
(2009) 02 CAL CK 0057

In the Calcutta High Court

Case No : F.M.A. No. 1903 of 2006 and C.A.N. 7667 of 2008

Calcutta Swimming Club

APPELLANT

Vs

Lalit Singh and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 39 Rule 1, Order 39 Rule 2

Citation : (2010) 8 RCR(Civil) 690

Hon'ble Judges : Tapan Kumar Dutt, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Anindya Mitra, Harish Tandon, D. Basak, D.N. Sharma and R.K. Rai, for the Appellant; Pratik Prakash Banerjee, Supratik Sanyal, Ranabir Roy Chowdhury, Hiranmay Bhattacharjee and Asis Choudhuri for Respondent Nos. 1 to 4 and S.P. Roy Chowdhury, Subhasish Ghosh and M. Ojha for Added Respondents, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This First Miscellaneous Appeal is at the instance of the defendant Nos. 1 and 2 in a suit for declaration and injunction and is directed against Order No. 16 dated 21st August, 2006 passed by the learned Trial Judge thereby disposing of an application under Order XXXIX Rules 1 and 2 of the CPC filed by the plaintiffs/respondents thereby restraining the present appellants from giving any effect to the results of the interviews of the candidates for membership with the intention to induct them as associate members under restricted category and also restraining them from convening any further meeting or interview to induct any associate members as restricted members of the defendant No. 1 till the disposal of the suit. The appellants were further restrained from inducting the proposed associate members with restricted rights from becoming the members of the defendant No. 1 till the disposal of the suit. Being dissatisfied, the defendant Nos. 1 and 2 have come up with the present appeal.

2. The plaintiffs/respondents, five members of the defendant No. 1, the club, filed before the City Civil Court at Calcutta, a suit being Title Suit No. 671 of 2006 thereby praying for the following relief:

- a. Leave be granted under Order 1 Rule 8 of the Code of Civil Procedure, 1908;
- b. Declaration that the meetings held on 5th July, 2006 to induct Associate members as Restricted Members not being in conformity with the Rules and Bye-laws of defendant No. 1 is illegal, null and void and cannot be given effect to;
- c. Declaration that induction of the proposed Associate members under the guise of Restricted Category and/or imposing any terms not in conformity with Rule 3 and 15(a) of the Rules and Bye-laws of defendant No. 1 are illegal and void ab-initio and be declared null and void;
- d. Permanent injunction restraining the Defendants from giving any effect to the interview of the proposed members with the intention to induct them as Associate members under Restricted category with restriction on their children of becoming members of the Defendant No. 1 on attaining the age of 21 years;
- e. Permanent Injunction restraining the defendants convening any further meeting and/or interviews to induct proposed Associate members as restricted members of the defendant No. 1;
- f. Permanent Injunction restraining the defendants from inducting the proposed Associate members as restricted members from becoming members of the defendant No. 1;
- g. Injunction;
- h. Receiver;
- i. Costs;
- j. Such other and further reliefs, the plaintiff is entitled to.

3. The case made out by the plaintiffs in the said suit may be summed up thus:

(a) The plaintiffs were the members of the defendant No. 1, a reputed and prestigious club of the city of Calcutta since 1887. The defendant Nos. 2 and 3 are the responsible office bearers of the defendant No. 1 and the defendant Nos. 4 to 14 the committee members of the defendant No. 1.

(b) The object of the defendant No. 1 is to provide and maintain swimming pool for the members of the club, encourage and promote swimming, water polo, life saving and all other branches of aquatic sports in every possible manner. The defendant No. 1 has also a restaurant, three bars, rooms and banquet-hall apart from a billiard-room and children-room. The defendant No. 1 also promotes various cultural and social activities in the premises of the club.

(c) According to Rule 3 of the Rules and Bye-laws of the defendant No. 1, there

are several classes of members and Rule 3(c) provides that any associate member who has been a member for a continuous period of two years can become a permanent member upon payment of the difference of entrance fee for associate member and entrance fee for permanent member.

(d) In February, 2002, the defendant No. 1 through its committee decided to admit new associate members. The persons willing to become associate members were required to deposit Rs. 2,00,000/- which include entrance fee and development fund. The children of the persons willing to become associate members were to be governed under Rule 15(a) of the Bye-laws of the said defendant No. 1 when they would become eligible for membership.

(e) Several applicants applied for becoming the associate members of the defendant No. 1 and the committee members of the defendant No. 1 after following the procedures under the Rules and Bye-laws of the defendant No. 1 selected approximately 380 numbers of associate members between the years 2003-04. However, at the time of admission of the new members, they were not taken as normal associate members but as associate members with a restriction clause.

(f) The committee, at the time of admission of those members, got an undertaking from them that their children would not be governed under Rule 15(a) of the Bye-laws of the defendant No. 1 and that their children after attaining the age of 21 years would not automatically become the members of the defendant No. 1.

(g) Such act of the committee members of the defendant No. 1 was itself in violation of Rule 3 of the Rules and Bye-laws of the club as such restriction imposed upon the associate members was not found in the Byelaws of the club. Hence the suit.

4. After filing of the suit, the plaintiffs, on the basis of the allegations contained in the plaint, came up with an application for temporary injunction restraining the defendants from giving any effect to the interview of the proposed members with the intention to induct them as associate members under the restricted category by imposing embargo on their children on becoming the members of the defendant No. 1 on attaining the age of 21 years and also prayed for injunction restraining the defendants from convening any further meeting or interview to induct such restricted members.

