's powers.

41. Section 10A of the 1972 Act empowers the CA to receive and decide on declarations under Section 2 of the said Act or amendments thereto. Section 13 of the said Act confers authority on the CA to frame Bye-laws with the

prior approval of the State Government. Section 16B (1) empowers the CA to pass directions on the Association if its Manager/BoM fails to perform its functions under the Act or the Bye-laws, whereas sub-section (2) thereof confers authority on the CA to remove a Manager or supersede the BoM if their function is detrimental to the interest of the Association or against public interest, upon giving a show-cause notice. Such period of removal/supersession may be extended up to six months at a time, up to three years in total.

- 42.** BL 39 of the Bye-laws stipulates that if difficulty arises in giving effect to the provisions of the Bye-laws, the CA may, by guidelines, make such provisions (not inconsistent with the Bye-laws) as may appear to the CA to be necessary for removing the difficulty.
- 43.** Conspicuously, none of the aforesaid provisions empowers the CA to adjudicate upon the day-to-day affairs or the functioning of an Association. The CA, in the first order dated May 27, 2026, invoked BL 39, and its second order dated August 6, 2026, Section 16B as well as BL 39.
- 44.** In any event, since Sections 10A and 13 operate in complete different fields than those relevant in the present context, those are being left out of the zone of the present consideration.
- 45.** BL 39 can be ruled out at the outset, since it confers power on the CA to formulate guidelines which are necessary for removing any difficulty in giving effect to the provisions of the Bye-laws in general. The power to frame such guidelines for clarification of the effect of Bye-laws and to remove difficulties in respect thereof is of a general nature and cannot be read to

confer power in the CA to pass specific directions in respect of particular meetings or specific functioning of the Association.

46. Insofar as Section 16B is concerned, sub-section (2) thereof relates to supersession or removal of the BoM or Manager if their function is detrimental to the interest of the Association or public interest, that too upon giving show-cause notice. Since the CA has not resorted to such measure in either of the orders in question, the said provision also does not come into play.
47. Thus, it is only Section 16B (1) of the 1972 Act which is required to be considered in the present context. As per the same, the CA can issue directions if the Association, through its Manager/BoM, fails to perform its functions under the Act or Bye-laws.
48. However, from the tenor of the orders dated May 27, 2026 and August 6, 2026, it is not found that the directions incorporated therein were on the premise of the failure of the Manager or the BoM to discharge their functions. The CA, in the first order dated May 27, 2026, proceeded to adjudicate on the validity of specific notices issued by members of the Association and also to determine the mode in which the meetings were to be conducted, which is entirely beyond the scope of Section 16B (1), since it was not specifically observed by the CA that the BoM or the Manager had failed to discharge their functions. In fact, the direction incorporated therein, to appoint the senior-most non-defaulting member as the Chairman of the AGM, was *de hors* BL 6(4), which mandates that the SGM shall be presided over by the President or, in his absence, *by a member to be chosen*

by the members present in such meeting. In the present case, it is the member chosen by the members who were present in the meeting who chaired the same on May 31, 2026. Hence, such an exercise of the CA beyond jurisdiction in arbitrarily directing the senior-most member to be appointed as Chairman, being *de hors* the Bye-laws, was a nullity.

49. Insofar as the order dated August 6, 2026 is concerned, the CA traversed palpably beyond its jurisdiction in invalidating meetings held by the members of the Association in terms of the requisition notices dated May 5, 2026 and May 22, 2026, which notices were held to be valid by the CA itself in its earlier order dated May 27, 2026, without recording satisfaction in any manner as to the specific infractions in the said SGMs. The only purported violation cited was that the senior-most member was not appointed as President, which we have already held to be *de hors* the Bye-laws. The invocation of Section 16B (1), thus, was a misnomer and the CA usurped jurisdiction beyond its charter as per the Bye-laws. In any event, BL 39 does not apply in the present case, since the order in question was not for framing of guidelines in general to give effect to the provisions of the Bye-laws.

