

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.173 of 2012

Order with signature of Judge

Shahimah Sayeed & othersPlaintiffs

Versus

Nasreen Khamisani & othersDefendants

1. For hearing of CMA No.7387/12
2. For hearing of CMA No.1660/12
3. For hearing of CMA No.1408/12

4. For orders on CMA No.12261/12

23.01.2013

Mr. Qadir H. Saeed, Advocate for plaintiffs.
Plaintiff Nos.1 and 2, also present.

M/s. Rashid Anwar and Yousuf Naseem, Advocate for
defendant No.2.

Defendant Nos.1, 2, 3, 10 and 12 also present.

Mr.Omar Soomro, Advocate for defendant No.6

Mr.Sharaf Din Mangi, State Counsel

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Muhammad Ali Mazhar, J: This is a suit for declaration and permanent injunction in which main prayer is for the declaration that Articles of Association as amended in 2005 is the prevailing constitution of Floral Arts Society of Pakistan. **(hereinafter referred to as Society)**. The plaintiffs have further prayed for the declaration that society should be administered and managed in accordance with Memorandum and Articles of Association. They have also claimed permanent injunction against the defendant Nos.1 to 7

from acting and/or representing themselves to be members of Executive Committee on the basis of election held on 20.09.2011. They have also sought permanent injunction against the defendant No.8 to 11 from acting and/or representing themselves to be members of National Committee on the basis of election held on 31.05.2011. The plaintiffs have also sought directions of this court that General Body Meeting of Society be convened for elections of Executive Committee and National Committee in a transparent manner under an independent supervision.

2. The defendant No.2 filed her counter affidavit in which she controverted and denied all allegations. Earlier the plaintiffs had also submitted a complaint to the Secretary of Industries and Commerce against Executive Committee as a result of which Mr. Sarfaraz Ahmed Chandio was appointed Administrator of the society. Being aggrieved, some of the defendants of the present suit challenged the appointment of Administrator in C. P. No.D-3851/2011 in this court in which the plaintiff No.1 was respondent No.3.

3. In the present suit all other plaintiffs are being represented by the plaintiff No.1 and 2 while the defendant's No. 1, 3 to 13 are being represented by defendant No.2.

4. During course of arguments, the representatives of plaintiffs and defendant's No. 1, 3 to 13 as well as their learned counsel on oral motion agreed to resolve the dispute amicably and also proposed/suggested modalities for holding elections of the society for the year 2012-2013. By consent this suit is decreed on the following terms and conditions:

1. Nazir of this court is appointed Election Commissioner who will hold elections of the Society for the year 2012-2013 within a period of eight weeks.
2. Nazir will first examine voters list which is available at Page Nos.153 to 159 of Part-II of court's file. Office is directed to supply copy of voters list to the Nazir.

3. Nazir shall also verify from society's record whether all members have paid their annual subscriptions for the current year or not?
4. Nazir shall immediately issue notices through courier service and registered post to all members of the society as mentioned in the voters list for the payment of dues/annual subscription and will also inform the members last date for payment of annual subscription. No member shall be allowed to cast vote without clearing dues up to the year 2012-2013.
5. Nazir will announce the date of election and last date for filing nomination papers. Three weeks' time will be allowed for filing nomination papers. The information shall be communicated to the members through registered post and courier service. Notice will also be published in the newspapers daily Jang and Dawn, Karachi.
6. Elections will be held for the post of ten Executive Committee Members of the Society.

7. After receiving nomination papers within prescribed time, Nazir shall scrutinize the nomination papers in presence of one member each nominated from both sides (i.e plaintiffs and defendant Nos.1 to 13). The objections to nomination if any may be filed within three days and objections will be decided by the Nazir within one week. The decision of Nazir shall be final. The Nazir shall have right to reject the nomination paper if it is found in violation of 2005 Memorandum and Articles of the Association.
8. After finalizing nomination papers and scrutinizing the voters list, Nazir shall hold election on the given date at Pearl Continental Hotel, Karachi.
9. Election shall be held through secret balloting. Ballot papers shall be printed and published by the Nazir.
10. No member shall be allowed to cast the vote without showing his identity through CNIC or passport.
11. Nazir shall announce the election result on the same day and shall also handover charge to the newly elected Executive Committee on the same day. He shall also communicate the election result immediately in writing to

defendant Nos.15 and 16 for their information and record.

