

(2020) 10 DEL CK 0011
In the Delhi High Court
Case No : Civil Suit (OS) No. 158 Of 2020

Ashok Arora

APPELLANT

Vs

Supreme Court Bar Association & Anr

RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 227
Code Of Civil Procedure, 1908 — Order 23 Rule 1, Order 39 Rule 1, Order 39 Rule 2
Supreme Court Bar Association Rules, 2010 — Rule 12(h), 14, 14(2), 22, 35
Advocates Act, 1961 — Section 7, 7(1)(b), 7(1)(d), 36, 46

Citation : (2020) 10 DEL CK 0011

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Arun Batta, Neha Kumari, Abdul Vahid, Arvind Nigam, Ankit Banati, Rajdipa Behura, Preet Pal Singh

Judgement

Mukta Gupta, J

I.A. 5151/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. The plaintiff has filed the present suit inter alia seeking a decree of declaration declaring the resolution of the Executive Committee of defendant No.1 dated 8th May, 2020 whereby the plaintiff was suspended, as void ab-initio and ultra vires the Rules and Regulations of the defendant No.1 Supreme Court Bar Association (in short "SCBA") besides a decree of permanent injunction restraining the defendant No.1, its office bearers, employees from interfering in the functioning of the plaintiff as duly elected Secretary of defendant No.1, declaring that the Committee of three retired Judges constituted by the defendant No.1/SCBA is illegal and that the resolution of the Bar Council of India (in short "BCI"), defendant No.2 herein dated 10th May, 2020 be implemented in letter and spirit by defendant No.1.

2. By way of this application under Order XXXIX Rule 1 and 2 CPC the plaintiff seeks an interim injunction staying the operation of the resolution dated 8th May,

2020 of the Executive Committee of defendant No.1/SCBA in terms whereof the plaintiff was suspended from functioning as Secretary of the defendant No.1.

3. Plaintiff who appears in person contends that in terms of Rule-35 of the Supreme Court Bar Association Rules (in short "the Rules"), only the General Body of the defendant No.1 Association is competent to suspend or terminate the membership of a member of the defendant No.1 Association and thus the decision of the Executive Committee of the defendant No.1 Association suspending the plaintiff from the post of Secretary of the defendant No.1 Association is illegal and non-est. Further Rule-14 gives power to the President of the Association and in his absence the Vice President to preside over all the meetings and if any question arises with respect to any matter, not provided for in the Rules or in the by-laws made by the Executive Committee, such questions shall subject to provisions of these Rules, be decided by the President whose decision shall be binding unless the General Body of the members in a subsequent meeting otherwise decides. It is the case of the plaintiff that since the action of Executive Committee of the SCBA falls under Rule-35, Rule 14 has no application to the facts of the case. The petitioner also challenges the Coram of the Executive Committee which passed the impugned resolution on the ground that most of the members of the said meeting being interested parties, and the neutral members in the meeting dated 8th May, 2020 being less than five, their decision cannot be binding. Hence the decision of the Executive Committee of SCBA dated 8th May, 2020 is non-est in law. However, after some arguments, the plaintiff confines his arguments to the applicability of Rule-35 and states that the allegations and counter allegations between the parties cannot be gone into at this stage in this application seeking interim injunction. Reliance is placed on the decisions reported as AIR 1936 PC 253 Khwaja Nazir Ahmed vs. King Emperor and 1994 (1) SCC 1 S.P.Chengalvarya Naidu vs. Jagannath & Ors.

4. Supporting the contentions of the plaintiff, learned counsel for the Bar Council of India (BCI) states that BCI is the top regulatory statutory body which derives its powers and jurisdiction from the Advocates Act, 1961. Section-7 of the Advocates Act provides for the functions of the Bar Council of India and sub-sections-1(b) and 1(d) empowers the BCI to lay down standards of professional conduct and etiquette for advocates as also the power to safeguard the rights, privileges and interests of advocates. Further under Section 36 of the Advocates Act, 1961 BCI is empowered to take disciplinary action against an advocate who is found guilty of professional or other misconduct. BCI has also prepared "Rules on Professional Standards" to govern an Advocate's professional conduct in discharge of his duties as an advocate which he owes towards the court, the opposite counsel, the clients and fellow advocates. Therefore, if any individual or a Bar Association, collectively or their members individually or collectively violate the standards of professional conduct and etiquette or impinge or infringe on the right, privileges and interest of any advocate, BCI is empowered to regulate the same. It is further contended that BCI generally avoids interfering in the functioning of the affairs of any Bar Association but given the extreme