50. Thus, both the said orders of the CA were *de hors* jurisdiction and were *prima facie* exercises in nullity.

51. The plaintiff/respondents have vociferously argued that this court cannot enter into the merits of the said orders. However, such argument is misplaced, since even if the issue is sub judice in the suit, the court, at the time of consideration of prayers of ad interim injunction, can, and ought to,

prima facie consider the legality of such contentions. In fact, the CA itself, in its order dated August 6, 2026, made the said order subject to the outcome of the suit, thus, explicitly recognising the supremacy of the adjudication of the Civil Court over its decision.

- 52.** Mere pendency of a writ petition cannot also coming the way of the Civil Court adjudicating such issue *prima facie*, more so, since the plaintiff/respondent nos.1 to 4 themselves have invoked the jurisdiction of the Civil Court by seeking injunction, in connection with which the validity of the orders of the CA are of major relevance.
- 53.** Accordingly, it is hereby held that the orders dated May 27, 2026 and August 6, 2026 passed by the CA were *de hors* the law and without jurisdiction and thus, do not have any binding effect insofar as the validity of the impugned acts of the parties are concerned. However, we hasten to add here that such observation is tentative and stands on a *prima facie* footing, meant only for the purpose of adjudication of the legality of the impugned ad interim order.

(ii) Validity of the impugned notices dated May 2, 2026 and May 22, 2026

- 54.** Some of the provisions of the Bye-Laws of 2022 are to be considered for deciding this issue, which are reproduced hereinbelow:

“6. Special General Meeting of Association.– (1) *The President may convene Special General Meeting as and when the Board decides to convene such Special General Meeting.*

(2) *On requisition of one-third members of an Association a Special General Meeting of such an Association may be held as often as may be necessary to consider all of or any of the subjects specified to be the business of the*

Annual General Meeting and any other business of general importance in the interest of the Association and within the scope of the Act and these bye-laws. After receiving the requisition, the President shall convene Special General Meeting within 15 days of receiving the same. If the President does not convene the meeting within the said period, then the persons who made the requisition shall hold the meeting within the next 15 days from the date of expiry of convening meeting by the President after giving notice of such meeting to all the members.

- (3) A notice of a Special General Meeting stating the place, date and hour of the meeting together with a list of businesses to be transacted thereat, shall be sent by the President to every member at least seven clear days before the date of the meeting and no business other than those mentioned in the said list shall be transacted at such meeting. Notice may be sent by email or any other electronic mode.*
- (4) The Special General Meeting shall be presided over by the President or, in his absence, by a member to be chosen by the members present in such meeting.*
- (5) Subject to the minimum of three, the quorum for a Special General Meeting shall be one third of the total number of the members.*
- (6) All questions which may come up before any Annual or Special General meeting shall be decided by a majority of the members present and voting, and in the event of equality of votes, the President or, in his absence, the member presiding the meeting shall have and exercise a second or casting vote. Voting shall be made by any method the President or the member of the Association presiding over the meeting may deem fit and the majority members present agree on it. Every decision shall be taken in the form of resolution and the decision of the general meeting shall be binding on the Board and all the members of the Association : Provided that if within half an hour from the time appointed for the meeting there is no quorum, the meeting shall stand adjourned ordinarily to the same day on the next week to be held at the same place and time and the fact of the adjournment shall be notified at the office of the Association or at or at any other conspicuous place or places within the compound of the property and shall also be informed through electronic mode to all the members.*
- (7) Every Association shall cause minutes of proceeding of Annual or Special General Meeting to be recorded in a book kept for the purpose. The minutes are to be drawn up by the Secretary of the Association and shall be duly signed by the President or the person presiding over the meeting immediately on the termination of the meeting or as early thereafter as possible.*
- (8) An Association shall observe such other procedure in regard to the transaction of its business in a general meeting as may be determined by its members in consistent with these bye-laws.*

...

