

(1984) 07 CAL CK 0018

In the Calcutta High Court

Case No : Appeal No. 128 of 1982 and Matter No. 326 of 1982

Ashoke Kumar Daw and Another

APPELLANT

Vs

Gobinda Chandra Dev and Others

RESPONDENT

Date of Decision : 02-07-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 2, 96, 99
Contract Act, 1872 — Section 202

Citation : AIR 1984 Cal 337

Hon'ble Judges : U.C. Banerjee, J; M.N. Roy, J

Bench : Division Bench

Advocate : Prodesh Mullick, Sudipta Sarkar, for the Appellant; Javanta Mitra, (for Nos. 1-16 and 18-21), Som Nath Chatterjee, (for No. 17), for the Respondent

Final Decision : Dismissed

Judgement

M.N. Roy, J.—The Respondents in this proceeding, are the members of Mohan Bagan Athletic Club and the office-bearers of the same. They convened a Special General Meeting of the club. for amending the Rules for the purpose of increasing the subscription. The appellants, who are also the members of the club, filed Title Suit No. 551 of 1982. before the learned 8th Bench of the City Civil Court at Calcutta, for the following prayers;--

(a) A decree of declaration that the defendants have no right to convene any meeting for the amendment of the Club Rules of Mohan Bagan Athletic Club or Special General Meeting to be held as published in the Amrita Bazar Patrika on 22-3-1982. as their right to remain in office expired in 1980.

(b) A decree" of declaration that the defendants" occupation as office-bearers and the members of Executive Committee of the Club on the expiry of Dec. 1979 and/or expiry of April 22. 1980 are illegal and they have no right under the Rules of the said Club to function as office bearers and as members of the Executive Committee,

(c) Permanent injunction restraining the defendants from acting and/or functioning as office bearers and members at of the Executive Committee of the Club and/or holding the election of the Club

(d) Permanent injunct'on restraining the defendants and/or their agents and/or their employees from taking step or Steps for holding any meeting for amending the rules of the Club till fresh Executive Committee members are elected according to law.

(e) Administrator and/or Receiver be appointed for the purpose of running the management and administration of the Club.

(f) Receiver.

(g) Temporary injunction.

(h) Cost of the suit.

(i) Leave under Ordr 1 Rule 8 C. P. C.

(j) and such and further order or orders as your Honour may deem fit and proper, against the Respondents herein.

2. In that Suit, the right of the Respondents to amend the Rules of the Club was challenged and it was also claimed that those Respondents have no right to continue as office bearers of the Club.

3. In the Suit, the appellants also filed an application. praying amongst others, for an order of iniunction restraining the respondents herein, not to give effect to any amendment and such application was allowed on 29th March 1982. It has been stated that thereafter. the appellant No. 1 and not the appellant No. 2. was served with a notice at about 2 P. M. on 6-4-1982. from Messrs. Dutt & Sen. Solicitors for the Respondents herein, for moving an application under Clause 13 of the Letters Patent, for transfer of the concerned Suit u/s 24 of the Civil P. C. The, appellants have stated that because of the shortness of time it was not possible for the appellant No. 1 to attend the Court of D. K. Sen. J.

4. It has been stated that in fact on the date as mentioned above. D. K. Sen. J. issued a Rule and Wanted an order staving the hearing of the Suit in question apart from staying the operation of the said Order dated 29-3-1982. It would appear from a reference to the said order dated 6-4-1982 as made by D. K. Sen. J. that the learned Judge recorded an undertaking from the Respondents herein to the effect that the difference of the subscription, if collected at the new rate, should be kept in a separate account. subject to further orders of the Court.

5. Against such order, the appellants herein, on 21-4-1982. preferred an appeal and white admitting the same, the Appeal court directed that the interim order made by the learned Trial Judge will continue with this addition that the Respondents to the application will be at liberty to collect the proposed enhanced subscription and the difference between the subscription at the old rate and the

subscription at the new rates will be separated and handed over to Mr. Abhijit Deb of M/s. Dutt & Sen, who is appointed Receiver without security and without remuneration for this limited purpose and he will keep the said sum invested in one of the Nationalised Bank in Savings Account. The difference between the subscription at the old rate and the new subscription proposed which has already been collected by the Club will also be made over to the said Receiver and he will also deposit the same in the Savings Bank Account to be opened by him in any Nationalised Bank and in case the appellants succeed, the difference so collected will be refunded to the members with proportionate interest accrued there in. The Appeal Court was constituted by Sabyasachi Mukharji and Suhas Chandra Sen. JJ.

6. The order as indicated above, was varied on 27th May 1982 by the same Bench as indicated above and it was directed that "50% of the excess subscription realised by the Receiver, pursuant to the previous order may be handed over to the Executive Committee of the Club, whose validity or legal competence are not admitted at this time. for the purpose of meeting the immediate needs for disbursement for running of the club. The Executive Committee would give an account of the amount received and how it has been spent to the Receiver who will forward a copy of the same to the appellant. This order is made on condition that in case the appellants succeed in the suit, the excess amount would be either adjusted against future subscription or refunded by the persons who ever be in the executive committee. It was also directed. having regard to the urgency of the matter, the parties would be at liberty to pray for an early hearing before the learned Trial Judge. The Appeal Court made it clear that the order, as made. was only tentative and for immediate running of the business of the Club and that was no indication of the right of the Executive Committee to realise excess amount. The learned Judge will be free to decide such question, taking into consideration all contentions of the parties. In order to help expeditious hearing of the matter before the learned Trial Judge affidavit-in-opposition to the application before the learned Trial Judge was directed to be filed by 8-6-1982 Affidavit-in-reply to be filed by 16-6-1982 and the parties were given liberty to pray for an early hearing before the learned Trial Judge, if they think the same to be fit and proper. It was also recorded that in view of the above order, both the parties agreed that the appeal may be treated as on day's list and disposed of on those terms and the matter may be heard afresh by the learned Judge, In view of the order made as above, an undertaking given on behalf of the petitioners for filing of Paper Book was discharged. The Receiver and all parties were directed to act on the signed copy of the minutes". It has been stated that even thereafter, on prayers of the Respondents herein, on 23-6-1982. there was a further clarification made by the same Bench to the effect that the order dated 27-5-1982 is modified to the extent only, that 50% of the excess subscription realised and to be realised by the Receiver. pursuant to the previous order, may be handed over to the Executive Committee of the Club. whose validity or the legal competence are not admitted at this time, for the