circumstances of the present case, BCI took notice of the complaints/events received by it and since the issue has a far reaching effect in relation to the working of the Bar Associations of the Country, took the conscious decision and passed the resolution dated 10th May, 2020. Reliance is placed on the decisions reported as 2003 (2) SCC 45 Ex.Capt. Harish Uppal vs. Union of India and 2020 SCC OnLine SC 244 District Bar Association, Dehradun vs. Ishwar Shandilya & Ors.

5. Rebutting the contentions of the plaintiff and learned counsel for the defendant No.2, learned counsel for the defendant No.1 contends that the provisions under the Advocates Act, 1961 empower the Bar Council of India to regulate the conduct of the advocates and State Bar Councils. The power under Section 7 (1) (b) and (1) (d) of the Advocates Act does not vest jurisdiction in the BCI to act as an appellate authority in relation to the individual grievances or issues of Bar Associations. Further the Bar Associations of various District Courts, High Courts or Supreme Court are independent bodies and their actions are not subject to the jurisdiction of BCI. The decisions relied upon by the learned counsel for the BCI in Capt. Harish Uppal (supra) and District Bar Association, Dehradun vs. Ishwar Shandilya (supra) have no applicability to the facts of the present case. In the said decisions, the Court was dealing with the issue as to whether the lawyers can go on strike and on merits the Court did not hold that BCI was the appellate authority of the various Bar Associations. Even under Section 46 of the Advocates Act, the Bar Council of India could at best issue directions to the State Bar Councils and not the various Bar Associations. Resolution of the BCI dated 10th May, 2020 is violative of the principles of natural justice, as before passing the resolution, the defendant No.1 Association was not heard nor was it represented. In case the plea of the BCI and the plaintiff is that the resolution dated 10th May, 2020 of the BCI is binding on the defendant No.1 Association, then the present suit is not maintainable as the plaintiff has already received the necessary decree/award/directions in his favour.

6. Refuting the arguments raised by the plaintiff, learned counsel for the defendant No.1 submits that the plaintiff is indulging in forum shopping. The plaintiff had first filed a writ petition before the Supreme Court and thereafter by filing an application withdrew the same. The ground taken for withdrawal of the writ petition in the application was that a Committee has been constituted by the defendant No.1 to look into the matter, that is, the complaints and counter complaints. Further the writ petition was withdrawn from the Supreme Court unconditionally, thus the same was an order under Order XXIII Rule 1 CPC. Reliance is placed on the decision reported as AIR 1987 SC 88: 1987 (1) SCC 5 Sarguja Transport Services vs. State Transport Appellate Tribunal, M.P. Gwalior & Ors. wherein it was held that on the same cause of action another suit/petition will not be maintainable. It is further contended that the suit filed by the plaintiff is barred by provisions of Specific Relief Act. Learned counsel for SCBA/defendant No.1 states that the issue which is raised in the present suit is a matter of internal management of an Association and no power is vested in the

BCI in the manner it has chosen to exercise. Hence the present suit is not maintainable even on the count seeking implementation of the resolution dated 10th May, 2020 of BCI.

7. The interim relief in the present application and the final relief in the suit are same and hence the interim relief sought cannot be granted unless the parties have led their respective evidence. The defence of the plaintiff is being looked into by a Committee constituted of three Hon"ble retired Judges, hence the decision on the disputes raised in the suit and the application will be taken by the Committee. Further the plaintiff has neither proved a prima facie case in his favour nor shown any irreparable loss. Balance of convenience also lies in favour of the defendant No.1. Hence no interim relief be granted.