- 10. Removal of Managers.** – (a) A Manager may be removed from office at any Special General Meeting of the Association, convened on the requisition of the Board, by a vote of the majority of the apartment owners present and thereupon

a successor shall be elected within six weeks through a Special Election. The Manager so elected shall remain in office for the residue period of the Manager on whose removal he has been elected.

(b) Any other casual vacancy in the office of any Manager by resignation or death shall be filled up through a Special Election for this purpose. The Board shall take steps to hold Special Election for this purpose within six weeks from the date of the vacancy. The election shall be held in the manner decided in general meeting for this purpose under clause (1) or clause (6) of bye-law 8.

11. Disqualifications for being Managers. *–(1) Any apartment owner, who fails to pay in any financial year any instalment of his contribution towards the common expenses which may have been assessed by the concerned Association shall not be entitled–*

(a) to vote at any election of the Managers of the Board concerned, and

(b) to seek election for the office of the Managers of the Board concerned, till all his arrears are cleared.

...

13. Election of Office-Bearers, and Removal of Office-Bearers. *– (1) (a) In addition to President, there shall be the following office-bearers of an Association – a Vice-President, a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers. All the office-bearers shall be elected by and from the managers of the Board,*

(b) The President shall after each election forward the names, address, phone number, e-mail address of the managers of the Association with their respective designation in form No. 3 printed on their Association letterhead to the Competent Authority for his record.

(c) The Managers of a Board including its President, Secretary and Treasurer may be paid honorarium for attending the meetings of the Board or any other business in connection with the affairs of the Association at such rates and under conditions as the Association may determine from time to time.

(2) Removal of office-bearers (a) The President, Secretary, Treasurer or any other elected office-bearer of a Board may be removed from such office by vote of not less than two-third of the Managers of the said Board in the meeting that shall be specially convened for the purpose by the President of the said Board on the requisition of at least one-third of the Managers of such Board:

Provided that the President or any other officer whose removal has been proposed shall be given an opportunity of being heard at the meeting specially convened for the purpose.

Provided further that in case of a meeting where the removal of the President will be discussed, the Secretary or any other office-bearer may convene the meeting for such purpose.

(b) Resignation of Office-Bearers–The President, Secretary or any other elected officer may resign his office any time by a notice to the Board addressed to the President or the Vice-President if the President resigns. On receipt of the notice the Board shall as early as possible at a meeting consider the matter and on the resignation being accepted shall forthwith elect another

officer from amongst the Managers of the Board in place of one who has resigned.”

- 55.** BL 11 provides that on failure to pay instalments of common expenses contributions, a defaulting member is disqualified, till the arrears are cleared, from the following :
- (a) To vote at any election of the Managers of the Board; and
 - (b) To seek election for the office of Manager of the Board.
- 56.** Thus, the restriction is limited to candidature and casting of vote in an election of Managers, and does not extend to any other activity, including removal of Managers.
- 57.** Under BL 10(a) of the Bye-laws, a Manager may be removed from office at any SGM convened on the requisition of the Board, by a vote of the majority of the apartment owners present. The election of the successor of such removed Managers is segregated in the provision itself, which is to be done through a Special Election, separately, within six weeks from the removal. Thus, the process of electing a successor is not done simultaneously with the removal but is left to be undertaken within six weeks subsequent to the removal by a different Special Election. Hence, if BL 10 and BL 11 are read in conjunction, there is no bar to removal of Managers even by defaulting members.
- 58.** The question which crops up then is whether BL 6(2) could be invoked to requisition an SGM for the removal of Managers.
- 59.** Under the second limb of BL 6(2), an SGM can be called on requisition of one-third members of the association to consider “any other business” (than

those specifically reserved for an AGM) of general importance in the interest of the Association and within the scope of the Act and the Bye-laws.

