
(2002) 07 CAL CK 0023
In the Calcutta High Court
Case No : FMAT No. 1960 of 2002

Bengal Club Limited

APPELLANT

Vs

Susanta Kumar Chowdhury

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 39 Rule 3, Order 39 Rule 4, Order 41 Rule 2, Order 41 Rule 33
Companies Act, 1956 — Section 10, 146, 2(1), 2(11), 2(II)
Constitution of India, 1950 — Article 141
Transfer of Property Act, 1882 — Section 52

Citation : AIR 2003 Cal 96 : 107 CWN 663

Hon'ble Judges : Hrishikesh Banerji, J; Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : P.C. Sen and Anindya Mitra, for the Appellant; S.P. Roy Chowdhury, Anil Kumar Gupta, Arijit Banerjee, Debasish Roy and Sourav Sen, for the Respondent

Judgement

Asok Kumar Ganguly, J.—After admission of the appeal, this matter was heard at length as the learned counsel for the plaintiff/respondent strongly opposed the prayer for grant of an ad interim order of stay of the order Nos. 1-3 dated 19th and 20th June, 2002 which are appealed against. Since the respondent entered appearance through learned advocate service of notice of appeal upon the respondent is dispensed with. All other formalities are dispensed with.

2. By consent of the parties the appeal is treated as on day's list and is heard without the Paper Book as all papers used in the court below have been brought on record in the stay petition.

3. While advancing his argument the learned counsel appearing for the plaintiff/respondent relied on the plaint filed in the suit and also on the injunction petition which are all made part of the stay petition and brought on record. A supplementary affidavit has also been filed by the appellant and copy was also served on the learned counsel appearing for the other side on the very first day

when the matter was taken up and the same is also on record.

4. The Bengal Club Limited, an existing Company within the meaning of Companies Act, 1956 having its registered office at Premises No. 33B, Chowringhee Road, Kolkata-700 016 (hereinafter called the said Club) is the appellant before us. The said Club is the sole defendant in the Title Suit No. 23/2002 filed by Susanta Kumar Chowdhury a member of the said Club.

5. The said suit was filed by the plaintiff/respondent before the 9th Court of Civil Judge, Senior Division, Alipore, 24-Parganas (South) on 19th of June, 2002 praying for declaration and injunction and also praying for an ad interim order of injunction restraining the holding of Annual General Meeting (hereinafter called the AGM) of the said Club in its Registered Office on 21st June, 2002.

6. On such application being made the learned Trial Judge heard the matter ex parte on 19th June, 2002 and 20th June, 2002 and ultimately by the order under appeal dated 20th June, 2002 the learned Trial Judge passed the ad interim order of injunction in terms of prayers (a), (b) and (c) of the injunction petition and fixed the matter for service return on 28th July, 2002. Prayers (a), (b) and (c) of the injunction petition are set out below:

"a) The respondent and its officers, men, servants, agents and/or assigns be restrained from giving any or any further effect to the purported notice dated 24th May, 2002 being annexure A" hereto.

b) The respondent be restrained from convening or holding any Annual General Meeting of the respondent pursuant to the said purported notice dated 24th May, 2002 or any other meeting.

c) The respondent, its men agents, servants and assigns be restrained from convening and/or holding any General Meeting of the respondent without consideration to the matters for which an AGM was requisitioned by notices dated 26th April, 2002 and 24th May, 2002 being Annexure "B" and "C" herein.""

7. The learned counsel appearing for the appellant challenged the said order on various grounds. Firstly, it was challenged on the ground of lack of jurisdiction of learned Court below in passing said order primarily in view of the provisions of Section 10 of the Companies Act read with Section 2(11) thereof. It was also challenged on the ground that in the plaint itself in paragraph 2 it was mentioned that the legislated office of the said Club is at Chowringhee Road outside the territorial jurisdiction of the learned Trial Court. It was submitted that in all matters (sic) to Company, the proceeding should be initiated in the court within whose territorial limits the registered officer of the company is situate.