purpose of meeting the immediate needs of disbursement for running of the Club. If any member is willing to Day half yearly subscription at the enhanced rate. the same apportionment would be done for handing over the sum to the Executive Committee by the Receiver as directed hereinbefore. It was made however, clear that the same apportionment will apply in respect of all receipts of subscription: and it was directed that the rest of the order dated 27-5-1983 will stand, by the same Bench and then again on 14-10-1982. on mentioning by the Respondents, it was directed that the previous order dated 23-6-1982 be modified to the extent that in respect of the excess subscription realised, amounting to approximately Rs. 2,20,000/- the Receiver, after keeping a sum of Rs. 75,000 in his hand, will hand over the balance sum to the Executive Committee, Such order was made without prejudice to the rights and contentions of the parties and upon the undertaking given by the learned Counsel on behalf of the Executive Committee, that in case it is ultimately held by the Court that the increase in subscription of the members was not either proper or legal Executive Committee will refund the amount to the credit of the members by way of adjusment who will insist on refund of the enhanced payment of subscription. The Court also recorded that the learned Advocate on behalf of the appellant stated that in this regard he had no instruction from his client. It was also directed that the Receiver and all parties should act on a signed copy of the minutes". This order was also made by that Bench and by a further order made on 15th Oct. 1982. the same Bench, further directed that before handing over the extra amount which is mentioned in the order dated 14-10-1982 the Receiver should ensure whether the accounts directed by the previous order dated 27-5-1982 have been furnished to the appellant. If the said account have not been furnished, the additional money should not be handed over to the Executive Committee in the manner indicated in the order dated 14-10-1982 until such accounts are furnished. It was also directed that the complete account of the additional amount which was sanctioned by the order dated 14-10-1982 should be sent indicating therein how and in which manner the amount is spent, to the appellant's Advocates on record within 3 weeks of its spending.

7. It would appear, that in pursuance to the order as indicated above. Mr. Abhiit Deb. the learned Receiver, along with his letter dated 19-10-1982. forwarded an account to the Advocate for, the appellants. Such account has of course been claimed to be a purported and not a proper one. The validity of such account has further been contradicted and it has also been claimed that the same was not in consonance with the directions contained in the orders as indicated hereinbefore. It was the further case of the appellants that by a letter of 2nd May 1983. their Advocate on record. Mr. P. N. Mukheriee objected to such account and claimed that the same to be an incomplete one. It has also been stated that on the same day, the said learned Advocate of the appellants, addressed other letters to M/s. Dutt & Sen and also to the said Mr. Deb calling upon them, to act in accordance with the orders as made by the Court. It was the further claim and contentions of the appellants that in terms of the orders as indicated above, the appeal was

finally disposed of and the entire matter was left to the discretion of the learned Trial Judge and to be decided and determined in the suit, which was expressed to be disposed of expeditiously. It has further been alleged that by 3 letter of 13-5-1983. the learned Advocate for the appellants informed their adversary, that in spite of the earlier letter of 2nd May 1983. no steps were taken to furnish the complete account. It was also and the specific contentions of the appellants that both the said Mr. Deb. the learned Receiver and the Respondents in this appeal, have deliberately flouted and violated the orders of 27th May 1982 and 15-10-1982. as passed by the Court and since no satisfactory answer to the queries as indicated hereinbefore, was received by the appellants" Advocate on record viz.. the said Mr. P. N. Mukherjee. he was asked to take appropriate action in the matter and as such, on 29-6-1983. a letter was addressed to M/s. Dutt & Sen and another to the said Mr. Abhiit Deb. regarding the things that have happened and the allegations as indicated hereinbefore.

8. It has been stated that thereafter, the matter was mentioned before Pyne and Suhas Chandra Sen. JJ. on or about 11-8-1983 or at that time the appellants came to know for the first time about the order dated 6-5-1983. which records . that by consent of the parties no further deposit need be made with the Receiver. The appellants have stated that they were surprised to know about the said order dated 6-5-1983 and it was their case that they were not aware of that order and the same was contrary to all the earlier orders passed by the Appeal Court, whereby the Appeal Court was pleased to give certain interim reliefs to the Respondents herein and that order was obtained on the plea that otherwise the Club would be facing great financial difficulties during the current football season and it has been stated that in such order, it was made clear that though the Court had allowed the Respondents to use the excess subscription due to financial stringency during the current football season, the validity of such right to use. would be determined by the Trial Court and on that basis the appeal was disposed of in the manner as stated hereinbefore. In fact. Mr. Mullick contended, that was the impact of the earlier orders as indicated hereinbefore.

9. It has now been stated, on necessary enquiries from their Advocate on record. Mr. P. N. Mukherjee. the appellants have come to know that one -notice dated 5-5-1983. from M/s. Dutt & Sen was sent to him for mentioning the matter before pyne and Suhas Chandra Sen. JJ. on 6th May 1983 and on that date, on mentioning and representations made by the Respondents herein to the effect, that unless the order as indicated hereinbefore. was made. Mohan Bagan Athletic Club would be put in serious financial difficulties. such order was made." It has been stated that Mr. P. N. Mukherjee. the learned Advocate on record of the appellants, without realising the effect of such order and the further effect of the same on the earlier orders had consented in having the same passed. A letter dated 15-7-1983. from the said Mr. P. N. Mukherjee has been relied upon by the appellants, for the purpose of establishing such fact and also for establishing the fact that since Mr. P. N. Mukherjee was pre-occupied with other matters and actually had forgotten about the matter, which was disposed of as far back as on

15-10-1982. gave his consent and reallv. he gave such consent on relying upon the assurances of the Respondents that no harm would be done to the appellants herein, if he had consented to such proposal. The letter of the said Mr. P. N. Mukherjee has been disclosed as Annexure "M" to the application and the same is quoted hereunder:--

Phanindra Nath

Mukherjee,

Solicitor & Advocate,

7, Old Post Office

Street, Calcutta.

Date 15-7-88

To

Shri Asoke Kumar Daw,

Shri Madan Saha.

Dear Sirs,

On ??????

Yourselves

-Versus-

Gobinda Chandra Dey

Sri

of M/s. Dutt & Sen personally requested me to come to the Court of Hon'ble Mr. Justice R. N. Pyne and Hon'ble Mr. Justice Suhas Chandra Sen. as they wanted to mention the matter before their Lordships for modifying the previous order so that no further deposit in terms of the previous orders to the Receiver would be necessary to make. They represented that unless such an order was made the Mohan Bagan Club would be in serious financial difficulty. The matter was thereafter mentioned before their Lordships and I consented to it. At that time I was pre-occupied with other matters and could not apply my mind to this matter and also I had forgotten about the matter which was finally disposed of as far back as 15-10-1982. I also completely relied on the assurance of the other side that no harm would be done to my client if I also had no time to look into the papers to refresh my memory. I now realise that the consent order takes away the very substratus of the previous orders which you obtained after so much fighting. I (am) extremely sorry and I apologise for what has happened. I now realise that I should not have given consent in such a matter without first consulting you.

Yours faithfully. Sd/- P. N. Mukherjee.