12. Since bone of contention between the parties is that which Memorandum & Articles of Association is valid and in force. The plaintiffs point of view is that the Memorandum & Articles of Association of Society was lawfully amended in the year 2005 while the defendant No.1 to 13 are of the view that still 2004 Memorandum & Articles of Association is valid and in vogue and it was never lawfully amended. In order to resolve this controversy and or dispute, newly elected Executive Committee shall hold first EGM of the Society within 25 days from taking over the charge of their offices and shall issue 21 days' notice with copy of agenda amongst the members for approving/opting 2004 Memorandum & Articles of Association or the approval of amendments made in 2005 in the Memorandum & Articles of Association. The acceptance of 2004 Memorandum & Articles of Association or amendments made in 2005, Memorandum & Articles of Association or any other amendments shall be decided by 2/3 majority of members of general body present and voting. After approval in EGM, the Memorandum & Articles of Association will amended accordingly and a copy shall be forwarded to the defendant No.16 for their record.

13. It is further agreed by consent that National Committee comprising defendant No.8 to 11 elected on 31.05.2011 is dissolved forthwith.
14. For the purpose of appointment of National Committee, newly elected Executive Committee shall hold second EGM within one month in accordance with prevailing Memorandum and Articles of Association.
15. In case no decision is taken in EGM for any reason regarding the acceptance and or rejection of amendments made in the Memorandum & Articles of Association in 2005 or acceptance and or rejection of 2004 Memorandum & Articles of Association, it is agreed that notwithstanding the above situation, the election of National Committee will be held and General Body of Karachi Chapter shall elect National Committee for a term of two years as provided under Article-VI of 2005 Memorandum & Articles of Association.
16. It is further agreed that if in EGM, no consensus is arrived at or no decision is taken as to which Memorandum & Articles of Association is valid and in force, the plaintiff No.1 on behalf of other plaintiffs and the defendant No.2 on behalf of the defendant No.1, 3 to

13 shall nominate one arbitrator each to resolve the issue within 10 days. In case Arbitrators will fail to resolve the issue/dispute or deliver the award, they will appoint a retired Judge of this court as Umpire. The Arbitration proceedings shall be conducted in accordance with Arbitration Act 1940. It is further agreed that the above reference to the arbitration and its decision shall not affect the function of society and its duly elected Executive Committee and National Committee shall continue to hold their offices till the expiry of their office tenure.

17. All expenses of election including venue charges, postage, publication and refreshment etc. will be borne by the Society. A cheque in the sum of Rs.75,000/- tentatively shall be issued within five days in favour of Nazir for postage, publication charges and other misc. expenses.
18. It is agreed that at present the bank mandate is in favour of the defendant No.1 and 2 and the plaintiff No.1 and 2 who are also representing other plaintiffs, have no objection if the cheques are signed and issued by defendant No. 1 & 2 for all expenses as well as Nazir fee from Society's account. The defendant No. 1 and 2 shall maintain proper accounts for all expenses or the payments made to Nazir of this court. For the day of

election, Nazir after discussing the requirement with plaintiff No.1 and defendant No.2 shall first obtain estimate/quotation from Pearl Continental Hotel, Karachi and intimate the quotation to plaintiff No.1 and defendant No.2, which is always tentative in nature, therefore, the defendant Nos.1 and 2 shall issue a cheque in advance in favour of Nazir with 20% additional amount of quotation. After payment of bill in case excess amount is found, the Nazir shall return the same to the society through cheque and in case of any deficiency, the defendant Nos.1 and 2 shall reimburse the amount to the Nazir.

19. Nazir fee shall be at Rs.100,000/- which shall also be paid from Society's account in advance.
20. It is further agreed that through this mutual settlement, the plaintiffs and defendant Nos.1 to 13 will have no issue/complaint against each other and they will not send any complaint to the defendant No.15 and 16 vice versa as they have resolved the matter amicably and agreed to hold the elections for the year 2012-2013 including the election of National Committee.
21. In view of the undertaking given by Mr.Rashid on 15.01.2013, the petitioner has withdrawn C.P.No. D-

3851/2012 on 18.01.2013. photocopy of order is taken on record.

22. In order to expedite the process, the plaintiff No.1 and defendant No.2 shall personally appear before Nazir in his office on 28.01.2013 at 3.00 p.m. for initial meeting. Nazir shall decide the election schedule with the assistance of plaintiff No.1 and defendant No.2 but the decision of the Nazir shall be final.
23. In order to hold election with peace and harmony, Nazir may take assistance from his staff on the day of election.
24. Votes will be counted by the Nazir in presence of one member each nominated by the plaintiffs and defendant Nos.1 to 13. Objection if any on the validity of any vote shall be decided by the Nazir, whose decision will be final.
25. Nazir shall maintain accounts of all expenses and submit to the society.
26. Office is directed to transmit the copy of this order immediately to the Nazir for compliance and also send a copy to the defendant No.15 and 16 for information.

5. In view of the above settlement, the suit is decreed and listed applications are disposed of accordingly. Nazir shall file the report in Chamber.

Judge