8. It has been submitted that even if the jurisdiction of the Civil Court Is not barred u/s 10 read with Section 2(1) of the Companies Act and if the jurisdiction of the Civil Court is there, even then the appropriate Civil Court cannot be the court where the suit was filed by the plaintiff.

9. The learned counsel appearing for the appellant also challenged the manner in which a last moment approach was made by the plaintiff to the court to stall the AGM. It has also been submitted that leave under Order 1 of Rule 8 of the Code was sought for but no such leave was granted and no advertisement was published. The suit at the instance of the sole member of the Club was instituted at a very late stage. It has been submitted that from the contents of the plaint and injunction petition it is apparent that the plaintiff had notice of the AGM well in advance but he chose to approach the court at the last moment for the purpose of obtaining an *ex parte* ad interim order in order to stall the holding of the AGM. It has also been stated with reference to the impugned order, that the learned Trial Court had not considered the question of balance of convenience and *prima facie* case in this matter in its proper perspective.

10. Moreover, it has been argued that the plaintiff indulged in suppression of a material fact which is clear from the supplementary affidavit filed in this case and the learned Judge passed the ad interim order of injunction without notice and without following the requirement of Order 39 Rule 3 and not following the repeated pronouncements of Supreme Court in two decisions which were cited before us to which we shall refer to in due course.

11. The learned counsel for the plaintiff/respondent on the other hand, repeatedly urged that this court has very limited power of scrutiny at this stage of hearing an appeal from an ad interim order. The learned counsel submitted that the court below has granted an ad interim order and the main injunction petition is still pending.

12. It has been also urged that this court has to proceed on the basis of the materials which are on record and cannot consider any other material.

13. The learned counsel for the plaintiff/respondent further submitted that the civil court undoubtedly has the jurisdiction to take up this matter in view of Section 10 read with Section 2(II) of the Companies Act. Jurisdiction of the civil court u/s 9 of the CPC is very wide. The learned Counsel cited various authorities on this point.

14. The learned counsel further submitted that the jurisdiction of the court below where the proceeding has been instituted had to be decided on the averments made in the plaint. If those averments are considered it becomes clear that there is no lack of jurisdiction. The learned counsel further submitted assuming there is any question of lack of jurisdiction, such defect of jurisdiction is not patent. So question has to be decided considering the argument to be advanced by both the sides. Therefore, at the ad interim stage this court should not come to any finding on the said question. The learned counsel further argued that in a matter relating to question of jurisdiction, the provisions of Order 7 Rule 11 of the CPC have to be kept in mind and this question can only be considered not at this stage by this court but by the learned court below.

15. This court while hearing the matter has asked the learned counsel for the

plaintiff a pointed question on the stand of his client in respect of document disclosed in the supplementary affidavit. The said document is a communication addressed to the committee of the said Club dated 5th June, 2002 bearing the signature of the plaintiff/respondent and also his membership number of the club. The said document was placed before the court by the appellant in order to show that the plaintiff was aware of the meeting on 5th June, 2002 and he proposed the candidature of some members for election of the committee of the club to be held on the AGM on 21st June, 2002.

16. To that question the learned counsel for the plaintiff/respondent asked the court to ignore the said document disclosed on the supplementary affidavit as, according to the learned counsel, it is not within the domain of this court to consider the same. At this stage the court cannot, according to the learned counsel, consider anything except the injunction petition and the plaint filed by the plaintiff.

17. In support of the said contention the learned counsel relied on two decisions of this court. This court proposes to examine those two decisions first before going into any other question.

18. Of those two judgments the first one is a Division Bench judgment in the case of Sm. Muktakesi Dawn and Others Vs. Haripada Mazumdar and Another, . In the said decision the court was considering an appeal from ex parte ad interim order of injunction issued by the District Court. The said appeal arose out of a suit for specific performance of sale to respect of the suit property in which an ad interim order of injunction was issued restraining the defendant from selling the property to a third party. The appeal was against the said grant of ad interim order of injunction. Two points were argued on behalf of the appellant namely that in view of the doctrine of "lis pendens" u/s 52 of the Transfer of Property Act. such an interim order of injunction is unnecessary. Secondly, it was also argued that while granting ex parte ad interim order of injunction the learned court below did not follow the mandate of recording reasons enjoined under Order 39 Rule 3 of the Code. The learned Judges of the Division Bench decided on both the issues against the appellant and dismissed the appeal. Therefore, the ratio of the Judgment in Muktakeshi is confined to these two questions.