The appellants have claimed that in view of the facts as disclosed and enuereated hereinbefore, such order of 6th May 1983. was obtained by the Respondents, without placing the correct facts before the Hon'ble Court and since the Court had. in fact, disposed of the appeal earlier and made the position clear by the orders as indicated hereinbefore, such order dated 6-5-1983. which virtually gave a go-by to the earlier orders, should not have been passed and in fact, the same was not authorisedly passed. In fact it has been claimed that the subsequent order dated 6-5-1983. in view of the earlier orders, was without iurisdiction. as the subsequent Appellate Bench had no jurisdiction. authority and competence to pass an order, which would affect the rights of the parties in the pending interlocutory application as well as in the suit. It was the categorical assertions of the appellants that they were completely unaware of the said order of 6th May 1983 till 11-8-1983. when the same was disclosed to them in Court. They have further claimed that the order of 6th May 1983. was obtained by the Respondents, by misleading the Court as well as the Advocate on record. In such circumstances, it has been claimed that the order of 6-5-1983. should be recalled and directions should be given to the learned Trial Judge, to go into the matter and "to act in accordance with terms of the orders, as passed earlier,

10. The Respondent No. 1. Gobinda Chandra Dey. by his affidavit-in-opposition dated 28-11-1983. apart from denying the material allegations in the application, claimed that before mentioning the matter before D. K. Sen. J.. due notice was given. It was also his case that the Respondents have right to collect subscriptions at the enhanced rate. It has been stated that the orders in the instant case, have been passed duly and the Respondents and the said Mphan Bagan Athletic Club have acted in strict compliance of those orders. It has been stated that in pursuance of the order dated 14-10-1983 a cheque was issued by Mr. Abhijit Deb in favour of the Club, which he as Treasurer of the same, duly deposited in the Bank. It has been claimed that the deponent and his Club had no knowledge of the order dated 15-10-1983 until this application was made and it was also his case that he has come to know from his learned Counsel, who appeared before the Appeal Court on 15th Oct. 1982, when the said order was passed, that on that day the Court was closing for the long vacation and at about 1 P. M. the learned Advocate for the appellants herein, requested him to go to the concerned Appeal Court, as they would like to have slight variation of the said order of 14-10-1983. It has been stated that as the Court was closing for the long vacation, on mentioning the matter by the learned Advocate for the appellants, just before the rising of the Court. some order of variation was made, even though the learned Advocate for the Respondents herein, intimated that since no notice was served, he had no instructions in the matter. It has also been stated by the deponent that the said order, directed that the Receiver and all parties to act on a signed copy of the minutes and the learned Counsel expected that the learned Advocate for the appellants herein, would take immediate steps to serve a signed copy of the minutes of the concerned order of

15-10-1982. on the Respondents or their Advocate on record. but strangely enough. no information of that order, either by way of serving any minutes or otherwise, was given by the appellants herein, or their Advocate on record to any of the adversaries including the Respondents. In such circumstances, the deponent has stated that the Respondents herein, were totally unaware of that order of 15-10-1982 and in the meantime the concerned payment was made on 15-10-1982 by the learned Receiver to the Club and such payments have been appropriated by them in terms of the order as indicated above. It was the further case of the deponent that his Club, from time to time, duly furnished accounts to the petitioners' Advocate on record- In short and the categorical submission of the deponent was that the order dated 15-10-1982 was never brought to the notice of Mohan Bagan Club or its authorities or their Advocate on record nor any signed copy of the minutes thereof, was served either on the Club or their Solicitors. The deponent has further alleged that no attempt was even made to obtain a signed copy of the minutes of the concerned order. The allegations regarding the validity of the accounts as filed. have been denied. It has further been stated categorically that the account as filed, was the proper account of the Club, during the concerned period and the same has also depicted duly, the amounts that were received and what amount was spent. The deponent has further stated that after leaving a balance of about Rs. 75,000/- with him. the learned Receiver has handed over to the Club the balance. This fact has also been corroborated by the learned Receiver.

11. The deponent has also claimed that perhaps the learned Receiver was not also aware of the order of 15-10-1982 and as such, he acted on the basis of the earlier order of 14-10-1982. This was also supported by the statements of the learned Receiver. The validity of the allegations regarding the way and the manner in which Mohan Bagan Athletic Club has said to have spent the amount as received has been denied and it has been stated that all payments have been duly made for the benefit of the Club.

12. The deponent has accepted the position that a letter of 2-5-1983. was received by Abhijit Deb from Mr. P. N. Mukherjee. the learned Advocate of the appellants on record. This letter has been claimed, not to have been sent to the other Respondents or their authorised agents. It has been pointed out that in the first of the two letters dt. 2nd May 1983. from Mr. P. N. Mukherjee. nothing has been mentioned about any order having been passed on 15-10-1982. but in the second letter of that date, there has been a mentioning of such an order of 15-10-1982. and as the signed copy of the order dt. 15-10-1982 was not served with the letter of 2nd May 1983 and the Club and its authorities were not aware of such order, for the circumstances as mentioned hereinbefore, the allegations of mala fide use of power or the allegations as contained in the application, have been denied.

13. The accounts as submitted, have been claimed to be due and complete. It has been denied that the receiver or the respondents or any one of them have

deliberately or at all violated any of the orders of this Court and it was the categorical assertions of the deponent that complete accounts have been sent along with the necessary statements of expenditure to the appellants herein, in terms of the order as indicated above. It has been claimed that since the order of 6th May 1983. was obtained after due notice to the learned Advocate for the appellants, they would not be justified to say that they had no knowledge of such order and more particularly when, the same was made by this Court in the presence of their authorised representative Mr. P. N. Mukherjee and with his consent. The statements that such order has been made contrary to all or any of the orders of the Court as passed earlier, have been denied. The deponent has stated that it is difficult to believe that the learned Advocate on record of the appellants viz. Mr. P. N. Mukherjee consented to the said order of 6th May 1983 being passed, without instructions from his clients or in any event he will not inform or has not informed the appellants, the terms of the said order, for about three months after the same was passed. Such order, according to the deponent. was passed by the learned Appeal Court, on the representations that the Club would require fund for the purpose of meeting the liabilities including making of payments to the soccer players. particularly in view of the fact that the Calcutta Football season was to commence.

