
(2010) 01 DEL CK 0033

In the Delhi High Court

Case No : I.A. No. 1787 of 2009 in C.S. (OS) No. 406 of 2006

Jai Karan Singh and Others

APPELLANT

Vs

Delhi and District Cricket Association

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Citation : (2010) 166 DLT 743

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Harish Malhotra, Rajender Agarwal and Tanuj Khurana, for the Appellant; Ashish Makhija and Sanjana Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh , J.—By this order, I shall dispose of the application filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (referred to as "CPC" for brevity) being I.A. No. 1787/2009. The plaintiffs filed the present suit for declaration and injunction with the following prayers:

[a] pass a decree of declaration declaring that the Defendant acting through its Executive Committee and or office bearers, has no right whatsoever to distribute complimentary tickets and or passes or duty and gold cards, etc.; and

[b] pass a decree of permanent injunction restraining the defendant acting through its Executive Committee and or any office bearers and from any person representing defendant from printing, publishing and or distributing any complimentary tickets or passes or any duty or any gold cards etc., for the purpose of entry of any person into the stadium, for any event/match whether national or international;

2. When the suit and the pending applications were listed before the Court on 17th March, 2006 this Court passed the following orders:

...The learned Counsel for the defendant as well as Mr. Jaitley who appears in his

capacity as President of Delhi and District Cricket Association assure this Court that the number of seats that would be put to public sale in the forthcoming one day match between India and England on 28.03.2006 would be the highest that has ever been subjected to sale in the history of this Stadium. He further states that he would make earnest efforts to maximise the number of tickets which are put up for sale to the general public. He also assures this Court that the revenues expected from the sale of the tickets would be the highest that has ever been collected and he says that an endeavour is being made to target revenues of Rs. 5 crores from sale of tickets of the forthcoming match. Mr. Jaitley also states that various steps would be taken to ensure that genuine ticket holders who have paid for the same would be allowed comfortable entry into the stadium. The learned Counsel for the defendant states that an appropriate affidavit would be filed before the next date of hearing indicating the exact status with regard to the tickets which have been issued complimentary as well as sold in the said match

3. The defendant filed the affidavit in compliance with the above stated order. However, the plaintiffs raised the objection that the affidavit dated 18th April, 2006 filed by the defendant did not fully comply with the said order.

4. Vide order dated 7th May, 2007 the defendant was given further six weeks time to file the complete affidavit by placing the information about the sale of tickets on record. Subsequently, the said affidavit in compliance with the said order has been filed by the defendant.

5. When the matter was again listed before the court on 31st March, 2008 a contention was raised by the defendant that during the pendency of the present proceedings, another suit instituted by the plaintiffs against the defendant being CS (OS) No. 1288/2005 had been disposed of in terms of order dated 18th December, 2007 wherein the Chairman-cum-Election Officer was appointed to call for the A.G.M. of the defendant and hold an election of the Executive Committee and, therefore, the present suit had become in fructuous.

6. Learned Counsel for the defendant at that stage denied the contention of the plaintiffs that the suit was rendered in fructuous on the reason that although the Executive Committee and office bearers of the defendant who had become functus officio were still proceeding to issue complimentary tickets and passes for the purpose of entry of any person into the stadium.

7. In the meantime, the defendant filed the present application under Order VII Rule 11 CPC for rejection of the plaint mainly on the ground as mentioned earlier in the preceding para of the order. Secondly, it is contended in the application that as regards the complimentary tickets/passes, the defendant and its President assure this Court that the number of seats that would be put to sale for the forthcoming one day match between India and England on 28th March, 2006 would be the highest that has ever been subjected to sale in the history of this Stadium. This Court vide order dated 7th May, 2007 directed the defendant to

file the affidavit and the same was filed. Lastly, it is contended in the application that the Executive Committee and office bearers have become functus officio and are, thus, incompetent to issue the complimentary tickets/passes for the purpose of entry of any person into the stadium and therefore, the present suit has already become in fructuous and the same may be rejected under the provisions of Order VII Rule 11 CPC.

