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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 414/2020

I.A.11814/2020 (under Order XXXIX Rule 1 and 2 CPC)

I.A.11815/2020 (exemption)

I.A.11816/2020 (enlargement of time to file court fee)

DR. P. V. VIJAYARAGHAVAN & ORS. Plaintiff

Represented by: Mr.Sudhir Nandrajog, Sr. Advocate
with Mr.Manish Kumar, Mr.Piyush
Kaushik, Mr.Asav Rajan, Advocates

versus

NITYAM SOFTWARE SOLUTION PVT. LTD. & ORS. . Defendant

Represented by: Ms.Nimrah, Advocate for D1 and D2
D4, D5 and D6 in person (through
Video Conferencing).
Mr.R.K.Gupta, Advocate for D7.
Mr.Arvind Nigam, Sr.Advocate with
Mr.Siddhant Nath, Advocate for D8.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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10.12.2020

The hearing has been conducted through video conferencing.

I.A.11815/2020 (exemption)

1. Exemption allowed subject to just exceptions.
2. Application is disposed of.

I.A.11816/2020 (for extension of time to file Court fees)

1. Court fees be filed within two weeks.
2. Application is disposed of.



CS(OS) 414/2020

1. Complaint be registered as a suit.
2. Issue summons in the suit to the defendants.
3. Ms.Nimrah, learned counsel on behalf of the defendant Nos.1 and 2, defendant Nos. 4, 5 and 6 who appear in person and learned counsels Mr.R.K.Gupta and Mr.Siddhant Nath appearing for the defendant Nos. 7 and 8 respectively accept summons in the suit. Copy of the complaint along with the applications be served to the respective counsels and the parties today appearing in person through video conferencing, if not served earlier, in the course of the day.
4. Summons in the suit be now issued to the defendant No. 3 on the plaintiffs taking steps through Email, SMS, Whatsapp, Speed Post and Courier, returnable before the learned Joint Registrar for completion of service, pleadings and admission-denial of documents on 18th January, 2021.
5. Written statements to the suit along with the affidavits of admission-denial will be filed within thirty days. Replication along with the affidavits of admission-denial within three weeks thereafter.
6. List the suit before Court on 24th March, 2021.

I.A. 11814/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Issue notice in the application to the defendants.
2. Ms.Nimrah, learned counsel on behalf of the defendant Nos.1 and 2, defendant Nos. 4, 5 and 6 who appear in person and learned counsels Mr.R.K.Gupta and Mr.Siddhant Nath appearing for the defendant Nos. 7 and 8 respectively accept notice in the application.



3. Notice in the application be now issued to the defendant No. 3 on the plaintiffs taking steps through Email, SMS, Whatsapp, Speed Post and Courier.
4. Reply affidavit to the application be filed within four days. Rejoinder affidavit within two days thereafter.
5. List the application for consideration on 17th December, 2020.
6. The issue which has been urged in the present suit by the plaintiffs is that in the meeting of the Executive Committee dated 19th July, 2020 of the Indian Orthopedic Association (in short, 'IOA'), the defendant No. 7 herein, it was decided to go ahead with the election process and it was pointed out by defendant No.3 that the nominations have already been invited, last date of nominations being 7th August, 2020 and the last date of withdrawal of the nominations was 30th August, 2020. Online voting was to start on 1st November, 2020 and the last date of voting was 21st November, 2020 till 5 pm. Counting and final tally of results of E.C. were to be held by the Executive Committee, to be decided by Prof. S.S.Yadav, Prof. Shantaram Shetty and Prof. Anil Jain who were appointed as Election Observers. The Vice-President of the Association who was supposed to be President (Elect) as well, informed that quotations have been invited from company which should have experience to conduct such elections, should have approval from Government of India and should not have conducted elections of IOA in the past.
7. Grievance of the plaintiffs in the present case is that despite protocols of the elections having been provided and it having been decided that the counting of the vote shall be before the start of the IOACON in the IOA House, the same was dispensed with. Further, though it was an E-meeting,



but links to all the members including the present President etc. were not sent. Further, grievance of the plaintiffs is that the defendant No. 2 which conducted the elections was incorporated on 10th September, 2020 only and thus, did not fulfill the qualifications of conducting the elections. Even defendant No. 1 which was the holding company of defendant No. 2 did not meet the criteria as cases were pending against the same and two such cases were of the year 2017 including a criminal and a civil case. It is further pointed out that though the online voting has been followed for the last three years, the procedure as followed this year was not upto the mark, for the reason, voting concluded at 5 pm and at 5:08 pm, Emails were sent to everyone indicating that on the next day at 10 in the virtual meeting, counting will take place, however, the links for the said virtual meeting were not received by all concerned. Further from the emails, it was evident that the raw data sent to the IOA was sent after nearly a week with number of facts masked therein, thereby, indicating that the tampering cannot be ruled out.

8. The plaintiffs addressed their grievance to the defendant No. 8 which is the Committee for grievances and in response to the letter of the plaintiffs, the defendant No. 8 sought information from the office of the IOA i.e. defendant No.7 and the information which was received, revealed that, (1) no information regarding selection process of the vendor and copies of the tenders within the framework of IOA protocols and EC guidelines was received till date; (2) no copy of the MOU with the vendor conducting the elections was received in IOA office till date; (3) no payment has been made to the vendor conducting the elections from IOA and (4) some data related



to election was received on 28th November 2020 at 9.51 pm through the e-mail from Dr. Ramesh Sen, Election Officer.

9. In the light of these facts, as noted above, from the reply of the IOA to Dr. Atul Bahadur, Chairman of the Grievance Cell, impleaded as defendant No. 8, this Court finds that there is a prima facie case made out for deferment of the emergent AGM called on 11th December, 2020, wherein, election results will be formally announced.

10. Consequently, the defendant Nos. 3, 4 and 7 are restrained from holding the emergent Meeting to be held on 11th December, 2020 till the next date of hearing before this Court.

11. Copy of the order be uploaded on the website of this Court.

MUKTA GUPTA, J.

DECEMBER 10, 2020
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