14. It has been denied that the learned Advocate for the appellants i. e. the said Mr. P. N. Mukherjee had consented to the order dt. 6-5-1983 being passed, without realising the effect of the same. It has of course, been denied that any assurance was given to him to the effect that no harm would be caused to the appellants if such order was passed. It has been stated that there was no such representation made by the respondents herein, or their representatives- It has also been stated that since the said Mr. P. N. Mukherjee. the learned Advocate on record of the appellants, had consented to the order dt. 6-5-83. it was assumed or it should be assumed that he had instructions to give such consent. The defence as sought to be set up through the letter of Mr. P. N. Mukherjee viz he had forgotten about the matter or the orders as passed therein have been claimed to be unreal by the deponent, and he has stated. that if really the said Mr. P. N. Mukherjee had forgotten the matter or the orders as passed therein, he should have mentioned that before the Court, before giving his consent. Such steps not having been taken, the defence as sought to be taken now. has been claimed to be not bonafide and an afterthought. It has also been stated that there is no explanation as to why the appellants were not informed of the said orders, if they had in fact, no knowledge of the same, soon after the concerned order was passed and in any event, even within three months thereafter. This story or the defence as sought to be setup now. has also been claimed to be an afterthought and not a bona fide one. It has also been categorically denied that the said order dt. 6-5-1983. was obtained without placing the correct facts before the Court. The said order having been passed on consent, the same has been claimed cannot be given a go-by or recalled without "the consent of the parties. It has been reiterated that by the said order of 6th May 1983. no right of

the parties has been sought to be determined, contrary to the earlier orders as made and the same has been claimed to have been passed in furtherance of the earlier order dated 14th October 1982 and thus, to enable the Club to utilise the amounts. paid voluntarily by the members by way of subscriptions. for the purpose of meeting their immediate need. In ANY event, it has been denied that was never the intention of the Court, to pass such order, so as to allow the Respondents to make use of the entire ex-cess amount. The said order dated 6-5-1983. has also been claimed to have been made subject to the conditions imposed by the Court in its earlier order dt. Aug. 27-8-1982 viz. in case the petitioners succeed in the suit, the excess , amount as would be collected by the Club or sent by them in the meantime w^uld either be adjusted against future subscriptions or refunded to the members by the Executive Committee of the Club. It has further been stated that the order as impeached was passed by the subsequent Appellate Bench, with the due authority, jurisdiction. competence and power. It has also been denied by the deponent that by the order of 6-5-1983. the rights of the parties in the pending interlocutory application or the suit have at all been affected. It has been claimed that the present application is not a bona fide one and the appellants have initiated the proceedings, to hamper the smooth running of the Club and the proper management or the affairs of the same.

15. The learned Receiver. Mr. Abhijit Deb. has filed an affidavit-in-opposition dt. 29-11-1983. As mentioned earlier it would appear that the order dt. 15-10-1983. was never communicated to him. He has stated that on receipt of the communication of the order dt- 14-10-1982 he has acted on the basis thereof and has complied with the same and the other previous orders as passed by the Court. He has also disclosed that he duly communicated with Mr. P. N. Mukherjee. the learned Advocate on record of the appellants about the order of 15-10-1982. but has not received any reply. He has also stated that since he had no knowledge or any intimation about the order of 15-10-1982 there could not have been any occasion for him to violate the terms of the same.

16. In his affidavit-in-reply dt. 16th Jan. 1984. the appellant No. 1. Mr. Asoke Kumar Daw has amongst others made allegations and has also levelled charges against the learned Receiver of being partisan, apart from claiming that the said Mr. Deb in this case has acted with a biased and pre-conceived mind and not bona fide, and for that reason. Mr. Sarkar representing the learned Receiver before us stated that the learned Receiver be discharged and he be released from the office and as such relieved of the unfortunate and unwanted remarks made against him. furthermore so. when those allegations were unfounded and without any basis. It should also be noted that the statements of Gobinda Chandra Dev in the other affidavit-in-opposition. remain uncontradicted.

17. On the basis of the pleadings and submissions as made, the points for consideration would be what were. Mr. P. N. Mukherjee. the learned Advocate for the appellants, power under the power of Attorney as filed, if under such power

he had the right to have the impugned order dt. 6-5-19"83. passed on consent, what should be the effect of such consent, as given by him. in the facts of this case and the "bona fide of the appellants in prosecuting this proceeding though the said Mr. Mukheriee, even though by giving such consent, he had acted to the detriment and prejudice of the appellants. In short, the effect of continuance of representation in this proceeding through the said Mr. Mukheriee by the appellants after realisation and disclosure of such fact, that he had not acted for their benefit, and when such act or action of the said Mr. Mukheriee has created prejudice for them in the pending proceeding. It must also be noted that during the course of hearing before us, it transpired that Mr. P. N. Mukheriee the learned Advocate on record of the appellants had not filed his power of attorney and on such, a further point for consideration arose as to whether, because of such admitted non-filing of the power, the present application and all the orders obtained earlier or as passed by the Court, became null and void or such non-filing of the power was a mere irregularity, which could be cured.

18. Mr. Mullick claimed and contended that such initiation of the present proceeding or obtaining the orders earlier would not make the proceedings null and void and at best the initiation or obtaining orders thereon would be an irregularity, which could be cured and more particularly when the action as taken by the said Mr. P. N. Mukheriee is being ratified now by filing a fresh power of Attorney. He. in fact, filed a fresh power of Attorney and asked for the necessary leave of this Court to accept the same.

19. In support of his submissions as above. Mr. Mullick relied firstly, on the decision in the case of Danish Mercantile Co. Ltd. v. Beaumont (1951) 1 All ER 925 . In that case, it has been observed that a solicitor who started proceedings in the name of a Company without verifying whether he had proper authority to do so. or under an erroneous assumption as to the authority, did so at his peril, and so long as the matter rests there, the action is not properly constituted. In that sense it is a nullity and can be staved at any time, provided the aggrieved defendant does not unduly delay his application, but it is open at any time to the purported plaintiff to ratify the act of the solicitor who started the action, to adopt the proceedings, and to instruct him to continue them. When that has been done, then, in accordance with the ordinary law of principal and agent and the ordinary doctrine of ratification, the defect in the proceedings as originally constituted is cured, and it is no longer open to the defendant to object on the ground that the proceedings "thus ratified and adopted were in the first instance brought without proper authority. Thereafter, and secondly. Mr. Mullick relied on the, determinations in the case of Manilal and Sons Vs. Purushottam Umedbhai and Co., . wherein it has been observed that the defect, in the absence of a warrant of attorney having been filed earlier, should be considered a mere irregularity which can be cured.

20. The submissions on irregularity of a proceedings by not filing the power of attorney in time, which were advanced by Mr. Mullick. were also accepted by Mr.

Chatterjee. who has appeared in person. Mr. Jayanta Mitter, who appeared for the other answering Respondents, did not also contend otherwise. Such being the position and considering the determinations as indicated hereinbefore, we are also of the view that the non-filing of the power of attorney in this case, was a mere irregularity and a curable one and as such we have allowed the necessary power by Mr. P. N. Mukherjee to be filed on behalf "of the appellants. We have also allowed Mr. Chatterjee. appearing in person, to to have his power of attorney filled, as he had also failed to file the same earlier. The other Respondents have filed their power of attorney duly and in time Such being the position, we feel that the defect which had crept in the proceeding has been cured retrospectively.