- 60.** In view of the aspersions cast regarding the allegedly unlawful activities of the President, Secretary, Treasurer and the BoM in general, the business contemplated in the agenda for the SGM was undoubtedly of general importance in the interest of the Association and otherwise within the scope of the Act and the Bye-laws, since removal is contemplated under BL 10 of the Bye-laws.
- 61.** Although BL 10 is the specific provision for removal of Managers and at the first blush may be considered to exclude the operation of BL 6(2), such proposition cannot be held to be absolute. Conspicuously, a meeting under BL 10(a) has to be convened on the requisition of the Board, and not one-third of the members. The question which arises thus is, what happens if the resolution sought to be taken in the SGM is the removal of key members of the Board, including the entire set up of President, Secretary and Treasurer? In such a situation, it would obviously be a farce to expect the Board to convene a meeting. In fact, in the present case, due notice was issued to the BoM to convene the meeting on May 5, 2026. *Vide* reply thereto dated May 18, 2026, the three key portfolio-holders, that is, the President, Secretary and Treasurer, specifically refused to convene such AGM. In such scenario, the prerogative to call the meeting shifted to the general members of the Association, in the teeth of specific refusal of the portfolio holders and office bearers of the BoM to do so, as per the last limb

of BL 6(2), particularly in view of the issue being of general importance in the interest of the Association.

- 62.** A comprehensive and conjoint reading of BL 10(a) and BL 6(2) clearly indicates that the latter provision may be invoked if the former becomes irrelevant in the context. BL 6(2) does not limit the scope of the agenda for calling an SGM under the said provision; rather, it incorporates all the other provisions of the 1972 Act and the Bye-laws and permits such SGM to be convened within the scope of the Act and the Bye-laws, thereby taking within its broad sweep all provisions of the Act and the Bye-laws. The specific language of BL 6(2) is that the agenda of the SGM contemplated therein can be “any other business of general importance in the interest of the Association and *within the scope of the Act and these Bye-laws*”, thus encompassing all the other provisions of the Bye-laws, including BL 10.
- 63.** Another clue to the scope of convening an SGM under BL 6(2) is found in the last limb of the said provision itself, which stipulates that if the President does not convene a meeting within the period of 15 days from a requisition notice calling upon him to do so, then the persons who made the requisition shall hold the meeting within the next 15 days from the date of expiry of convening meeting by the President, after giving notice of such meeting to all the members.
- 64.** The facts of the present case fit the ambit of BL 6(2) “to the T”. On May 5, 2026, a notice of the SGM was given to the BoM, upon which the President, Secretary and Treasurer refused to convene the same in writing on May 18, 2026. Consequent to such refusal, the notice dated May 22, 2026 was

issued to convene such SGM, after the lapse of 15 days from the first notice dated May 5, 2026.

- 65.** Accordingly, there was no bar to invocation of BL 6(2), particularly in the circumstances of the present case, which would be perfectly in consonance with the said provision, by the requisition of more than one-third members of the Association.
- 66.** Insofar as the authority of the 78 signatories to call the requisition meeting by the said notice is concerned, as discussed above, the bar under BL 11 did not operate in respect of the removal of Managers. As such, even leaving out of consideration five of the 78 requisitionists, whose eligibility is debatable and relating whom a limited concession has been given by the appellant, there remained 73 requisitionists, who still formed the quorum of one-third, in view of the total number of members of the association being 192, one-third of which comes to 64 members.
- 67.** Another issue involved is the interplay between BL 10 and BLv 13. The plaintiffs argue that in view of the respondent nos. 1 to 3 being elected office bearers, the President, Secretary and Treasurer respectively, of the Association, it is BL 13 which would apply and not BL 10.
- 68.** However, we are unable to accept such contention. The aforesaid two Bye-laws operate in separate and distinct fields. BL 13(2)(a) pertains to removal of office bearers, and not ordinary Managers. Under it, the President, Secretary, Treasurer or any other elected office bearer of a Board may be removed *from such offices*, whereas under BL 10(4), a Manager may be removed from office. The removal contemplated in BL 13(2)(a) is a removal

from the office of President, Secretary, Treasurer or otherwise and not from the general office of Manager. In the present case, the agenda of the proposed SGM pertained to removal of the plaintiff nos. 2 to 4 (present respondent nos. 1 to 3) from their basic office of Manager, such removal being not restricted merely to their removal from their offices of President, Secretary and Treasurer. Thus, it is BL 10, as opposed to BL 13, which is applicable. Hence, such argument of the plaintiffs/respondents also falls flat.