19. So far as the first question is concerned, namely whether an ad interim order of injunction can be issued in the fact situation in Muktakeshi, despite the provision of Section 52 of the Transfer of Property Act, we are not concerned in this appeal.

20. But the court is concerned with the finding of the Division Bench, about the requirement of recording reasons under Rule 3 of Order 39 CPC since the same question has arisen here also.

21. The learned Judge while delivering the judgment in Muktakeshi held in paragraph 2 that even though there is a statutory mandate under the proviso to Rule 3 to record reasons is not "that mandatory to warrant reversal of an order

solely on the ground of omission to record reasons" in passing an ex parte ad interim order. The Division Bench held that the order cannot be set at naught solely on the ground that the court did not record the reasons for proceeding ex parte.

22. Unfortunately this formulation of the Division Bench is against the express provision of the Statute. Apart from that the said question of recording reason under Order 39 Rule 3 came up for consideration and was considered in two judgments of the Hon^{ble} Supreme Court where a contrary view has been expressed. The first of such judgment is delivered in the case of Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, . In that case while considering the requirement of recording reason under proviso to Rule 3 of Order 39 of the Code, the learned Judges of the Supreme Court observed in paragraph 34 as follows:

"In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise whether under a statute or under the common law must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or (the authority concerned to record reasons before exercising power vested in them. in respect of some of such provisions it has been held that they are required to be complied with but non compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex-parte orders have far reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of the Order 39 of the Code attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all."

23. The aforesaid observation in the case of Chadha has been further reiterated in a subsequent judgment of the Supreme Court in the case of Morgan Stanley Mutual Fund vs. Kartick Das, reported in AIR 1994 SC 225. In paragraph 38 of the said judgment the aforesaid observation in the case Shiv Kumar Chadha extracted above has been reiterated,

24. Therefore, in view of this pronouncement of the Supreme Court, this court while recording its profound respect to the learned Judges delivering the judgment in Muktakeshi, is humbly of the opinion that the pronouncement of the learned Judge on the interpretation of Order 39 Rule 3 and its proviso in Muktakeshi is no longer good law and does have the character of a binding precedent in the view of the contrary law laid down by the Supreme Court and also in view of the proviso of Article 141 of the Constitution.

25. It may also be noted in this connection that a subsequent Division Bench judgment of this court in the case of Supratik Ghosh & Anr. vs. Pasari Housing Development reported in 2000 (3) CLT 97. following the aforesaid pronouncements in Chadha and Magan Stanley held that recording of reasons is mandatory and if any ex parte ad interim order of injunction is passed without recording such reasons that order becomes null and void as the court lacks inherent jurisdiction to pass such orders without recording reasons The observations to that effect in paragraph 16 of the Judgment in Supratik Ghosh (supra) are set out below;

In view of the discussions made hereinabove. I am of the view, that if the court fails to record reasons as contemplated by proviso to Rule 3 of Order 39 of CPC then non-recording of such reasons goes to the very root of the matter, making the order itself null and void because the court lacks inherent jurisdiction to pass an ex parte order without recording a reason. That is why I put stress upon the words "or not at all.

26. Of course, the attention of the Division Bench in Supratik Ghosh (supra) was not drawn to the earlier Division Bench judgment of this court in Muktakeshi.

27. This court is in respectful agreement with the aforesaid pronouncement in Supratik Ghosh and cannot follow the contrary pronouncement by another Bench in the case of Muktakeshi in view of the Supreme Courts judgment and the provision of Article 141 of the Constitution.

28. In Muktakeshi the learned Judges, apart from deciding two points mentioned above, made a passing observation in paragraph 6 on which reliance was placed by the learned counsel. Those observations are:

The defendant has not as yet filed his show cause against the plaintiff's application for injunction and. therefore, at this stage, all the statements made in the application will have to be accepted as true *mode et forma*.