21. On such power of attorney being filed, a question arose as to whether under or in terms of the same, the said Mr P. N. Mukherjee. had the power to give his consent, to have the order dated 6-5-1983 Passed or what was the extent of his authority. While on the point and the competence of Mr. P. N. Mukherjee. to consent to the order dated 6-5-1933. Mr. Mullack relied on the case of Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand and Others, . where it has been observed that a pleader (which includes all legal practitioners as indicated in Section 2(15) C.P.C.) has the actual though implied, authority of a pleader to act by way of compromises a case in which he is engaged even without specific consent from his client, subject undoubtedly to two overriding considerations : (i) He must act in good faith and for the benefit of his client: otherwise the power fails: (ii) It is prudent and proper to consult his client and take his consent if there is time and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fall to the ground. It has also been observed in that case that ordinarily. when a iunior (Pleader not enrolled as advocate in this case) and senior ("advocate in this case) appear in the case, it would be an adventurist act exposing himself to great risk on the part of the iunior. to report a compromise without consulting his senior, even assuming that the party was not available. apart from holding that it is right to stress that Counsel should not rush in with a razi where due care will make them fear to tread, that a junior should rarely consent on his own where there is a senior in the brief, that a party may validly impugn an act of compromise by his pleader if he is available for consultation but is by-passed. The lawyer must be above board. especially if he is to agree to an adverse verdict. On further scanning of the said determination. Mr. Mullick submitted that the consent given by a learned Advocate can thus be given effect to or acted upon, if the same was given bona fide, in good faith, for the benefit of the client and on due and proper exercise of necessary prudence. In fact, he claimed that those characters or necessary requisites would not be available in this case and in the act of the said Mr. P. N. Mukherjee. the learned Advocate for the appellants and more particularly when, such consent has gone against his clients or their interest, since by such order, as indicated hereinbefore, all earlier orders, which had benefited the appellants, have been given a go-by. Mr. Mullick

also stated that in terms of the law as laid down in the case of Yusuf I.A. Lalji Vs. Abdullabhoy Lalji (No. 2), . an order made on . consent can be set aside, if there is mistake, fraud and misrepresentation and more particularly when the same is not final. He specifically claimed that the facts of this case would certainly come within the exceptions as mentioned above, as admittedly, the consent which was given by Mr-Mukherjee. was given on mistaken belief and realisation and in fact he was misled by the misrepresentations as made by the Respondents. As such. Mr. Mullick further claimed that the consent as given by Mr. Mukherjee may also come under the other limb viz fraud, more particularly so. when such consent was not spontaneous and the same was not certainly for the benefit of the appellants In the above Bombay case it has further been observed that the Court has jurisdiction to set aside an order made by consent which is not in the nature of final order or judgment. but which is merely an interlocutory order in the suit, provided proper grounds are made out and such observations were made on consideration of the determinations and the conditions indicated in the cases of Mulling v. Howell (1879) 48 LJ Ch 679. Ainsworth v. Wilding (1896) 1 Ch 673. Khitipati Roy v. Dharani Mohan Mukherjee. AIR 1921 Ca] 229. Jamnabai v. Fazal-bhov AIR 1923 PC 184 . Rameshwar Singh v. Hitendra Singh, AIR 1924 PC 202 . apart from considering the determination in Wentworth's case (1829) 9B and C 840.

22. After referring to the letter of Mr. P. N. Mukherjee. the learned Advocate on record for the appellants, the text whereof has been quoted hereinbefore. Mr. Mullick specifically contended that the entire circumstances as depicted therefrom would show that Mr. Mukherjee himself felt that he made a very wrong and unauthorised thing or took a rash action in giving such consent as mentioned in the order dt. 6-5-1983 and as such, even though Mr. Mukherjee had the power to represent the appellants on that day or even now, the appellants would not be bound by the consent as given by him and that too in view of the law as stated herein before. It was Mr. Mullick's specific case that immediately on hearing the fact of the consent order, the appellants had specifically written to Mr. Mukherjee that he had taken a very rash action or an action, contrary to their interest and as such, he must not give consent any further. This letter was not produced in this proceeding at the appropriate time and in answer to the specific objections regarding the conduct of the appellants, as taken by the Respondents. Mr. Mullick wanted to file a supplementary affidavit disclosing the said letter, which we have not allowed. It should be restated that even in spite of such conduct of Mr. P. N. Mukherjee which according to the appellants have prejudiced their case, they have continued with P- N. Mukherjee or have kept him on record.

23. Mr, Javanta Mitter also referred to the letter of Mr. P. N. Mukherjee as mentioned hereinbefore and pointed out that in that letter neither any mistake nor fraud or misrepresentation has been alleged and he stated that the admitted fact that the said letter was addressed after about two months or more after such realisation as mentioned therein or as was felt after such long lapse of time

from 6-5-1983. if considered with the conduct of Mr. P. N. Mukherjee. which was really against the conduct of an ordinary prudent man. would suggest that perhaps the letter in question was procured subsequently from Mr. Mukherjee. by the appellants and that too for suiting their convenience. It is true that there has not been pleadings on mistake fraud and misrepresentation with necessary material particulars and on proper affidavit in this case. It was claimed and contended by Mr. Mitter that in view of the above and more particularly in view of the other admitted fact that there has been no affidavit by Mr. P. N. Mukherjee, who only, could have established the charges as levelled now. no reliance should be placed either on those grounds or on the statements as made in the connected application and as such, the same should be deemed to be not in form. Apart from the above. Mr. Mitter. after referring to the earlier orders as made and which directed effective variations from time to time, claimed that by the order of 6-5-1983. no harm has either been caused to the appellants or that they have suffered any harm. It was also and specific submissions of Mr. Mitter. on the basis of the determinations in the case of Bokaro and Ramgur Ltd. Vs. The State of Bihar, to the effect that the Court had no jurisdiction to vary an order, passed by consent, and relieve a party from the mischief of a default clause, in an order of the Court claimed that the consent order in this case cannot be varied or should not be allowed to be varied.