5. The application was opposed by the appellants by filing written objection thereby denying the material allegations made in the application for temporary injunction and the defence of the appellants may be summed up thus:

(1) The suit filed by the plaintiffs was not maintainable as the defendant No. 1 was not a corporation within the meaning of the City Civil Court Act. As the Rules and Bye-laws of the defendant No. 1 provided a dispute redressal forum under Rule 27 of the Rules and Bye-laws and the plaintiffs being the members of the

defendant No. 1 are bound by the said Rule and, therefore, the dispute alleged to have been raised by the plaintiffs should not be tried before the Court.

(2) None of the plaintiffs is an aggrieved party and at their instance, the suit is not maintainable. The Rules and Bye-laws of the club do not stand in the way of admitting associate members with restricted right. The balance of convenience and inconvenience is not in favour of grant of any injunction. As pointed out earlier, the learned Trial Judge arrived at the conclusion that the plaintiffs had proved a strong prima facie case and consequently, it was a fit case for grant of injunction.

6. Being dissatisfied, the defendant Nos. 1 and 2 have come up with the present appeal.

7. After hearing the learned Counsel for the parties and after going through the materials on record, we are of the view that even if it is assumed for the sake of argument that the plaintiffs had proved a strong prima facie case pointing out that the associate membership with the restriction upon their children to become direct members on attaining the age of 21 years are not found in the existing Rules and Bye-laws, that fact by itself is not sufficient to pass an order of injunction as granted by the learned Trial Judge.

8. For admitting those persons as the members with a restricted right, the plaintiffs will not be prejudiced in anyway as the associate members of the club. None of their rights as an associate member of the club is going to be affected if those new members with curtailed rights are admitted. Mr. Roy Chowdhury, the learned senior advocate appearing on behalf of those members with restricted right who have been subsequently added in this proceeding, has supported the appellants and submitted that his clients have no grievance or objection in continuing with such restricted membership.

9. Mr. Banerjee, the learned advocate appearing on behalf of the plaintiffs/respondents, in this connection, strenuously contended before us that after two years from becoming the associate members, these persons with restricted right will become permanent members and will also be entitled to become the members of the executive committee and at that time, they, being zealous towards the other associate members like the plaintiffs, will oppose the induction of the children of the plaintiffs and other associate members as the members of the club by exercising voting right as the committee members and consequently, there will be disharmony and ill-feeling among the two categories of the members of the club and in the process, as a member of the club, his clients will definitely be prejudiced. We, however, find that for the purpose of making the children of associate members as regular members on attaining the age of 21 years, no further ballot is necessary and automatically on mere application of those children and on payment of the requisite fees, they would automatically become members and, thus, the apprehension of Mr. Banerjee is without any basis.

10. This is not a case of expulsion of the plaintiffs from the roll of membership of a club by violation of the rules or without giving them opportunity to defend. This is also not a case of taking penal action against a member or curtailing of any right of such member conferred by the rules. Even the plaintiffs have not alleged that the proposed members lacked the qualifications of becoming the member of the club.

11. In order to maintain a suit, the plaintiff must prove that right to sue has accrued in his favour. In our judgment, there is no right to sue until there is an accrual of the right asserted in the suit, and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted: AIR 1930 270 (Privy Council) . A plaintiff cannot file suit alleging that by the action of the defendant, although none of his rights is infringed, yet, somebody else's right is going to be affected and such right of the third party should be protected. We, therefore, prima facie, do not find any cause of action for the plaintiff to file a suit. We, for that reason, find that the learned Trial Judge did not follow the appropriate procedures which are required to be followed while disposing of an application for injunction in this type of a case. Merely because, prima facie, it has been established that the proposed action of the club is not in conformity with the Rules that fact by itself is not sufficient for granting temporary injunction if by the alleged action of the defendants, none of the rights of the plaintiffs is going to be interfered with and at the same time, the balance of convenience and convenience is not in favour of the plaintiffs. It is needless to mention that it is not the case of the plaintiffs that they will suffer irreparable loss and injury if ultimately the suit succeeds or that the relief will become inappropriate. If the suit succeeds in the long run, the new admitted members with restricted right who have no grievance even at this stage will get the same right like other associate members to have their children as a member on attaining the age of 21 years; on the other hand, if the suit is ultimately dismissed, for unnecessary injunction, the club will not be entitled to admit the new members and will consequently, suffer financially for not admitting any new members.

12. We, therefore, set aside the order impugned and hold that although the plaintiffs had proved the prima facie case that the alleged action of the defendant is not strictly in conformity with the Rules of the club, this is not the case where the injunction should be granted because of the fact that such action has not infringed any of the rights of the plaintiffs as a member of the club and thus, prima facie, the plaintiffs have no cause of action to file the suit and at the same time, the other two important factors, namely, the question of balance of convenience and inconvenience and that of irreparable loss and injury of the plaintiffs had also not been established in their favour.

13. The appeal is, thus, allowed and the order impugned is set aside. The application for temporary injunction filed by the plaintiffs is dismissed. We make it clear that our observations regarding the prima facie case is tentative for the

purpose of disposal of the appeal and will not be binding upon the Court at the time of disposal of the suit itself.

In the facts and circumstances, there will be, however, no order as to costs.

Bhaskar Bhattacharya, J.

14. I agree.