29. "Relying on these observations the learned counsel submitted that at this stage the court shall confine Itself only to the averments made in injunction petition before the court below and ignore the supplementary affidavit.

30. This court is of the view that this observation made in paragraph 6 do not form any part of the ratio of the judgment in Muktakeshi as the ratio of the said judgment has already been indicated. Apart from that the purport of the observation in para 6 has become a little complicated in view of the use of Latin

expression "mode et forma. The aforesaid Latin expression has been explained in Black's Law Dictionary, 5th Edition (Page 965) as follows:

"Mode et forma. In manner and form. Words used in the old Latin forms of pleadings by way of traverse, and literally translated in the modern precedents, importing that the party traversing denies the allegation of the other party, not only in its general effect, but in the exact manner and form in which it is made."

31. Wharton's Law Lexicon, 14th Edition, page 663 "explains the said expression as follows:

"Mode et forma (in manner and form), phrase formerly used in pleading. It was the nature of a traverse to deny the matter of fact in the adverse pleadings in the manner and form in which it was alleged, and, therefore, to put the opposite party to prove it to be true in manner and form as well as in general effect."

32. From these text books it is clear that the said expression is used to explain the mode of traversing pleading of the opponent and it has been stated that if such pleading is to be so traversed, the party traversing it is to deny the allegation of the other party, not only in its general effect but in the exact manner and form in which it is made. Therefore, the proper meaning of the said expression can only be appreciated in the context of traversing the pleading and not while accepting it. But unfortunately the said expression, the way it has been used in paragraph 6 in Muktakeshi. does not convey that meaning. But that as it may, since quoted above are without any argument and without reason, they do not form part of the ratio and are to be regarded as passing "sub-silentio". The Apex Court in District Collector, Chittoor and Others Vs. Chittoor District Groundnut Traders Association and Others, , held :

"Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however, eminent, can be treated as an ex cathedra statement, having the weight of authority (para 43. para 12 of the report).

33. The other judgment of the learned Single Bench in the case of Jitesh Pandey vs. Urmilata Sinha, reported in 2000 (2) CHN 857. was also relied on in support of the proposition that in an appeal from and ad interim order of injunction the appeal court must confine itself to the averments in the injunction petition. In para 17 of the said judgment the learned Judge held that a person who is aggrieved by an ad interim order of injunction, has three remedies. He can (i) file his written objection in answer to the show cause notice and there he may put forward his defence for vacating the injunction order or (ii) can file an application Order 39. Rule 4 of the Code for variation or vacation of the interim order or (iii) he may prefer an appeal before the appellate court under Order 43. Rule 1. clause (r) of the Code. This Court is in respectful agreement with this part of the judgment. But after saying so. the learned Judge held:

"But if he decides to choose the above mentioned remedy by way of an appeal before filing written objection or application Order 39 Rule 4 of the Code, he

must be prepared to accept all statement made in the application for temporary injunction to be true and he should persuade the appellate Court that even if the allegations. of the other side are true, the trial court ought not to have granted an ad interim order of injunction. But without showing cause as ordered by the trial Judge or without filing any application under Order 39 Rule 4 of the Code, the aggrieved person cannot insist on showing cause or placing his defence before the appellate court for the first time. Such procedure will be against the scheme of Order 39 of the Code."

34. In the instant case, even if this court confines its scrutiny to the averments in the injunction petition filed by the plaintiff/respondent the ad interim order cannot be approved and has to b(sic) stayed.