24. It has been indicated earlier that Mr. Mitter severely commented on and criticised the conduct of the appellants, their learned Advocate on record and the actions as taken by them. To supplement such submissions. Mr. Mitter referred to the letters dt. 13th May 1983. 29-6-1983 and 15-7-1983 all addressed by the said Mr. P. N. Mukherjee and that too after the consent order dt. 6-5-1983. and pointed out that in the letters as aforesaid and which were addressed by the said Mr. Mukherjee in May and June 1983, there has been no whisper or any indication that he was either misled by any representation made by or on behalf of the Respondents or there has actually been any misrepresentation, on the basis whereof the said order dt. 6-5-1983. on consent, was obtained and there was any fraud practiced on him. The grounds of attack or challenge against the letter dt-15th July 1983 as put forward by Mr. Mitter have also been indicated hereinbefore and after scanning the said letter. Mr. Mitter also claimed the same, as mentioned hereinbefore, to be an afterthought. He also contended that the fact that even in spite of the above and the more so when the appellants have retained the said Mr. P. N. Mukherjee as their learned Advocate on record, even though he had acted to their prejudice and detriment, will have to be considered and such admitted fact of Mr. Mukherjee's retention, still after such injuries created and caused by him against the appellants, would certainly be against the ordinary run of human conduct and would establish anything but bona fide on the part of the appellants. In two places in the application, the appellants have stated that they were unaware of the concerned order till 11th Aug. 1983. But it transpired on queries made, that such date of knowledge was wrong and the said date would be 11th July 1983. Mr. Mullick stated that the dt. 11th Aug. 1983 was

mistakenly mentioned.

25. Mr. Mitter claimed that since the present application is more or less in the nature of review of the order dt. 6th May 1983 and as the same was filed on 23rd Sept. 1983. the same would be barred under Article 124 of the Limitation Act. 1963. the period being thirty days from the date of decree or order, no matter whether the knowledge of the appellants in this case, was on 11th July 1983 or 11th Aug. 1983. It was claimed by Mr. Mullick that since the proceeding is not really an application for review but one for making an order passed without jurisdiction. Article 137 would apply and not Article 124 of the Limitation Act and as such the point of limitation as taken by Mr. Mitter. would be of no avail or any assistance.

26. The submissions of Mr. Mitter were adopted by Mr. Chatterjee. who appeared in person. He submitted further that from the proceedings and the pleadings, it must first to be ascertained, what loss or damages the appellants have suffered by the order dt. 6-5-1983? His submissions were that, really the appellants have neither suffered any loss nor any damages or any harm has been caused to them, by the order as (sic) Mr. Chatterjee pointed out that by the order dt. 14-10-1982. the learned Receiver was directed to hand over to the Executive Committee of the Club, all collections after keeping a sum of Rs. 75,000/- with him. This order. Mr. Chatterjee pointed out. was made in the presence of the said Mr. P. N. Mukherjee and his clients have accepted the same and such fact of acceptance of the order. Mr. Chatterjee pointed out. would be apparent from the subsequent letters of Mr. Mukherjee, which are disclosed with the application Mr. Chatterjee also indicated that by the letter of 5-5-1983. Mr. P. N. Mukherjee was specifically informed and indicated about the variation which would be asked for and no exception to such intended variation was taken. Mr. Chatterjee stated, that being the position, and when admittedly the said sum of Rupees 75,000/- or more is still lying with the learned Receiver, there is actually no real loss or harm caused to the appellants by the concerned order dt. 6-5-1983. According to him. loss or harm if the appellants have suffered or are suffering by that order, is emotional only, which cannot be a cause or good ground for allowing the application, which is incidentally in the nature of a review application.

27. Mr. Mullick submitted that the order as impeached was made without jurisdiction as after the disposal of the appeal, the Bench presided over by Pyne J. had no authority to entertain the proceeding or make the order dt. 6-5-1983 so this Bench, which is one of the available Appeal Benches, would be authorised to hear and dispose of this application. It should of course be mentioned and remembered at this stage. that on 6-5-1983. the Appeal Bench Presided over by Sabvasachi Mukharji J, was not available and in any event the said learned Judge was not available here, because of his elevation to Supreme Court. As indicated hereinbefore, while on such question of jurisdiction. Mr. Mullick also claimed that even if Mr. P. N. Mukherjee. the learned Advocate for the appellants had consented to the concerned order, the learned Appellate Bench presided over by

Pvne J. should not have made the impugned order as. firstly they had no jurisdiction as mentioned above and secondly they had not applied their mind duly to the facts of the case and more particularly to the effect of such order, which had virtually made all orders passed earlier, nugatory. He of course slated, perhaps all relevant facts were not brought to the notice of the learned Judges of that Bench. In support of his submissions. Mr. Mullick referred to Vol. 44 of Halsbury's Laws of England. particularly to paragraph 116 at page 86. which deals with "Acts authorised by retainer in litigation" and records in note 7 at page 87. that "in considering these cases it is important to bear in mind that, while a solicitor or a Counsel", may have ostensible authority to bind in contract his client to a particular compromise, neither solicitors nor counsel have power to bind the Court to act in a particular way. so that if the compromise is one which involves the Court in making an order (other than an order merely dismissing the action on the plaintiff's request), the want of authority may be brought to the Court's notice at any time before the grant of its intervention is perfected i. e. before the order granting that intervention has been passed and entered, and the Court may refuse to permit the order to be perfected. So, too. as a matter of policy or practice when the order has been drawn up and entered, it cannot be discharged by such means on the ground of want of authority in solicitors or counsel, but nevertheless it may be set aside in another action." Cordery on Solicitors, has summed up that a solicitor is authorised to compromise proceeding subject to the reservations that (i) The proceedings must be in being. A solicitor although retained to bring an action cannot without express authority compromise it before the writ or other originating process is issued, and still In some cases the sanction of the court is required to make a compromise valid e. g., in the Chancery Division where the rights of infants or patients are affected, and in proceedings (other than matrimonial causes) in the Q- B. D. or P. D. A. where a claim is made on behalf of an infant or patient and (iii) In any case in which as part of the terms of compromise the court's intervention to order that something shall or shall not be (done) is required, the court may notwithstanding anything which has been said or done by the counsel or solicitors of the parties inquire into the circumstances and withhold or grant its intervention as it may deem just. On the basis of the celebrated decisions as referred to and discussed by Cordery. the relevant propositions would thus be. a consent order or compromise, made with the express authority of the client, is binding upon him from the time it is made, whether the case has been opened to the court or not and a mere consent order cannot be arbitrarily withdrawn. even before it is passed and entered, where the client is in court at the time, his express authority will generally be implied, unless he intervenes openly, if the client's conduct is such as reasonably to induce the solicitor to believe that he is authorised to make a certain compromise, the client will be bound by such a compromise though he did not intend to authorise the solicitor to make it. where a reference or a compromise, not going beyond the subject-matter of the action; is made by solicitor or counsel in the absence of any express instructions from the client, the apparent authority of solicitor or counsel will prevail, and will not

be affected, so far as concerns the other side, by the absence of the client and his consequent inability to intervene and where a reference or a compromise (not going beyond the subject-matter of the action) is deliberately but "bona fide made by solicitor or counsel in the face of express instructions by the client not to refer or compromise, the apparent authority will equally prevail. The client can withdraw the retainer but cannot by previous instructions, limit the apparent authority flowing from it so far as concerns the other side and there is no difference in this respect between interlocutory and final orders, no action lies by the client against his counsel for compromising an action but an action does lie by the client against his solicitor for compromising against his express instructions and where the compromise goes beyond the subject-matter of the action as. e. g. where on an issue of *devastavit vel non*. counsel withdraws a juror on the terms of dividing an estate or where the plaintiff's counsel in a breach of promise case agrees to give up letters and not to molest, as part of the terms or where, after recovering damages in the action.. the plaintiff's solicitor assents to the defendant executing a deed of assignment for the benefit of all his creditors, a special authority from the client is required, in the absence of which the entire compromise will be set aside. In view of the above propositions or having the facts of this case tested with them. Mr. Mullick specifically contended that this Court will have jurisdiction to set aside the order dated 6-5-1983. even though the same was obtained by consent.