8. The present application is strongly opposed by the learned Counsel for the plaintiffs, who has referred to the prayers of the present suit wherein the plaintiffs have sought the declaration from this Court to the effect that the defendant acting through its Executive Committee and office bearers has no right whatsoever to distribute the complimentary tickets/passes or duty and gold cards etc. and further an injunction is sought against the defendant restraining the defendant from printing, publishing and/or distributing any complimentary tickets or passes or any duty or any gold cards etc. for the purpose of entry of any person into the stadium, for any event/match whether national or international.

9. As regards the earlier suit being CS (OS) No. 1288/2005, learned Counsel for the plaintiffs has submitted that the said suit was filed by Mr. Neeraj Gautam against the defendant seeking declaration and permanent injunction, inter alia, with the following prayer:

[a] pass a decree of declaration declaring that the defendant No. 2 to 25 ceased to be the office bearers and the members of the executive committee of defendant No. 1 and that day they have no right whatsoever to represent themselves as the office bearers or the members of the executive committee of defendant No. 1

[b] pass a decree of permanent injunction restraining the defendant No. 2 to 25 from representing themselves to be the office bearers and the executive committee members of defendant No. 1

[c]

10. Mr. Harish Malhotra, Senior Counsel for the plaintiffs has argued that when the said suit was listed before the Court on 18th December, 2007 this Court was of the view that the dispute in the said suit could be set at rest by directing the Executive Committee of DDCA to hold an Annual General Meeting under the supervision of an independent Election Officer on or before 15th March, 2008 and in view of the said direction, the said suit was disposed of.

11. Learned Senior Counsel has further argued that the prayer in the said suit was very limited, however in the present case, the plaintiffs have sought additional prayers wherein it is specifically prayed that the defendant has no right whatsoever to distribute the complimentary passes for any event/match whether national or international thereby bringing on record the illegal and mala fide conduct of the defendant in distributing the complimentary passes, which are of

a value more than that of the tickets sold for the events, therefore, the application filed by the defendant is not maintainable.

12. It is also argued that due to the abovementioned reasons the defendants company is going in gross loss, which is reflected in the negative balance sheet for the last several years. The plaintiffs have raised an important issue before this Court which is distinct from the earlier suit. He has also referred to para-11 of the reply wherein it is stated that the defendant has issued 25288 complimentary passes as against 14997 tickets sold and the value of the passes was not less than Rs. 20 crores whereas sale proceeds which they are showing to have been received by sale of tickets is only Rs. 3.25 crores.

13. After hearing the learned Counsel for the parties as well as having gone through the prayers for the earlier suit, it is clear that most of the prayers in the present suit are different than that of the earlier suit.

14. Learned Counsel for the defendant has argued that the main grievance in the present suit is that there was no Annual General Meeting held by the defendant after 4th April, 2002 and the other issues, according to the learned Counsel for the defendant, are totally irrelevant. Learned Counsel for the defendant has also argued that as per practice the defendant has never issued complimentary tickets/passes against the saleable tickets as the saleable tickets are booked much earlier than the issuance of complimentary passes, therefore, the contention of the plaintiffs is totally false and frivolous.

15. It is settled law that in order to decide the application under the provisions of Order VII Rule 11 CPC, the Court has to examine the averments made in the plaint. The cause of action in the present case is referred to in para 23 of the plaint, which reads as under:

That the cause of action arose on 4.7.2003 when the Annual General Meeting ought to have been held by the defendant in accordance with law. Cause of action arose on 28.1.2006 and thereafter when the plaintiffs made inquiries and when the plaintiffs came to know that in April, 2005 and December, 2005 a large number of complimentary tickets and passes were distributed by the defendant acting through its Executive Committee and or its office bearers, although they had no right to do the same, more so when they had already become functus officio and ceased to be the members of the executive committee and the office bearers of the defendant and were deemed to have vacated their office on 4.7.2003 when the next AGM of the defendant should have taken place in accordance with law. Cause of action is continuing.

16. From a bare reading of para 23 of the plaint, it appears that as far as the cause of action regarding there being no Annual General Meeting of the defendant after 4th April, 2002 is concerned, the same has already become in fructuous. The plaintiffs have also not filed the application for amendment of the plaint despite the time sought by the plaintiffs as mentioned in order dated 31st March, 2008.