- 69.** In view of the above discussions, there cannot be any manner of doubt that the notices dated May 5, 2026 and May 22, 2026 were valid in the eye of law.

(iii) Whether the impugned order was beyond the appellants' prayers

- 70.** The challenge in the plaint and the permanent injunction sought therein revolves around the notices dated May 5, 2026 and May 22, 2026 and the consequential meeting which was scheduled to be held on May 30, 2026 (ultimately held on May 31, 2026). Thus, the entire scope of the plaint pertains to the said notices and the consequential meeting.
- 71.** In the initial injunction application filed under Order XXXIX Rules 1 and 2 of the CPC, similar interim and ad interim reliefs have been sought as in the plaint, challenging the May 27, 2026 order of the CA as well as the notices of the SGM to be held on May 30, 2026. From a composite reading of the reliefs sought in the plaint, it is evident that, contrary to the arguments of the plaintiffs before us, the primary relief was not restricted to the challenge

to the order of the CA dated May 27, 2026 but the challenge to the notices dated May 5, 2026 and May 22, 2026 and the consequential meeting also forms the basis of a principal relief. Without the latter, the very premise of the subsequent injunction applications would be rendered toothless.

72. Even from the prayers made in the second application for injunction captioned under Section 94(e), read with Section 151 of the CPC, it is found that the plaintiff sought a restraint order on the appellants from granting any recognition, legitimacy or operational effect to any resolution, election or minutes passed at the “fractured assembly” dated May 31, 2026. Thus, the entire scope of the prayer made in the application was centered around the May 31, 2026 meeting, which was nothing but the outcome of the two notices assailed in the suit and the initial injunction application. However, by the parent impugned order dated June 1, 2026, the learned Trial Judge granted a blanket injunction restraining the private defendants/appellants from conducting *any meeting in connection with the association*, which order was extended from time to time by the subsequent impugned orders.

73. The defendants, being members of the Association, are independently entitled to invoke several provisions of the Bye-laws, including BL 6, to convene valid SGMs subsequently, which are beyond the scope of the resolutions taken on May 31, 2026, which was the sole subject-matter of the prayer made in the second injunction application. Thus, the learned Trial Judge granted a protection/relief much beyond the prayers made by the plaintiffs themselves in the second injunction application, on which the impugned orders were passed. Hence, the impugned orders are vitiated on

such count as well. The blanket injunction restraining the appellants, who are admittedly members of the concerned Association, from conducting “any meeting” in respect of the Association is a fetter which is not only unwarranted and beyond the scope of the prayers made by the plaintiffs themselves, but also contrary to the Bye-laws themselves, imposing a restriction not envisaged by the statute itself.

(iv) Effect of refusal of ad interim injunction in connection with the application under Order XXXIX Rules 1 and 2 on the validity of the impugned order

74. By Order No.2 dated May 29, 2026, an ad interim prayer for injunction in respect of the meeting to be held on the strength of the impugned notices was refused. The meeting dated May 31, 2026 was only a fallout of the said notices and cannot be divorced from the same. The meeting was held on May 31, 2026 instead of May 30, 2026 only in terms of the order of the CA dated May 27, 2026. However, fact remains that the prayer made in the subsequent application under Section 94(e), read with Section 151, CPC, came squarely within the purview of initial injunction application as well. The subsequent prayer, being only in furtherance of the previous prayer of injunction, cannot be segregated from the previous prayer and compartmentalised on the premise of any distinct cause of action. Thus, the principle of *res judicata* operated squarely in respect of the subsequent prayer at the same (ad interim) stage by dint of refusal of ad interim order in connection with the earlier injunction application on May 29, 2026.