8. Learned Senior Counsel for the SCBA further states that Rule-35 of the defendant No.1 Association relates to the suspension/termination of the membership of a member of SCBA whereas the present case relates to the working of the plaintiff as an office bearer of defendant No.1 Association. In its written statement defendant No.1 has clarified that the President convened the meeting under Rule 14 (2) and recused himself from the meeting. The plaintiff duly participated in the meeting and plaintiff's contentions and explanations have been duly noted in the minutes. Defendant No.1 Association passed the resolution dated 8th May, 2020 after ascertaining the views and explanation of the plaintiff. It is thus the case of the defendant No.1 Association that effective representation was permitted to the plaintiff and hence it cannot be alleged that the principles of natural justice were not followed.

9. Learned counsel for the defendant No.1 Association further states that since there is no specific provision in the Rules of the defendant No.1 Association with regard to the termination/suspension of an office bearer of the Association, the Court would look into the past precedences of the Association. It is stated that vide the minutes dated 14th December, 2011 the then President took up the matter in the Executive Committee and suspended the then Secretary of the defendant No.1 Association. Similar resolution was passed on 9th August, 2019 wherein due to the behaviour of the Secretary with the President, the Secretary was suspended and his jurisdictional powers were handed over to the Treasurer. In the absence of a specific provision this Court can base its decision on the past precedents.

10. Heard the plaintiff and learned counsels for defendant No.1 and 2.

11. Brief facts giving rise to the filing of the present suit and application are that according to the plaintiff after being elected for the third time as Secretary of the defendant No.1 Association on 13th December, 2019 he was taking active and effective steps in furtherance of the provisions and Rules of the defendant No.1 Association. On 19th March, 2020 the plaintiff received a requisition signed by more than 400 members of the defendant No.1 Association asking the plaintiff to convene a meeting in his capacity as Secretary of the defendant No.1

Association. On 21st March, 2020 the plaintiff informed the Executive Committee of defendant No.1 Association and the said requisition was posted in the whatsapp group of the Executive Committee. On 6th May, 2020 the plaintiff was constrained to take logical steps towards convening the emergent General Body Meeting in view of the requisition received by more than 400 members on 19th March, 2020. Since the plaintiff was pursuing the requisition signed by more than 400 members of SCBA, on 8th May, 2020 President of the defendant No.1 Association called a meeting of the Executive Committee. In the said meeting, vide the resolution qua agenda Nos.3 and 4 which related to the plaintiff and is impugned in the suit, plaintiff was suspended from functioning as Secretary of the defendant No.1 Association.

12. Pursuant to the resolution of defendant No.1 Association dated 8th May, 2020, the plaintiff made representation to the BCI on 10th May, 2020 which passed the resolution dated 10th May, 2020 on which the plaintiff relies and seeks implementation thereof. On 20th May, 2020 plaintiff filed a petition under Article 32 of the Constitution of India before the Supreme Court, however, on 8th June, 2020 the same was withdrawn in view of the subsequent events including the filing of the present suit and application. On 6th June, 2020 the plaintiff received another communication from the defendant No.1 Association informing that a Committee of three Hon"ble retired Judges has been constituted to hold an inquiry against the plaintiff in respect of the show cause notice dated 5th June, 2020. The plaintiff responded to the show cause notice dated 5th June, 2020 denying all the allegations being false and frivolous. However, thereafter the plaintiff in view of the fact that his term would expire on 11th December, 2020 has sought quashing of the impugned resolution dated 8th May, 2020 and implementation of the resolution of the BCI dated 10th May, 2020 in the present suit.

13. The minutes of the meeting dated 8th May, 2020 of the Executive Committee of SCBA read as under:

"MINUTES OF THE URGENT MEETING OF THE EXECUTIVE COMMITTEE HELD BY THE PRESIDENT OF THE SUPREME COURT BAR ASSOCIATION ON FRIDAY THE 8TH MAY 2020 AT 12.30 HOURS BY VIDEO CONFERENCING.

