

**Order On Exh. 18 in Arbitration Suit No.422/2022.**

(CNRNo.MHNS010073072023)

The respondent No. 2 prays for rejection of the appeal vide Order 7 Rule 11(d) of the C.P.C.

2] **Briefly stated, facts put forth by the appellant is as below:-**

The respondent No. 2 Maratha Vidya Prasarak Samaj Nashik is a registered Educational Society having registration No. PTR 436. For the election of the Executive Committee, the respondent No. 2 appointed respondent No. 3 on the selection committee and also as an Arbitrator.

3] According to the constitution of the society, the respondent No. 2 framed election rules and by order dated 31/07/2022 pronounced election program on 01/08/2022.

4] The appellant and respondent No. 4 are life time members of society and they have contested the election. The respondent No. 4 was elected. After some time the appellant got information about material facts put forth by the respondent No. 2 during election process that would have unqualified him to contest the election. Subsequently, he filed an appeal before the respondent No. 1 i.e., arbitrator appointed for the purpose of election. By order dated 18/11/2022 the arbitrator rejected his appeal against the election of respondent No. 4 leading to present appeal against the arbitral award.

5] The respondent No. 2 appeared and with instant application (Exh.18 vide O.7 R. 11(d) of the CPC r./w. Sec. 9) prayed for rejection of the arbitration appeal.

6] According to the respondent No. 2, it is registered under the Bombay Public Trust Act 1959 as per rules having its own constitution and the election rules. The respondent No. 3 was appointed as a president of election committee to conduct election of members for year 2022-27. Since the election, the respondent No. 1 to 3 have become functus-officio.

7] The appellant instituted appeal bearing No. 1/2022 before the arbitrator and after hearing the parties, the award was passed on 18/11/2022.

8] The Sec. 35 of the Election rules of the society provides that any member of the society is barred from seeking redressal from the court of law in respect of the election rules or the election and the decision of the arbitration shall be final.

9] The award is passed by the arbitrator and as per Sec. 35 of the election rule of the committee, it has attend the finality therefore the appellant is not having any right to challenge it in the Court. Therefore, arbitration appeal needs to be rejected. Further According to respondent No. 2 the appellant is silent regarding the provisions under which the appeal is made and therefore the appeal is not maintainable.

10] The appellant has opposed the application contending that the application is made to delay the proceeding. He further states that the respondent No. 4 has breached the rules framed by the society, therefore, his election is invalid. Further he states that he is having a right to appeal against illegal award passed by the arbitrator therefore the application needs to be rejected.

11] The respondent No. 2 has specifically prayed for rejection of the appeal vide Order 7 Rule 11(d) of the C.P.C.

Order 7 Rule 11(d) of the C.P.C. provides that--

“The plaint shall be rejected in the following cases...

- A) .....
- B) .....
- C) .....
- D) Where the suit appears from the statement in the plaint to be barred by any law.”

12] Heard Ld. Advocates at length and perused the record.

13] Points for determination along with findings thereon and reasons therefor are as below:

**POINTS**

**FINDINGS**

i] Whether the respondent No. 2 proves that the appeal is barred by any law?	...In the negative.
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ii] The relief.	...The application is rejected.
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**: REASONS :****As to Point No. 1 and 2 :-**

14] The Ld. Adv. for the respondent No. 2 emphasised upon election of respondent No. 2 i.e., Society. As per the amended election rules by the General Body Meeting on 04/06/2022. In the context, he submits that in furtherance of the election, the General Body Meeting of the society approved the election rules and vide Rules 35 the members of the society are barred from seeking relief in the Court in relation to the rules framed for the election or the election. Further, he states that resultantly the appellant is barred from seeking the relief against the election process and election of respondent No. 4. Further according to him, the election is over therefore, the arbitrator appointed for the purpose of election is not in existence. Hence, according to him, the appeal needs to be rejected.

15] To the contrary, Ld. Adv. for the appellant submits that entire election process and election of respondent No. 4 is vitiated due to breach of laws and rules of society and he was not heard by the arbitrator, therefore is not having other recourse then to approach the Court against an award of the arbitrator.

16] From the documents put forth by the Ld. Adv. of the respondent No. 2, it is clear that he has emphasised upon rules 35 of election rules framed by the society for the purpose of election. The Rules 35 specifically bar its members from taking any recourse to the Court of Law in respect of any matter pertaining to the election or the election rules. In context, Sec. 34 of the Arbitration & Conciliation Act 1996 provides recourse to Court against the arbitrator award.

17] Order 7 Rule 11(d) provides that the plaint can be rejected where from the statement contained in it appears to be barred by any law. Thus, it is clear that for the application of O 7 R 11(d) of the CPC, only plaint needs to be considered to ascertain whether the plaint is liable to be rejected. The respondent No. 2 has raised objection in respect of non maintainability of present appeal in the context of the election rules framed by the society. However, has failed to bring forth any statement in the plaint where from it appears that it is barred by any law. He has relied upon the judgment of the Hon'ble Apex Court in **Ajay Hasia etc., vs. Khalid Mujib Sehravardi and others etc., AIR 1981 SC 487.** The Hon'ble Apex Court adjudicated as to “whether the society registered under the Societies Registration Act is an “authority” falling within the definition of ‘State’ in Article’12 of the Constitution of India. He emphasizes a fact that the respondent Society being legally created entity falls within the expression “other authority” and therefore, is having right to frame rules to maintain its identity. According to him, therefore, when the election rules specifically bars any members from taking recourse to the Court of law against election process or the election, the appellant is not having right to seek redressal from the Court of law in this regard, hence being barred, the appeal needs to be rejected.”.

18] The respondent No. 2 has specifically emphasised on the rule 35 of election rules of the society as afore stated. The plain meaning of rule 35 is that the society has restricted the right of its members to seek recourse to Court of law. However, Sec. 8(2)(b) of the Arbitration & Conciliation Act 1996 provides a recourse to the

Court against the arbitrator award if ;

(a) .....

(b) (ii) the Court find that arbitrator award is in conflict with the public policy of India.

The explanation (1)(3) clarifies, when an award will be termed as in conflict with public policy of India i.e., when it is in conflict with most basic notion of morality and justice.

19] Reverting back to election rule 35 of the society it is clear that it bar the members from taking recourse to the Court against the award of arbitrator, against the election rules or the election. Apparently, the restriction placed by rule 35 is in conflict of public policy of India and more particularly against the right provided under Sec. 34 of the Act. More particularly, regarding the basic notion of morality of justice. Thus, the restriction placed on the members of rule 35 of the election rules of the society does not seem in conformity of basic notion of morality or justice. Therefore, it can not be said that the appeal is liable to be rejected vide Order 7 Rule 11(d) of the C.P.C. therefore, answered point No. 1 in the negative to pass the following order :

**ORDER**

The application Exh. 18 is rejected with costs.

Nashik.  
02/09/2023.

**J. M. Dalvi**  
District Judge-7, Nashik.