35. But on principle this court cannot accept the propositions laid down in Jitesh Pandey about pleadings in the appellate Court in an appeal under Order 43. Rule 1. Clause (r) of the Code on torn following grounds:

(i) The learned Judge supported the principles laid down in Jitesh Pandey on the scheme of Order 39 of the Code. But an appeal from and ad interim order of injunction is not controlled by the schemes of Order 39 of the code. Such appeal, filed under Order 43, Rule 1 (r) of the Code, is governed by the rules of Order 41 of the Code.

ii) No such restrictions appear to have been imposed on such appeal under Order 41. On the other hand, the provisions of Order 41. Rule 2 and Order 41 Rule 33 indicate the wide scope of appeal and the wide powers of the appellate court.

iii) A right of a appeal is always a creature of statute and the right of appeal conferred under Order 43. Rule 1 of the Code is an appeal both on facts and law. So when no restriction is imposed on such appeal by law. courts should not unduly restrict its scope by an interpretative process.

iv) The cardinal rule of construction of statute is that in a case where two interpretations are reasonably possible and of them one is restrictive of the right and the other one is not, the court should follow the latter one.

v) If the principles laid down in Jitesh Pandey are followed then out of the three remedies, pointed out by the learned Judge, in Jitesh Pandey, the remedy of appeal under Order 43 Rule 1. Clause (r) of the Code because unduly restrictive compared to the other two remedies where the person aggrieved is under no obligation to accept the pleading of his opponent. Such a restrictive construction of a right of appeal. where the statutory intent is to the contrary, is opposed to the fundamental tenets of statutory interpretation.

36. This Court, with great respect to the learned Judge, cannot for the reason aforesaid, accept that part of the conclusions in para 17 in Jitesh Pandey which have extracted above. This Court respectfully differs from the same.

37. The question of pleading is of great importance in the context of an ex parte

application for injunction. At that stage proceedings before the court rest on the basis of total good faith on the pleadings. At that stage there is no contested hearing, therefore, the party making the prayer for ex parte ad interim order of injunction must plead the entire facts of the case. Such pleading must be clear, complete and candid. Therefore, if in a given case a party obtains an ex parte ad interim order of injunction from the court on the basis of pleadings which do not disclose the correct state of facts with sufficient candour and clarity and if against such an order an appeal is filed before the appellate court, this court fails to understand why the appellant filing such appeal should accept the pleadings of the plaintiff at the ex parte stage as sacrosanct and cannot point out before the appeal court that the plaintiff before the Trial Court suppressed facts.

38. Principles on this aspect have been laid down about 100 years ago in the celebrated decision rendered in the case of *The King vs. The General Commissioner for the purpose of Income Tax for the District of Kensington : Ex parte Princess Edmund Polignac*, reported in AIR 1917 KB 486. In inimitable words Lord Cozens-Hardy M. R. held at page 504 of the report "It is a case in which it seems to me there was plainly a suppression of what was material, and we cannot but be too strict in regard to that which to the best of my belief has been a long established rule of the court in applications of this nature and has been recognised as the rule. The authorities in the books are so strong and so numerous that I only propose to mention one which has been referred to here, a case of high authority, *Dolglisch vs. Jarvie* (I), which has decided by Lord Langdale and Rolfe B. The head note, which I think states the rule quite accurately, is this : "It is the duty of a party asking for an injunction to bring under the notice of the court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward"."

39. The learned Judge held that at this stage such ex parte applications are governed by principles of "Uberrima fides" which mean disclosure of all facts with perfect candour and utmost good faith.

40. Similar propositions have been laid down by Lord Justice Scrutton another member of the Bench at page 514 of the report as follows :

"I find in the case of *Republic of Peru vs. Dreyfus Brothers & Co.* (3) Kay J. stating the law in this way. "I have always maintained, and I think it most important to maintain most strictly the rule that, in ex parte applications to this court, the utmost good faith must be observed. If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this court the importance of dealing in good faith with the Court when ex parte applications are made."

41. The pages of law report containing these principles have become brittle but not the principles enshrined therein. Those principles still guide us and we are

time and again reminded of their great relevance. But we are sorry to say that in practice these principles are honoured more by their breach than by observance.

42. Having regard to the importance pleadings at this stage, if the appellant can establish before the appeal court, that the pleadings in the court below do not follow the aforesaid standard, in our considered view, he is under no obligation imposed by any law to accept the pleading of his appointment at the trial court as true and correct. If the principles in *Jitesh Pandey* are accepted, then, apart from the fact that they will have the effect of stultifying the right of appeal, it would also amount to putting a premium on pleading which are otherwise deceptive and dishonest. No court should follow such a practice which is not warranted either by law or in equity."