- 75.** The argument of the plaintiffs that the earlier refusal was premised only on violation of Section 80 of the CPC is fallacious, since the learned Trial Judge had also considered the merits of the prayer and came to the *prima facie* view that the CA, while passing the order dated May 27, 2026, might have considered the contentions of both parties. Thus, the principle of *res judicata* operated at the same stage. Although the meeting dated May 31, 2026 took place subsequent to the earlier refusal of ad interim injunction, the same came within the scope of the initial refusal of ad interim injunction and was merely an outcome of the impugned notices, which were assailed in the earlier injunction prayer as well. If the ad interim injunction as sought in the initial application under Order XXXIX Rules 1 and 2 was to be granted, the same would have precluded the meeting dated May 31, 2026 from being held, thus rendering the subsequent prayer redundant. The meeting in respect of which the second injunction application was filed was merely a result of, and in furtherance of, the notices which were the subject-matter of the earlier injunction application, the ad interim prayer made in which was refused.
- 76.** Thus, the artificial captioning of the second injunction application under Section 94(e) of the CPC was a mere misnomer and a feeble endeavour to dissociate the scopes of the two injunction applications.
- 77.** We must consider the fact that Section 94(e), CPC is merely the substantive provision for grant of injunction, in turn derived from Sections 37 and 38 of the Specific Relief Act, 1963, whereas Order XXXIX Rules 1 and 2 deal with

the procedural part of the same. The two sets of provisions are not independent of each other but supplemental *inter se*.

- 78.** It is further to be noted that the filing of the earlier injunction application by the plaintiffs themselves under Order XXXIX Rules 1 and 2, CPC for reliefs of a similar nature as the second one invalidates the contention of the plaintiffs that the second injunction application operated in a sphere not covered by Order XXXIX Rules 1 and 2. If such argument is to be accepted, the earlier injunction application would also be denuded of validity, since the scope of prayers made in both the injunction applications are qualitatively the same.
- 79.** Hence, the reliance of the plaintiffs/respondent nos.1 to 4 on *Manohar Lal Chopra (supra)*¹ and *Vareed Jacob (supra)*² is misplaced, as the present case is not one left uncovered by the paradigm of Order XXXIX Rules 1 and 2 of the CPC, furnishing scope to the court to grant injunction *ex debito justitiae* under its inherent powers.
- 80.** The captioning of the second application under Section 94(e), read with Section 151, CPC was merely an attempt on the part of the plaintiffs/respondent nos.1 to 4 to mislead the Court and to seek an injunction which they could very well seek in connection with the earlier injunction application. Not only that, the refusal of the earlier ad interim prayer of injunction directly affects the outcome of the second application since, if granted, the earlier ad interim injunction would preclude the cause of action of the second injunction application from arising at all.

¹ *Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal*, reported at AIR 1962 SC 527

² *Vareed Jacob vs. Sosamma Geevarghese and Others*, reported at (2004) 6 SCC 378

81. Thus, the plaintiffs/respondents are squarely barred by the principle of *res judicata* from seeking the ad interim relief sought in the second injunction application at the self-same (ad interim) stage of the proceedings (although such bar would not operate at the subsequent stage of final disposal of the injunction applications) in view of the refusal of their earlier ad interim prayer for injunction.