The following members were present for this Urgent Meeting:

1. Mr.Duashyant A. Dave, President
2. Mr.Kailash Vasdev Vice President
3. Mr.Ashok Arora Hony. Secretary
4. Mr.Rohit Pandey Joint. Secretary
5. Mr.Meenesh Dubey Treasurer
6. Ms.Shamshravish Rein Joint Treasurer

7. Ms.Pavani Mahalakshmi Senior Executive Member
8. Mr.Chander Uday Singh Senior Executive Member
9. Colonel R Balasubramaniam Senior Executive Member
10. Mr.Arijit Prasad Senior Executive Member
11. Mr.Anip Sachtey Senior Executive Member
12. Mr.Amarendra Kumar Singh Member-Executive
13. Ms. K.V. Bharathi Upadhyaya Member-Executive
14. Ms.Anjali Chauhan Member-Executive
15. Dr.Ritu Bharadwaj Member-Executive
16. Mr.Upendra Narayan Mishra Member-Executive
17. Mr.R.Anand Padmanabhan Member-executive
18. Ms.Alka Agrawal Member-Executive
19. Ms.Reena Rao Member-Executive
20. Ms.Prerna Kumari Member-Executive

****Mr.Adish Chandra Aggarwala sought leave of absence.**

RECORD OF PROCEEDINGS AND MINUTES OF THE MEETING

A special requisition seeking that an urgent meeting of the Executive Committee be convened at the immediate earliest was sent to the President and Vice President of the SCBA by seven members as follows:

"Request/Requisition to the President and Vice-President to call an emergency meeting of the Executive Committee, Supreme Court Bar Association, through video-conferencing, to consider the agenda and take suitable follow up action

To,

Shri Dushyant Dave, President.

Shri Kailash Vasdev, Vice President.

Dear Mr.President and Mr.Vice President,

We, the six undersigned members of the Executive Committee, consisting of three Office-Bearers and three Members, are sending in terms of Rule 12(h) of the SCBARULES 2010 (as amended) this requisition with a request to convene an emergency meeting of the Executive Committee immediately through Video conferencing mode to consider the following agenda:

Agenda No.1.

It has come to the notice of the members of the EC that Shri Ashok Arora, the Hony Secy, SCBA, has issued a notice dated 7th May, 2020 purportedly exercising and assuming power to himself under Rule 22 of the SCBA Rules *ibid*, convening a General Body Meeting on 11th May, 2020 to consider an alleged Requisition allegedly signed by 400 members/person for nullifying a validly passed EC Resolution dated 26th Feb, 2020 and for removing Shri Dushyant Dave from the post of SCBA, as well as from the Primary Membership of the SCBA. The Notice dated 07.05.2020 was never discussed in any meeting by the EC so far nor was it ever decided by the EC to issue any such notice. In fact, the notice allegedly signed and served by about 400 Members was also never discussed in the EC. Rule 22 empowers only "The Committee", i.e. the EC, to call a GBM upon requisition, and though the requisition is to be addressed to the Secretary, the Rule does not authorise or empower the Secretary to call such a GBM, and yet, without obtaining the approval of the EC, Shri Arora has caused havoc and consternation among thousands of SCBA members throughout the length and breadth of India by unilaterally calling this GBM.

Agenda No.2:

The EC should consider and decide to cancel the Notice dated 7th May, 2020 issued by Shri Ashok Arora in contravention of Rule 22 of the SCBA Rules, and to intimate all members of the SCBA that the alleged GBM shall not be held as the EC has neither had occasion to study or examine any requisition issued in February 2020, nor to determine whether such requisition is valid, proper, or worthy of consideration by the General Body, as required by Rule 22.

Agenda No. 3:

It has also come to the notice of some of the Member (s) of the EC that the conduct of Shri Ashok Arora as Secy has exceedingly become obstructive, abusive, and now indulging in destructive acts of commission and omission by him. He has failed in his primary duty of maintaining proper records and minutes of meetings and proceedings of the EC as mandated under the Rules; he has resorted to highly objectionable, unparliamentary language, and even outright abusive language primarily against the President, but occasionally against some of the other office bearer/other EC members too; time and again when his actions have been found wanting by an office-bearer or member, he has retaliated by threatening criminal prosecution or removal from the EC, and on one occasion unilaterally issued as "show cause notice" to the Treasurer; he has frequently taken far-reaching actions *suo moto*, unilaterally, and without even consulting the EC or obtaining EC approval; he has sought to disown EC Resolutions after they are passed, even though they were issued under his own signature; he has obstructed the farewell Function for a highly respected Judge of the Supreme Court, organised under difficult circumstances during the lockdown period, not only by indulging in violent abuse and threats against the President and Vice President, but even by telephoning the Hon'ble retiring Judge in order to try and disrupt the Function; on one occasion when the Lecture

