

(2020) 02 CAL CK 0099

In the Calcutta High Court

Case No : General Application (GA) No. 459 Of 2020, Civil Suits (CS) No. 30 Of 2020

Keshav Bhajanka & Anr

APPELLANT

Vs

Saturday Club Limited

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 12, 62

Citation : (2020) 02 CAL CK 0099

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Ratnanko Banerjee, Soumabha Ghose, Souvik Kundu, Jayanta Sengupta, Rahul Auddy, Ayon Dutta

Judgement

Debangsu Basak, J

The Court : In a suit for damages, perpetual injunction and delivery up and cancellation of a letter, the plaintiffs seek interim relief.

Learned senior Advocate appearing for the plaintiffs submits that, the plaintiff no.2 is a member of the defendant which is a social club. Plaintiff no.1

as a spouse of the plaintiff no.2 is also treated as a member of the defendant. He submits that, an incident occurred on December 24, 2009 at the club

premises and spilled over beyond the club premises. He submits that, the plaintiff no.1 is being wrongfully fully singled out for treatment at the behest

of a section of the club members. He draws the attention of the Court to the Articles of Association of the defendant. He submits that, under Article

12 of such Articles a members committee has to be composed of the specified number of members. In the present case, there is nothing on record to

suggest that, there is compliance by the defendant of Article 12 of the Articles.

He refers to Article 62 of the Articles and submits that, in case the club decides to take a cognizance of any infraction of Articles or any other circumstances happening within or without the club premises, then also the defendant is required to follow up the procedure prescribed. In the present case, the defendant did not follow such prescribed procedure.

Learned senior Advocate appearing for the plaintiffs refers to the correspondence exchanged between the plaintiffs, defendant as well as a third

party. He submits that, the Minutes of the meeting by which the defendant decided to suspend the membership of the plaintiffs for a period of three

months has not been provided till date despite request. He submits that, an independent witness wanted to give evidence in the committee meeting. He

refers to the electronic mail issued by such independent person. He submits that, the content of such electronic mail of such independent person did

not allow the defendant to take a decision of suspension of three months.

Learned senior Advocate appearing for the plaintiffs submits that, a decision to suspend the plaintiffs for a period of three months is harsh. Since the

defendant is a social club, such decision affects the reputation and standing of the plaintiff in the society. According to him, not only did the plaintiffs

made out a prima facie case but also the balance of convenience and inconvenience lies in favour of the plaintiffs in granting the reliefs as prayed for.

The defendant is represented.

The application was considered yesterday. While considering such application, the Court desired that the close circuit television footage of the incident

should be produced in Court for the perusal of the Court and the parties to the proceeding.

In deference to such desire of the Court, the defendant produces the close circuit television footage of the incident. Learned Advocate appearing for

the defendant placed the relevant portion of such footage. The footage is viewed in presence of the learned Advocates for the parties in Court.

On perusal of the footage it appears that, a commotion did occur on the day involving a group of persons. It is the claim of the defendant that, the

plaintiff no.1 is involved in the commotion and is the person central to the commotion.

This contention of the defendant, however, is denied on behalf of the plaintiffs.

Be that as it may, the portion of the close circuit television footage played in

Court establishes that a commotion did occur. The plaintiff No. 2 is a part of the incident. The commotion at this interim stage can be said to reflect upon the character and good name of the defendant. It is the contention of the plaintiffs that, the procedure envisaged under Article 62 of the Articles governing the defendant was not followed while the defendant took the impugned decision of suspending the plaintiffs for a period of three months.

At the ad interim stage, without affording the defendant an opportunity to explain its conduct in relation to the incident as also the adherence to the Articles of the club, it would not be appropriate to decide whether the defendant did follow the Articles of Association of the defendant in imposing the impugned order of suspension or not.

There is a prayer for damages in the suit. The plaintiffs can be adequately compensated if the actions of the defendant are found to be in contravention of the Articles.

A social club such as the defendant herein is required to resolve its disputes in house. In the present case, the defendant has taken a decision of suspension of membership for 3 months. Whether such decision is bad for infraction of the Articles ought to be decided after affording the parties to file affidavits.

In such circumstances, ad interim relief as prayed for at this stage is refused.

Let affidavit-in-opposition be filed within two weeks from date. In such affidavit, no doubt the defendant will disclose the Minutes of the meeting, which decided the fate of the plaintiffs as communicated by the impugned letter dated January 30, 2020 by the defendant. Affidavit in reply within a week thereafter.

List the application as an `Adjourned Motion` in the monthly list of April, 2020.