(v) Non-joinder of all signatories

82. Since there were 78 signatories to the requisition notices dated May 5, 2026 and May 22, 2026, which have been assailed as one of the principal reliefs in the suit and the injunction applications, all the said signatories would be directly affected by the outcome of the suit as well as the injunction prayers and, hence, are necessary parties. As discussed above, since the bar against defaulting members under BL 11 operates only in respect of voting and candidature in elections to the post of Manager and not to removal of Managers from their office, at least 73 of the 78 signatories were legally entitled to issue such notices for a requisition SGM, as held above. Hence, the injunction applications and the suit in respect of only 4 out of the total 78 signatories are not maintainable in view of non-joinder of necessary parties.

83. As held in *Dr. Vimal Sukumar (supra)*³, such bar is curable and not absolute and does not debar the Court from granting interim reliefs. However, in the said report, the Hon'ble Supreme Court also observed that an order passed

³ ***Dr. Vimal Sukumar v. D. Lawrence*, reported at 2025 INSC 622**

without leave being granted under Order I Rule 8 of the CPC is not binding on non-parties.

- 84.** Taking the said ratio to its logical conclusion, only the four defendants, including the present appellants, would be bound by the injunction and not the rest of the signatories to the impugned notices. In such situation, the grant of injunction would cause a confusion of legal principles and anarchy of reliefs, since the impugned notices were conjointly issued by all the requisitionists. The chaos which would ensue would be that theoretically, all the other signatories apart from the defendants would be able to pursue the said notice and consequentially, the meeting held in furtherance thereof on May 31, 2026 would also hold valid for the other signatories. If such be the situation, the injunction granted by the learned Trial Judge would be rendered toothless, as the notices and the consequential meeting would stand valid for all practical purposes. Also, it cannot be that a joint cause of action of all the signatories would be segregated and the outcome thereof, that is, the meeting dated May 31, 2026 can be partially said to be valid and partially invalid, which would be an absurd proposition. Just as there cannot be a partial rejection of a plaint, there cannot be a partial segregation of a joint cause of action. Hence, the ratio of *Dr. Vimal Sukumar (supra)*⁴ cannot come to the aid of the plaintiffs in the present case, as the challenge to the impugned notices and the consequential meeting and resolutions taken therein would hold good in respect of all the other signatories whose cause of action is joined with the present defendants.

⁴ *Dr. Vimal Sukumar v. D. Lawrence*, reported at 2025 INSC 622

- 85.** We cannot overlook another aspect of the matter. Contrary to the impression sought to be given by the plaintiffs/respondent nos.1 to 4, a closer look at the first relief claimed in the plaint would clearly betray the fact that the leave sought under Order I Rule 8 of the CPC did not pertain to maintainability of the suit against the other signatories of the notice. The expression used in Prayer A of the plaint is “to sue under representative capacity” and no further, in a studied non-disclosure of further details.
- 86.** From Paragraph Nos.1 and 2 of the plaint, it would be revealed that the plaintiff no.1 claims, as the existing Secretary, to be fully authorised and duly empowered and legally competent to “represent and act for and on behalf of the Association”. Also, the pleadings indicate that allegedly that BoM of the Association, comprised of the President, Secretary, Treasurer and the other duly designated executive members, “are the lawfully and officially elected representatives of the Association, whose authority is binding upon all apartment owners and stakeholders”.
- 87.** In the last sentence of Paragraph No.2 of the plaint, it is categorically pleaded that the BoM is “collectively as well as individually clothed with the full-fledged legal capacity, *locus standi* and authority to sue, be sued and initiate appropriate civil and criminal proceedings before the Trial Court for the effective preservation and enforcement of the rights, interests and entitlements of the Association and its constituent apartment owners”. Thus, from the plaint pleadings, it would be evident that the leave to sue under Order I Rule 8 of the CPC sought in Relief A of the plaint was not for the purpose of suing against the other signatories to the impugned notices

but for the plaintiffs themselves to sue in representative capacity for all the apartment owners and the members of the Association.