17. However, as far as the remaining cause of action is concerned, one has to see the prayer made in the suit. While determining as to what would constitute the cause of action, the Supreme Court in the case of Om Prakash Srivastava Vs. Union of India (UOI) and Another, observed in paras 12 and 13 as under:

12. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. See Gurdit Singh and Others Vs. Munsha Singh and Others, .

13. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person. (See Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. See Navinchandra N. Majithia Vs. State of Maharashtra and Others, .

18. In another case reported as Union of India and Others Vs. Adani Exports Ltd. and Another, , the Apex Court in para 11 has observed as under:

11.... it is crystal clear that a substantial part of the cause of action has arisen within the jurisdiction of the High Court at Ahmedabad. He pointedly referred to the bundle of facts mentioned in Paragraph 16 of the application as also the additional fact pleaded in Paragraph 7 of the application in regard to the respondents having furnished a bank guarantee as also a Bond in favour of the appellants. He pointed out that the bank guarantee and the Bond were executed by the respondents at Ahmedabad, hence, at least on this Court a part of the cause of action has arisen at Ahmedabad.

19. Thus, it is apparent from the aforesaid decisions that while examining the cause of action, the Court ought to look at the factual situation that gives rise to an enforceable claim. In the present case, there are other claims also, which are mentioned in paras 14, 16, 17 and 19 of the plaint and on the basis of the said averments made in the plaint, the cause of action is mentioned in para 23 of the plaint. The prayer in the plaint is in consonance with the averments made in the aforesaid paras of the plaint as well as the cause of action, referred to above. I do not accept the contention of the defendant that due to the mere disposing of the suit being CS (OS) No. 1288/2005 on 18th December, 2007 with the

direction to hold Annual General Meeting of the defendant on or before 20th March, 2008, the other cause of action will also become infructuous and therefore, the plaint be rejected in view of settled law laid down in *Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others*, wherein the Supreme Court, with regard to the scope of an application under Order VII Rule 11 observed as under:

12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

20. The next contention of the learned Counsel for the defendant that the suit is barred by law and is not maintainable. In support of his submission, he argued that proper remedy for the plaintiffs to raise their other grievance is to approach the Company Law Board (Company Tribunal) under Sections 397 and 398 of the Companies Act, 1956 which is competent to decide the present grievance of the plaintiffs. According to him, the Civil Court is not competent to decide the grievances raised by the plaintiffs. The argument of the defendant, prima facie, does not hold good in the absence of any express provision of the Companies Act excluding the jurisdiction of the Civil Court to adjudicate upon the grievance of the plaintiffs.

21. Prima facie, it appears that Sections 397 and 398 of the Companies Act, 1956 do not exclude the jurisdiction of the Civil Courts, therefore, u/s 9 of the CPC, the Civil Courts have jurisdiction to try all issues of civil nature except those of which, jurisdiction of civil courts has been specifically or by necessary inference barred. The operation of Section 9 of the CPC comes into play when the jurisdiction of the civil court is either expressly or impliedly barred, and the said provision reads as under:

9. Courts to try all civil suits unless barred- The Courts shall (subject to the

provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I]- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II]- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]

22. The relevant principles regarding ouster of jurisdiction of Civil Court were laid down by the Apex Court in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, Supreme Court 78 at page 89 (para 32) reads as under:

(1) Where the statute gives a finality to the orders of the special tribunals the civil courts jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of juridical procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intentment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunal so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express

prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

23. It is also well settled law that plaintiff is dominus litis (Master of the suit)/the party, who carries and controls an action and has dominion over the case and has an inherent right to bring the present action of a civil nature, which is not barred by statute and is not opposed to public policy and subserves public policy and is not an abuse of the process of law.

24. For the aforesaid reasons, the prayer made in the application for rejection of plaint cannot be allowed. I do not find any merits in the application and the same is dismissed.

CS (OS) No. 406/2006

List the matter before the Joint Registrar on 18th February, 2010 for directions.