43. We are taking (his view having regard to the wide powers of the appeal court under Order 41 Rule 33 of the Code. The width of the power of the appeal court has been considered recently in two judgments. In the case of *The State of Punjab and Others Vs. Bakshish Singh*, , the learned Judges of the Supreme Court, while considering the provisions of Order 41 Rule 33. came to the conclusion that powers have been given to the appellate Court in order to do complete justice between the parties to enable it to pass such decree or order which ought to have been passed (Paras 8 and 9).

44. Similar view's have been taken by Supreme Court in *K. Muthuswami Goundu vs. N. Go under*, reported in AIR 1988 SC 3118.

45. Therefore, we are of the view that we are entitled to consider the contents of the supplementary affidavit. Going through the same we find that the plaintiff/respondent on 5th June, 2002 came to know of the AGM of the said Club on 21st June, 2002 and proposed the candidature of some member for election in the said AGM. But this fact has not been stated clearly in the injunction petition. The statement made in paragraph 41 of injunction petition is quite misleading and does not disclose the real facts.

46. The court cannot ignore this.

47. This court finds that it is not a case of suppression of facts unknowingly. The plaintiff/respondent had referred to something happening on 5th June, 2002. in para 41 but facts have been pruned to such an extent that the real state of affairs are not disclosed- So there is a clear lack of candour on the part of the plaintiff. This court is firmly of the view that on this ground alone the order dated 20th June, 2002 passed by the court below should be stayed.

48. Now coming to the merits of the said order on the materials disclosed in the injunction petition this court finds that the order cannot be sustained.

49. In paragraphs 40 and 42 of the judgment in *Morgan Stanley* it has been made clear that having regard to the expanding nature of the corporate sector the court granting injunction against companies should be aware of the venue restriction. The learned Judges made it clear that in so far as India is concerned,

the residence of the Company is where the registered office is located. This also flows from Section 146 of the Companies Act. Therefore, if a court, located outside the place where the registered office is situated, has been approached for grant of interim order, that court must have regard to certain factors. Those factors which are indicated in paragraph 42 in Morgan Stanley are quoted below :

"Courts outside the place where the registered office of the company is located, if approached, must have regard to the following. Invariably suits are filed seeking to injunct either the allotment of shares or the meetings of the Board of Directors or again the meeting of general body. The court is approached at the last minute. Could injunction be granted even without notice to the respondent which will cause immense hardship and administrative inconvenience. It may be sometimes difficult even to undo the damage by such an interim order. Therefore, the court must ensure that the plaintiff comes to court well in time so that notice may be served on the defendant and he may have his say before any interim order is passed. The reasons set out in the preceding paragraphs of our judgment in relation to the fact which should weigh with the court in the grant of ex parte injunction and the rulings of this court must be borne in mind."

50. The following reasons have been set in previous paragraph 36 in Morgan Stanley. They are:

"As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are -

- a) whether irreparable or serious mischief will ensue to the plaintiff;
- b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
- c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;
- e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.
- f) even if granted, the ex parte injunction would be for a limited period of time.
- g) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court".

51. In the instant case also there is a last minute approach for stay to the court within whose territorial limits the registered office of Club is not located. This last minute approach was made even though the plaintiff was aware of the said meeting from 3rd June, 2002. This appears from the pleadings in the injunction

petition itself.

52. Therefore, the Court below has not properly exercised its discretion in the matter of granting ex parte ad interim order of injunction and it should not have issued the ad interim ex parte order on 20th June, 2002 restraining the holding of AGM on 21st June, 2002.

53. So far as the jurisdiction of the Civil Court is concerned, the court, having regard to the submission of Mr. Roy Chowdhury, the learned Counsel for the respondent, is of the opinion that such questions raise an arguable issue and need not be decided at the ad interim stage. The point may be decided first when the injunction petition will be heard.