Committee organised a Lecture by Justice Deepak Gupta, which was entirely organised and paid for the Lecture Committee without seeking any funds from the SCBA, Shri Arora misused the courtesy shown to him as Secretary and launched a verbal tirade against the President and Vice-President from the Podium, causing immense embarrassment to the audience and especially to the Chief Guest Justice Gupta and the Attorney General for India, Shri KK Venugopal.

Agenda No.4

In the light of the above is it not imperative to immediately suspend Shri Ashok Arora from discharging the duties of Hony Secy SCBA and consider vesting all functions and powers of the Honorary Secretary as a pro term measure upon the Joint Secretary, with intimation and information to all authorities and bodies concerned.

Agenda No.5

To consider conducting a one man enquiry to investigate the acts of commissions and omissions resorted to by Shri Ashok Arora and thereafter place the matter before the EC in order to take further necessary action as may be warranted.

Agenda No.6

Any other matter incidental thereto with the permission of the Chair.

In view of the above and considering grave urgency and sensitivity of the matter we, the undersigned in our capacity as EC Committee Members invoking the power under Rule 12 (h) of the SCBA Rules 2010 as amended hereby give notice for immediate convening of emergent meeting of EC.

Thanking you.

Mr CU. Singh Mr Col. Balasubramanian Mr.Anand R Padamnabhan

Mr.Rohit Pandey Ms Ritu Bhardwaj Ms.Shamsravish Rein Mr. Meenesh Dubey"

On receiving the aforesaid requisition the President invoking Rule 14 of the Supreme Court Bar Association Rules (SCBA) gave due notice for convening an Urgent meeting of the Executive Committee to be held by video conferencing on Friday 8th May 2020 at 12.30 hours.

The meeting was called to order after confirming that the Chair and each member present was audible and understood video functioning.

After calling the meeting to order, the President recused himself as the issues raised in the Agenda were directed at him.

The vice President was asked to preside over the meeting.

There was no objection from the members.

The Vice President then presided over the meeting.

The Agenda was read out by the Chairman.

After reading out the proposed Agenda, members were asked to have their say on each Agenda where after the Agenda was put to vote.

Agenda Item No: 1 and 2:

Both these were taken up together. Mr. Ashok Arora and some members made their address. They were heard. The EC discussed items 1 and 2 on the agenda at length and heard the views and counter views (from Shri Arora). Members were of the view that the Hony. Secretary should have informed the Committee before calling a special meeting of the SCBA more so when the Requisition had been received by him in physical form and was available with him since the third week of March 2020. Further that the Hony. Secretary could not have called the Special Meeting of the Association without the concurrence of the EC.

After hearing all members in great detail it was RESOLVED by majority of members present and voting to declare that the notice dated 7th May, 2020 issued by Shri Ashok Arora purporting to act under 22 of the Rules was illegal and unauthorised as the EC alone has power to call any EGM/AGM and consequently resolved to cancel the EGM called on 11th May 2020 under the said notice and to inform the Distinguished Members of the SCBA accordingly.

Agenda 3 and 4 were then taken together for consideration by the members. Mr. Ashok Arora objected to the said agenda being taken up and or being framed. Members of the Committee were given full opportunity to put forth their views. The EC discussed these items dispassionately and seriously at great length, allowing full and proper opportunity to all Members including Shri Ashok Arora to put their view points. When the agenda were put to vote, the majority of the members after extensive debate resolved to approve agenda item 3 and 4.

Resolved by majority of the members present and voting that in view of the serious misconduct and act of indiscipline and unauthorised acts by Shri Arora as prima facie indicated in the notice calling for the meeting of the EC Shri Arora be suspended as the Hony Secretary of the SCBA and divested of his powers as the Secretary with immediate effect. It was further resolved that Shri Rohit Pandey, Joint Secretary would discharge all functions of the Secretary with immediate effect in consultation with the President of the SCBA.