28. In the case of *The Administrator General of West Bengal Vs. Kumar Purnendu Nath Tagore*, . to which reference was made by Mr. Mullick. it has been observed that in case of an order dismissing a suit for non-prosecution is drawn up. signed and perfected, the absence of notice to the plaintiff is merely an irregularity and does not affect the validity of the order and in such a case, the Court has no power to recall the order. The said determination was referred to for the purpose of showing the limitations to the exercise of power by the Court. Mr. Mullick pointed out specifically that the said determination would appropriately apply in this case, as on the disposal of the appeal on 27-5-1982. there was no lis pending on 6-5-1983 and that been the position, the Appellate Bench presided over by P.V. J. was wrong and acted without jurisdiction in passing the impugned* order. Mr. Mullick also made a reference to the case of *Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another*, . in which case there was a clause in a trust deed empowering the settlor to alter the Quantum of interest given to each beneficiary by will alone and the Court permitted the settlor to revoke that clause and permitted alteration being done by deed-On a challenge being thrown, such act of the Court was found to be incompetent and outside the jurisdiction of the Court. .It was not merely a wrong order, or an illegal order, it was an order which the court had no competence to make. , It is not merely an order that the court should not have passed but it is an order that the court could not have passed and., therefore, a void order. It has also been held that before a court can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to-

try the suit;* brought but must also have the authority to the orders sought for. It is not sufficient that it has some iurisdiction in relation to the subject-matter of the suit. Its iurisdiction must include the power to hear and decide the Questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties.

29. Mr. Chatterjee. while dealing with the jurisdictional aspect as indicated above, contended since the Receiver in this case was appointed on 21-4-1982 and from time to time, the Appellate Benches at the relevant time gave directions to him and the learned Receiver was not in fact discharged up to 6th May 1983. so the Appeal Bench presided over by Pyne J. on 6th May 1983. being the appropriate available Bench at the relevant time. was authorised to pass the order dt. 6-5-1983- the more so when the effect of that order was nothing but giving directions on the learned Receiver. That being the position. Mr. Chatterjee submitted that -the determinations in the case of The Administrator General of West Bengal Vs. Kumar Purnendu Nath Tagore, , would really help his clients and not the appellants. He stated, that would also be so. as the relevant orders have not as yet been drawn up completed and filed-

30. Mr. Chatterjee made further reference to the provisions of Order XI, Rule 1 of the Civil P. C. and also restated his earlier submissions that so long the learned Receiver in this case, who was appointed in terms of the provisions as above, is discharged, the Court appointing him would retain the necessary jurisdiction to give such and necessary directions on him. To supplement such submissions, reference was firstly made by him to the case of Dwijendra Krishna Dutta Vs. Surendra Nath Nag Choudhury and Others, . where it has been observed that when a receiver is appointed by the High Court in its appellate jurisdiction. pending an appeal in that Court the High Court has ample jurisdiction to deal with matters relating to the receiver including proceedings for contempt and so also when the appeal itself has been disposed of but the receiver has not been discharged. Mr. Chatterjee then and secondly, referred to, the determinations in the case of Surendra Nath Bhattacharjee Vs. Harendra Nath Bhattacharjee and Others, . where it has been observed that when a receiver is appointed by the appellate Court, the power to remove or discharge such receiver. unless there is specific direction given to the trial Court on this behalf. will be with the appellate Court. The principle extends to cases even when the appeal is no longer pending in the appellate Court. He, thirdly, relied on the case of (Mahant) Parshotam Das Vs. Prem Narain, . which has specifically laid down that when a receiver is appointed by the orders of the High Court but he is directed to submit his accounts to the lower court and that court is authorised to issue necessary directions to him the receiver is still an officer of the High Court and the court below in giving the directions exercises a delegated power. As the receiver continues to be an officer of the High Court and the officer continues to have seisin "of the case, it is open to High Court to set aside the directions of the court below and to give such directions to the receiver as it considers just in the circumstances of the case. Mr Chatterjee categorically contended that the law.

that so long a Receiver as appointed is not discharged, the Court appointing him. retains jurisdiction to give necessary directions on him. would not only appear from the cases as indicated above, but that such would be the position as has been recognised since the case of *C. E. Gray v. Woogramohun Thakur*. ILR (1901) Cal 790. where also it has been observed that when a Receiver of a property has been appointed by an Appellate Court pending an appeal to that Court, even when the appeal is no longer pending he must be regarded as the Receiver of the property, of which, he has been put in possession, until he is finally discharged. and the Appellate Court has jurisdiction to deal with the matter relating to the Receiver including proceedings for contempt until he has had his accounts passed by it.

31. In our view there has been no evidence of obtaining the order dated 6-5-1983. without placing the correct facts before the Court and there has also been no fraud. misrepresentation or undue influence practiced or caused by the Respondents or their learned Advocate on record on Mr. P. N. Mukherjee. the learned Advocate on record for the appellants, in obtaining the said order. In case a consent order is obtained, by fraud, misrepresentation or undue influence or such consent is given on mistake, the Court would be authorised to set aside the same. In this case, the evidence of the elements as indicated hereinbefore are lacking. In fact the records as disclosed have not also established any mistake, for which Mr. Mukherjee had given his consent. Such being the position, the concerned consent order cannot be interfered with. On the materials on record, it is also very difficult to agree with the conduct of Mr. Mukherjee in realising the mischief, if any. that has been caused to his clients at a belated stage. The statements made by him. particularly in the absence of any affidavit from him, are very difficult to be accepted, even though in his letter dated 15-7-1983. Mr. Mukherjee has stated that he realised the effect of such order as was obtained by him on consent, after some lapse of time. From the contents of that letter and more particularly, as some material portions therein. have been kept blank, it is further difficult to place any reliance on the said letter and in our view if the same is read with the earlier communications of Mr. Mukherjee. there would be grave doubt, as contended by the Respondents, about the bona fide of the same. The Respondents, in the facts of this case. were perhaps justified in their contentions that the said letter was later on obtained from Mr. Mukherjee. to suit the purpose of this proceeding and of the appellants.