54. Assuming the civil court has the jurisdiction, the appropriate civil court will be the court within whose local limits the registered office of the company is situate. But here the court has not followed that principle and why the lower court departed from that well settled principle Has not been indicated in the order under appeal. This also shows that the court below exercised its jurisdiction improperly.

55. This court also does not understand how the learned Judge passing the impugned order came to the finding that he is passing the order for the interest of the majority of the members of the Club. The majority members of the Club are not before him. Therefore, the learned Judge had no right to assume that he was exercising his discretion to protect the interest of the majority members.

56. This court also finds that the balance or convenience or inconvenience of issuing such an order on 20th June, 2002 which is the. day before the date of AGM was not at all considered by the learned Judge.

57. Therefore, this Court, for the reasons aforesaid, is compelled to stay the said ad interim order till the hearing of the injunction petition. Thus both the appeal and the application are disposed of with the certain directions. But one thing is made clear that the observations and findings on the particular facts of this case are all tentative and the learned trial Judge need not be influenced by those while hearing the injunction petition or the suit.

58. This court gives the following directions :

"1) The appellant before us shall file its objection to the injunction petition pending before the court below by 8th July, 2002 and the plaintiff/respondent shall file his reply to the said objection by 12th July, 2002. The court below must make ail endeavour to dispose of the injunction petition within a period of fortnight thereafter. The ex parte ad interim order passed on the injunction petition by the learned Court below on 20th June, 2002 shall remain stayed till the disposal of the injunction petition.

2) In view of the provisions of the Companies Act. the holding of AGM cannot be indefinitely postponed. This court, therefore, permits the said Club to hold AGM

on 19th July, 2002 in its registered office on the basis of the notice dated 24th May, 2002 and in respect of the agenda mentioned in the notice.

3) For the said purpose the Club must issue advertisements at least in three English Dailies namely the Statesman. Telegraph. The Times of India (Calcutta edition) and also in two Bengali Dailies namely. Anandabazar Patrika and Bartaman, giving therein the details of the time, venue and the agenda of the AGM to be held on 19th July, 2002 on the basis of this court's order.

4) Since there are some disputes and allegations. and counter allegations generating a sense of distrust among the members. we feel that for a fair conduct of the proceedings of AGM an impartial person of high esteem and repute should be there to supervise the holding of the AGM. So we are of the opinion that the AGM of the Club may be held in accordance with the Articles of Association of the Club but under the direct supervision of the Hon'ble Justice Chittatosh Mookerjee, a former Chief Justice of this court and also of Bombay High Court.

5) We humbly request Chief Justice Mookerjee to be kindly present in the said AGM and hold the same under his direct supervision. Even though the proceedings will be conducted in accordance with the Articles of Association and Regulations of the Club, if any, but if necessary. Chief Justice Mookerjee may give such directions as he thinks necessary for conducting the proceedings in a fair and just manner.

In the discharge of the aforesaid functions. Chief Justice Mookerjee will be assisted by two members of the Bar.

6) We hereby appoint Mr. Arabinda Chatterjee and Mr. Rabindranath Dutta, both learned advocates of this Court for the said purpose and they will render such assistance as may be required of them by Chief Justice Mookerjee.

7) We request Chief Justice Mookerjee to accept the honorarium of Rs. 15,000/- for conducting and supervising AGM of the Club at its registered office on 19th July, 2002. We fix the remuneration of the learned advocates at Rs. 2,500/- each. All these expenses are to be borne by the Club."

59. We. however, make it clear that whatever decision will be taken in the AGM will be given effect to. But those decisions will abide by the order to be given by the Court below in the injunction petition or in the suit.

60. We dispose of both appeals as also the stay application as above. There will be no order as to costs.

61. A plain copy of the operative portion of this order may be forwarded to Chief Justice Mookerjee by the Registrar General and a copy may also be sent to each of the concerned learned advocates by the Assistant Registrar of this Court. Let a plain copy of the operative part of this order be given to the learned counsel for both the parties. Xerox certified copy of the judgment and order, if applied for, be

given on an urgent basis.

Hrishikesh Banerji, J.

I agree.