

(1996) 09 KAR CK 0064
In the Karnataka High Court
Case No : M.F.A. No. 2268 of 1996

Bowring Institute

APPELLANT

Vs

Florale (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 04-09-1996

Acts Referred:

Citation : (1997) ILR (Kar) 364

Hon'ble Judges : S. Venkataraman, J

Bench : Single Bench

Advocate : S. Najundaswamy, for the Appellant; Law Associates, for the Respondent

Final Decision : Dismissed

Judgement

S. Venkataraman, J.—Though this matter has come up for admission, as the lower Court records have been secured and the point involved is short, the matter is heard on merits by consent.

2. The parties will be referred to by the rank they held in the lower Court.

3. The respondent has filed a suit for declaration that the letter written by the defendant dated 9.1.1996 is null and void and the same is not binding on the plaintiff-company for a direction to the defendant to allow the plaintiff-company to enjoy the status as the corporate member of the defendant and allow the plaintiff to make the subscription as and when intimated by the defendant. Along with the plaint, the plaintiff also sought for an order of temporary injunction restraining the defendant from preventing the plaintiff from using the facilities available to a corporate member of the defendant-club pending disposal of the suit.

4. It is not disputed that the plaintiff became a corporate member of the defendant-institute by paying an entrance fee of Rs. 40,000/-and advance subscription for one year on 27.9.1994. The defendant-instituted sent a notice to the plaintiff on 16.12.1995 intimating the plaintiff that the subscription for the

period from September 1995 to December 1995 had been outstanding and calling upon the plaintiff to remit that amount on or before the last date of December 1995 to keep its membership current. It is not disputed that the plaintiff sent a cheque for Rs. 1,432/- being the subscription fee from September 1995 to December 1995 along with a letter dated 6.1.96. The defendant accepted that cheque and informed the plaintiff that in terms of Rule 15(c), the plaintiff had ceased to be a corporate member of the Institute with effect from 9.1.96. It is this letter which has been challenged in the suit filed by the plaintiff.

5. The learned City Civil Judge has granted the temporary injunction sought for by the plaintiff mainly on the ground that the plaintiff had been admitted as a corporate member for a period of 15 years and it is not open to the defendant to state that the membership has ceased on the ground that the subscription fee had not been paid for 4 months and that in similar case in O.S.No. 5346/95 pertaining to another club he had granted an injunction.

6. The Learned Counsel for the defendant-appellant has contended that the learned City Civil Judge has not at all taken into consideration the relevant bye-laws of the institute which clearly show that a corporate member ceases to be a member if there is default in payment of monthly subscription for 4 months and that the learned City Civil Judge could not have relied upon his order in another case pertaining to another club where the facts were different, to grant the temporary injunction sought for.

7. The Learned Counsel for the respondent sought to support the order of the lower Court contending that the defendant had not issued notice about the amount due well in time and that the question as to whether on the facts of the case, the plaintiff's membership came to an end requires to be investigated and the Trial Court was justified in granting the temporary injunction sought for.

8. At the outset, I must mention that the learned City Civil Judge could not have relied on his own order in another case to pass the impugned order. He had to confine himself to the facts of the present case and he had to have found out whether prima facie the plaintiff had made out a case for grant of a temporary injunction of the nature sought for.

9. In the present case, there is no dispute about the fact that the plaintiff was due the monthly subscription for the period from, September 1995 to December 1995. In fact, the document produced by the plaintiff shows that the plaintiff acknowledged the amount due towards subscription fee for 4 months and has sent a cheque for that amount on 6.1.1996. Even in the plaintiff's letter dated 18.12.95 addressed to the defendant, it is clearly stated that there is a mere delay of 5 days in paying the arrears of Rs. 1,232/-. In that letter, the plaintiff has sought for condonation of the delay. Thus what the Court had to find out was whether as per the bye-laws, the defendant is justified in contending that the membership of the plaintiff had ceased. Unfortunately, the learned City Civil Judge has not at all referred to the bye-laws which were produced before him

and has proceeded on the basis that because the plaintiff had been admitted as a member for 15 years, the membership cannot come to an end for non-payment of subscription fee for 4 months. The bye-laws which had been produced before the lower Court show that subscription has to be paid by the member in advance. That apart Rule 15(c) of the bye-laws stipulates that a non-resident member, a corporate member, an associate member or a long term temporary member, whose subscription is in arrears for four calendar months, ceases to be a member. The defendant had admittedly issued a notice to the plaintiff wherein this rule has been quoted and he has been requested to pay the subscription arrears before the end of December 1995 to keep the membership current. It may be that the delay in making the payment by the plaintiff was unintentional or due to various other bona fide facts. But when the bye-laws stipulate that the membership would cease if there is arrears of subscription for 4 months, prima facie the membership would come to an end once, it is found that the member was in arrears for 4 months. The defendant has also produced the application for membership given by the plaintiff to show that the plaintiff has agreed to abide by the Rules and Bye-laws of the Institute. "As amended from time to time". Even if it could be said that the plaintiff was not aware of this particular bye-law, the defendant has drawn the attention of the plaintiff specifically to the bye-law 15(c) in the notice dated 16.12.95. In the circumstances, it cannot be said that the plaintiff has made out a prima facie case for grant of a temporary injunction. That apart, the temporary injunction that is sought is in the nature of a mandatory injunction. By making a prayer that the defendant should be restrained from preventing the plaintiff availing the facilities of a corporate member, the plaintiff has virtually sought for a mandatory injunction directing the defendant to provide all facilities of a corporate member to the plaintiff till the disposal of the suit. As the defendant's action prima facie is within the parameters of the bye-laws of the Institute, it cannot be said that the plaintiff has a prima facie case for grant of such a temporary injunction.

10. The order of the learned City Civil Judge is capricious and cannot be sustained. For the above reasons, this appeal is allowed and the order of the lower Court is set aside. The plaintiff's application for temporary injunction stands rejected.