It was further RESOLVED that Shri Pandey would discharge all duties, functions and obligations of the SCBA including and not limited to operating bank accounts, signing all documents, notices, pleadings on behalf of the Supreme Court Bar Association. Due intimation and information of this resolution be sent to all authorises concerned.

Agenda Item: No:5: Thereafter agenda Item 5 was taken up by inviting the views of the members. Majority of the members were of the view that any enquiry into the matter as mentioned should be held by a Committee to be constituted by Three independent persons. They suggested an amendment to the

proposed agenda by changing the constitution of the Enquiry Committee. This amendment was accepted.

The majority of the members present and voting RESOLVED that an enquiry to investigate into the acts of commission and omission by Shri Ashok Arora be conducted by a Committee of three members to be nominated by the President in consultation with the EC and thereafter the report of the enquiry be placed before the EC for taking necessary action as may be warranted.

The President abstained from voting. The Vice president did not cast his vote as he chaired the meeting.

The meeting ended with a vote of thanks to the Chair.

08.05.2020

New Delhi

sd/-

Kailash Vasdev

Vice President

Chairman of the Meeting."

14. Learned counsel for the defendant No.1/SCBA has objected to the maintainability of the present suit on the ground that the same is barred under Order XXIII Rule 1 CPC and relies upon the decision of the Supreme Court in *Sarguja Transport Services (Supra)*. The plaintiff had filed a writ petition before the Hon"ble Supreme Court inter alia seeking quashing of the resolution dated 8th May, 2020 of the Executive Committee of the defendant No.1 in terms whereof the plaintiff was suspended as Secretary of the Association, as void ab-initio and ultra vires the Rules and Regulations of the defendant No.1 Association along with directions to reinstate the plaintiff as the Secretary, SCBA for the remaining term for which he was elected. Before the said Writ Petition under Article 32 of the Constitution of India could be listed the plaintiff filed an application seeking withdrawal of the said writ petition on the ground that after the filing of the writ petition the defendant No.1 has issued the show cause notice to the plaintiff and has constituted a three member Committee. Therefore, the plaintiff sought to appear before the Committee and sought permission to withdraw the writ petition. However, before the said application was listed, the plaintiff filed the present suit and hence the plaintiff withdrew the writ petition on the ground that a suit had been filed. The present suit would not be barred on the ground that the plaintiff having withdrawn the earlier proceedings under Order XXIII Rule 1 CPC without leave of the Court to file the present suit as the plaintiff withdrew the writ petition before the Hon"ble Supreme Court before it could even taken up for hearing. Even in *Sarguja Transport Services (supra)* relied upon by learned counsel for SCBA it was held that where a petitioner withdraws a petition in the High Court under Articles 226/227 of the Constitution

of India without permission to institute a fresh petition, remedy under Articles 226/227 of the Constitution of India would be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition, however, the remedies like filing of a suit or a writ petition before the Supreme Court under Article 32 of the Constitution of India would remain open to him. In the present case the plaintiff has not resorted to filing a fresh writ petition having withdrawn the earlier one without leave of the Court and has filed the present suit though for the same cause of action and is thus maintainable.

15. While addressing arguments in the application plaintiff has based his submission on Rule-35 of the SCBA Rules and stated that resolution dated 8th May, 2020 is contrary to and violative of Rule-35 of the SCBA Rules. Rules of the SCBA relevant for the decision of this application being Rules-12, 14 and 35 are reproduced hereinafter:

"12. MEETINGS The Committee shall ordinarily meet at least once every three months for dispatch of business. The Committee shall subject to the control of the Members in the General Meeting assembled, have the following powers: a) To maintain such establishments and staff for the Association as may be required from time to time. b) To appoint or suspend, dismiss or remove any member of the staff of the Association. c) To determine and regulate the remuneration and conditions of the services of the staff of the Association. d) To spend within the budgeted provisions such monies for the purposes of the Association as may be required from time to time. e) To make such bye-laws and regulations as it may consider necessary or expedient to carry out the aims and objects of the Association. Such bye-laws and regulations shall, however be submitted for the approval of the members of the Association in the next General Body Meeting. f) To report to the General Body Meeting about its activities and the activities and work done by other committees at least once every year. g) Re-constitute all committees at least once every year other than those that may have been elected by the members assembled in General Body Meeting. h) The Committee shall normally transact its business by resolutions passed by the majority of the members present and voting. In case of equality of votes the President shall have a casting vote. It shall be open to the Committee to transact its business and to pass resolutions by means of circulars provided that if any 3 members of the committee 6 desire a particular matter to be brought in a meeting of the Committee such a matter shall be transacted in a meeting of the Committee.