32. As indicated earlier during the course of this proceeding, on the prayers made by the respective parties, we have allowed the warrant of attorney to be filed by the appellants and they have also filed such warrant. through Mr. P. N. Mukherjee, the learned Advocate. who was alleged to have acted to their detriment and prejudice. in having the consent order passed. Mr. Chatterjee. who is appearing in person has also filed his power. The effect on the conduct of the appellants to have filed their power of attorney even at this stage and that too through Mr P. N. Mukherjee will have to be considered and that too for the purpose of finding out the bona fide of their claims and the validity of the

allegations as made against Mr. P. N. Mukherjee's conduct. The filing of such powers now has no doubt cured the infirmities and irregularities in this proceeding and non-filing of a power, in appropriate cases like this, is curable and when such defect is cured, that curing of the defect, would be retrospective. The further effect of such filing of power now by the appellants through Mr. Mukherjee would be that, they have ratified or are ratifying all acts done or actions and steps taken by Mr. Mukherjee. The absence of warrant of attorney or the non-filing of the same as stated earlier, can be considered as mere irregularity in appropriate cases. The effect of such ratification as indicated hereinbefore, by filing the fresh power by the appellants now and even at this stage through Mr. P. N. Mukherjee. in our view is, also fatal for the appellants, as by such filing of the fresh power they have ratified all acts done by Mr. P. N. Mukherjee in the past or steps taken by him.

33. Admittedly, in the form in which such power of Attorney was filed by Mr. P. N. Mukherjee. gave him the due authority to have the proceeding settled or orders being passed for effective disposal of the 14s and that too for the benefit of his clients. A consent in terms of the determinations as cited at the Bar. can be given effect to or acted upon, if the same was given -bona fide and in good faith. Apart from the fact of benefiting the client. such power must also be used and exercised on due and proper exercise of necessary prudence. The facts of the present case do not take the actions of Mr. P. N. Mukherjee outside the exceptions as indicated hereinbefore. There were controversial submissions on the effect of the concerned consent order or if the same had gone to the benefit of the Respondents or to that of the appellants. The benefits of the appellants in this proceeding, which was also submitted by Mr Chatterjee. would not be more than Rs 75,000/- and when such amount is available with the learned Receiver. it can be well imagined or such position as was submitted by Mr. Chatterjee can be accepted that by the concerned consent order, the appellant", who were and still are the members of the Mohan Bagan Athletic Club have really derived the necessary benefit as by such order, their club has been benefited for the current Football season. An order obtained by consent can also be. in terms of the determinations cited at the Bar. set aside, if there is fraud, mistake and misrepresentation. But such elements are not available in the instant case and more particularly in the actions of Mr. P. N. Mukherjee. in having the consent order obtained. As indicated earlier from the records of this proceeding, it is very difficult to hold and find that consent in the instant case was given by Mr. P. N. Mukherjee on misrepresentation by the respondents or as he was misled. The character of the letter dt. 15-7-1983 which was addressed by Mr P. N. Mukherjee. has been indicated hereinbefore and it is very difficult to agree with Mr. Mullick. that the said letter has really established the necessary limbs for setting aside the consent order There is hardly any legal evidence available in this case, on the basis whereof, it can be held and observed that the consent by Mr P. N. Mukherjee. the learned Advocate for the appellants, was not given in good faith. Mr. Mukherjee's conduct of having the consent order passed, cannot be held to

be not bona fide and the consideration of his long silence and so also that of his clients cannot enure to the benefits of the appellants. The circumstances as depicted and disclosed in this case and more particularly the delay in recording the statements through his letter dt 11-7-1983 or the particulars contained there in do not disclose much diligence of Mr. Mukherjee and do not inspire confidence.

34. Agreeing with the submissions of the respondents, we do not feel that the appellants have suffered any real loss and harm and it is also true that the club as a whole has been benefited by the concerned order and thereby the appellants, who at the material times were and still are members of that club or as the members of the same have been benefited. The non-filing of an affidavit by the said Mr. P. N. Mukherjee when he alone could have thrown some light on his mistake or any misrepresentation or fraud committed on him, would certainly go against the contentions of the appellants or in the matter of establishing their case. The acts of fraud, misrepresentation or any undue influence committed on the said Mr. P. N. Mukherjee by the respondents herein, have neither been appropriately pleaded with due particularity nor established. The fact that Mr. P. N. Mukherjee was retained as the learned Advocate for the appellants even after such grave allegations and charges against him, establish anything but bona fide of the conduct of the appellant in making those allegations and bringing of the concerned charges against Mr. P. N. Mukherjee and such conduct of the appellants, has really reduced the impact of the charges and allegations as levelled and thus no weight or any reliance can be placed on them in determining this application.

35. After considering the facts and submissions as made on them or the question of jurisdiction and so also on consideration of the cases as cited at the Bar, we hold and find that since the Receiver as appointed has not as yet been discharged, so the appropriate and available Appellate Bench, would retain the jurisdiction in giving directions and including the order of discharging the Receiver, even though the concerned Appeal has been disposed of. Such being the position, the Appellate Bench presided over by Judge J., even after the disposal of the connected appeal, had jurisdiction to pass the order dt. 6-5-1983, whereby directions were given to the retired Receiver. Apart from the above, when we are informed that the relevant orders in the connected appeal have not as yet been drawn up, completed and filed, the Appeal Court as mentioned hereinbefore, which again was an available Appellate Bench at relevant time, also retained their jurisdiction to pass order dt. 6-5-1983. In view of the above, the case *The Administrator General of West Bengal Vs. Kumar Purnendu Nath Tagore*, would really support the contentions of the respondents, on their submission; of retention of jurisdiction of the Bench presided over by Judge J. and to pass the order dt. 6-5-1983. The other cases as cited by Mr. Mullick, while on this aspect, are distinguishable.

36. Above being the position and our views the application cannot be enter-

tamed and as such, the same is dismissed without any order as to costs.

37. Before, leaving the matter, as must also sav that on consideration of the submissions made by Mr. Sarkar. appearing on behalf of the learned Receiver. we discharge Mr. Abhijit Deb from further acting as such Receiver but subject to his filing of accounts, we however appoint Mr. Sovendra Kumar Mitra. a learned Advocate of this Court, as the Receiver in place and stead of Mr. Abhijit Deb. The outgoing" Receiver is directed to forthwith hand over the entire balance amount as available with him now. to Mr. Sovendra Kumar Mitra. who shall: hold such amount till the disposal of the suit or until further orders. Mr. Mitra would receive a monthly remuneration of 40 Cms. which should be paid in equal shares by the applicants and the club.

38. We must also keep it on record that nothing said in th's order, should be deemed to be considered as making any determination on the merits of the case.

U.C. Banerjee, J.

I agree.