88. Rather, in Paragraph No.4 of the plaint, it is categorically stated that the defendant no.2 and his associates are acting “strictly in their individual capacities”, possessing zero executive power and “carrying no statutory mandate to represent the collective body of apartment owners and hold no legal authority to execute instruments or make representations on behalf of the Association”.
89. The crux of the above discussion is that, as per the plaint case itself, the leave to sue sought under Order I Rule 8 of the CPC sought by the plaintiffs was only in respect of the plaintiffs, in representative capacity of the Association and all the apartment owners, and not for suing the defendants in representative capacity of the other signatories.
90. Hence, in the absence of any prayer or averment in the plaint that the other signatories were also sought to be brought within the purview of representative capacity of the defendants impleaded, there was no scope of even seeking any leave under Order I Rule 8 of the CPC. Thus, the suit is also bad in its present form, at least on a *prima facie* footing at this stage, in view of the non-joinder of other signatories as parties to the suit.
91. Indeed, following the principle laid down in *Dr.Vimal Sukumar (supra)*⁵, it could have contemplated that the defect is a curable one if there was any iota of averment or prayer in the plaint itself, beyond which the plaintiffs cannot traverse, as to an attempt to seek such leave or at least recognising

⁵ ***Dr. Vimal Sukumar v. D. Lawrence*, reported at 2025 INSC 622**

the need to ask for such leave under Order I Rule 8, CPC. In the absence of the same, however, the defect attains an absolute character and cannot be curable, even as per the plaint pleadings. Thus at least till date, the defect remains palpable and vitiates the grant of injunction altogether.

CONCLUSION

92. In view of the above findings, there cannot any manner of doubt that the impugned order was passed not only *de hors* the prayers made by the plaintiffs/respondent nos.1 to 4 but also *de hors* the law and vitiated on such count. The contention of the plaintiffs that the prayer for injunction could be moulded by the Trial Court is also fallacious, since the concept of moulding reliefs applies only when the relief granted is lesser than that prayed for, and cannot be invoked for granting injunction wider than and beyond the prayers made in the plaint or the injunction application. The omnibus prayer in the injunction application for “any other or further reliefs” is too wide and vague to be a basis of consideration since, if so construed, it would include every relief under the Sun and would entitle the Court to traverse beyond the pleadings and reliefs sought in the plaint and injunction application.
93. Furthermore, we find that the sole premise of the impugned order was the removal of Mr. Shreekant Gupta, allegedly the senior-most member of the Association, from the meeting in violation of the direction of the Competent Authority dated May 27, 2026, which we have already held above to be

without jurisdiction, in particular being in contravention of Bye-Law 6(4) of the West Bengal Apartment Ownership Bye-Laws, 2022.

- 94.** Apart from that, the impugned order dated June 1, 2026 is absolutely devoid of any reason whatsoever. Thus, the said order cannot be sustained on such count as well.
- 95.** Since we hold that the parent *ex parte* order dated June 1, 2026 is not sustainable in law, the subsequent mechanical extensions of the same at the same stage (ad interim) of the proceeding, without final adjudication of the injunction application, also cannot be sustained consequentially.
- 96.** Accordingly, all the appeals stand allowed, setting aside the orders impugned therein.
- 97.** Thus, F.M.A. No.816 of 2026 is allowed on contest, thereby setting aside the impugned order dated June 1, 2026, passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta in Title Suit No.1123 of 2026.
- 98.** Consequentially, F.M.A. No.951 of 2026 is also allowed on contest, thereby setting aside the impugned order dated June 29, 2026, passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta in Title Suit No.1123 of 2026; F.M.A. No.952 of 2026 is allowed on contest, thereby setting aside the impugned order dated July 17, 2026, passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta in Title Suit No.1123 of 2026; and F.M.A. No.1186 of 2026 is allowed on contest, thereby setting aside the impugned order dated September 7, 2026, passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta in Title Suit No.1123 of 2026.

99. Accordingly, the application made in connection with F.M.A. No.816 of 2026, being CAN 1 of 2026, stands dismissed as well.

100. There will be no order as to costs.

101. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)