14. OFFICE BEARERS PRESIDENT (1): The President of the Association and in his absence the Vice-President shall preside at all meetings of the Association and of the Executive Committee or other committees. In the absence of the President or the Vice-President the members present shall elect one of them to preside over a meeting. (2) If any question arises with respect to any matter not provided for in the rules or in the bye-laws made by the Executive Committee, such question shall, subject to the provisions of these rules, be decided by the President whose decision shall be binding unless the General Body of the members in a

subsequent meeting otherwise decides.

35. COMPLAINTS

Regarding Members: (i) On the receipt of a written complaint from any person as to unprofessional or improper conduct on the part of any Member, the Secretary shall place it before the President, and if the President of opinion that it merits consideration, the Secretary shall call a meeting of the Committee as expeditiously as possible. (ii) The Committee or the Sub-Committee constituted by it generally for the purpose of this rule or especially for any particular case will hold an inquiry into the complaint. If on consideration of its own findings or of the Report of Sub-Committee, the Committee is satisfied that there is a prima facie case against the Member complained against it shall direct that the Complaint together with the report of the Committee or Sub-Committee be placed before a General Meeting of the Association. Provided always that where a prima facie case is made out against the Member complained the Committee or Sub-Committee shall give such Member reasonable opportunity of being heard in person. (iii) The Association may by a resolution passed at such meeting expel or suspend for a specific period the Member complained against, if in its opinion he is guilty of dishonorable conduct. Such Resolution shall be voted up by ballot and shall be considered to be passed if supported by not less than 2/3rd of the Members present and voting at such meeting. Provided always that before such resolution is passed the member concerned shall be given reasonable opportunity of being heard in person before the ballot by the General Meeting. (iv) A copy of resolution shall, if the General Meeting so decides be forwarded to the Secretary of the All India Bar Council or the Bar Council where such Member may be enrolled.

16. As noted above, Rule-35 of the SCBA Rules relates to the suspension or expulsion of a member of the SCBA as member of the said Association. Rule-35 of the SCBA Rules has no application to the suspension/termination of the status/position of a member of SCBA as an office bearer of its Association. Vide the impugned resolution dated 8th May, 2020 the plaintiff has not been either suspended or expelled as member of the SCBA. The plaintiff continues to be the member of SCBA and by the impugned resolution has been directed to not act in his capacity as the Secretary of the SCBA. Since Rule-35 of the SCBA Rules has no application to the facts of the present case, the residuary Rule applicable would be Rule-14 under which the resolution has been passed by the Executive Committee of the SCBA.

17. By the present suit the plaintiff seeks a decree of declaration and mandatory injunction and in the present application the prayer seeking stay of the operation of the resolution dated 8th May, 2020 is also in the nature of interim mandatory injunction, thereby seeking a status-quo ante position. Dealing with the relief of grant of mandatory injunction, Supreme Court in the decision reported as 1990 (2) SCC 117 *Dorab Cawasji Warden vs. Coomi Sorab Warden & Ors.* laid down the principles as under:

10. The trial court gave an interim mandatory injunction directing respondent 4 not to continue in possession. There could be no doubt that the courts can grant such interlocutory mandatory injunction in certain special circumstances. It would be very useful to refer to some of the English cases which have given some guidelines in granting such injunctions.

11. In *Shepherd Homes Ltd. v. Sandham* [(1970) 3 All ER 402: (1970) 3 WLR 348] Megarry J. observed:

"(iii) On motion, as contrasted with the trial, the court was far more reluctant to grant a mandatory injunction; in a normal case the court must, inter alia, feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted; and this was a higher standard than was required for a prohibitory injunction."

12. xxx xxx xxx

13. xxx xxx xxx

14. xxx xxx xxx

15. In one of the earliest cases in *Rasul Karim v. Pirubhai Amirbhai* [ILR (1914) 38 Bom 381: 16 Bom LR 288: 24 IC 625], Beaman, J. was of the view that the courts in India have no power to issue a temporary injunction in a mandatory form but Shah, J. who constituted a bench in that case did not agree with Beaman, J. in this view. However, in a later Division Bench judgment in *Champsey Bhimji & Co. v. Jamna Flour Mills Co. Ltd.* [(1914) 16 Bom LR 566: 28 IC 121] two learned Judges of the Bombay High Court took a different view from Beaman, J. and this view is now the prevailing view in the Bombay High Court. In *M. Kandaswami Chetty v. P. Subramania Chetty* [ILR (1918) 41 Mad 208: 1917 MWN 501: 41 IC 384], a Division Bench of Madras High Court held that courts in India have the power by virtue of Order XXXIX Rule 2 of the Code of Civil Procedure to issue temporary injunctions in a mandatory form and differed from Beaman J.'s view accepting the view in *Champsey Bhimji & Co. v. Jamna Flour Mills Co.* [(1914) 16 Bom LR 566: 28 IC 121] In *Israil v. Shamser Rahman* [ILR (1914) 41 Cal 436: 18 CWN 176], it was held that the High Court was competent to issue an interim injunction in a mandatory form. It was further held in this case that in granting an interim injunction what the court had to determine was whether there was a fair and substantial question to be decided as to what the rights of the parties were and whether the nature and difficulty of the questions was such that it was proper that the injunction should be granted until the time for deciding them should arrive. It was further held that the court should consider as to where the balance of convenience lies and whether it is desirable that the status quo should be maintained. While accepting that it is not possible to say that in no circumstances will the courts in India have any jurisdiction to issue an ad interim injunction of a mandatory character, in *Nandan Pictures Ltd. v. Art Pictures Ltd.* [AIR 1956 Cal 428], a Division Bench was of the view that if the mandatory injunction is granted at all on an interlocutory

application it is granted only to restore the status quo and not granted to establish a new state of things differing from the state which existed at the date when the suit was instituted.

16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

18. Considering the fact that the plaintiff basis his case on the violation of Rule-35 of the SCBA Rules and as noted above by this Court, the case of the plaintiff is not covered by Rule-35 of the SCBA Rules and hence the plaintiff having not made out a prima facie case much less a strong prima facie case, this Court finds no merit in the application. Plaintiff has also relied on the decision in the case of Khwaja Nazir Ahmed (supra) wherein the Privy Council held that an act can be performed in the manner prescribed and in no other manner. As noted above Rule-35 of the SCBA Rules having no application to the facts of the case defendant No.1 Association has proceeded under Rule-14.

19. Plaintiff has also contended that the Coram of the Executive Committee which passed the impugned resolution was incomplete and thus not binding. Case of the plaintiff is that since seven members of the Executive Committee were interested for the reason the requisition to the President was made by these seven members, they being non-neutral members, their voting should not

be counted. The plaintiff has not been able to point out any Rule of the SCBA that participation of the members who have moved the issue before the Committee for noting would vitiate the said resolution. This argument of the plaintiff prima facie cannot be accepted as merely because various office bearers take stands on various issues their right to vote and participate in the meeting cannot be taken away.

20. In *S.P.Chengalvarya Naidu* (supra) relied upon by the plaintiff Supreme Court noted that a person, whose case is based on falsehood, has no right to approach the Court and he can be summarily thrown out at any stage of the litigation. It was also held that a litigant who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation and if he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. In the present case defendant No.1 has filed no pleadings where facts have been concealed. If the allegations of the plaintiff are that the acts of some of the members of the Executive Committee of SCBA are mala fide then the said allegations are required to be raised specifically and parties against whom mala fides are alleged are required to be impleaded as defendants in the suit. The seven members of the Executive Committee have not been impleaded as parties.

21. Since at this stage this Court is only required to take a prima facie view, this Court finds that the plaintiff has not made out any prima facie case in his favour for grant of injunction as prayed for. Application is dismissed.