

(2005) 06 KAR CK 0046

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3638 of 2005

K.P. Kashinath

APPELLANT

Vs

Manjunath Eshwar

RESPONDENT

Date of Decision : 03-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 93

Citation : (2005) 5 KarLJ 108 : (2005) 3 KCCR 231 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : G.S. Vishweshwara, for Lalitha K. GSV Associates, T. Krishna and K.A. Prakash, for the Appellant; K. Raghavendra Rao and V. Vidya Iyer, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Appellant is before me challenging the order dated 16-4-2005 passed on I.A. No. I in O.S. No. 2251 of 2005.

2. The facts in brief are as under:

Appellant was elected as the President of Sadashivanagar Club by the General Body of the Society in an Annual General Meeting held on 11-6-2004. Certain construction activities were carried out in the club premises and some of the members complained that there were some irregularities in the utilisation of funds. In this regard an extraordinary General Body Meeting was held and a fact finding committee was constituted.

2.1 One Sri Jagadishchandra and others filed a suit in O.S. No. 9044 of 2004 against the club praying to declare that the convening of the extraordinary General Body Meeting on 3-10-2004 and the proceedings of the said meeting and all steps pursuant to the same are illegal and void. An ex parte order of injunction was granted in the said suit. Plaintiff-appellant filed objections on behalf of the defendants including the club. Suit was later withdrawn.

2.2 The appellant herein was the President of the Club and he was also a senior permanent member of the club. One Sri Chandrakanth Halgali had submitted an application for permanent membership. The Committee had deferred the decision. Appellant raised objections to the application for membership submitted by Sri Chandrakanth Halgali, on the ground that he was not suitable for permanent member.

2.3 Thereafter appellant received a notice on 14-3-2005 suspending him under Rule 15(e), (i) and (j) of the Rules governing Sadashivanagar Club on the ground that he has filed statement of objections in O.S. No. 9044 of 2004 representing the club, though it had been agreed that all past issues relating to the construction issue have to be closed and that the plaintiffs in O.S. No. 9044 of 2004 would withdraw the suit. It is further stated that the filing of the objections by the appellant is without authority, as the respondent was not consulted. The other reason for suspending the appellant was that he has used the club letter head in his individual capacity to address a letter to the President of the Bangalore Club requesting him not to consider the application of one of the member of the Sadashivanagar Club who had applied for a membership in the Bangalore Club. According to the club, these acts amount to indiscipline of a grave nature.

2.4 Thereafter appellant received a letter dated 9-4-2005 stating that the order of suspension is continued till the Disciplinary Committee completes the enquiry. Being aggrieved by the letter of suspension, appellant filed O.S. No. 2251 of 2005 for declaration that the order of suspension is invalid and is inoperative against the appellant. An I.A. was also filed seeking to suspend the operation of the suspension order dated 14-3-2005. Respondent filed his written statement and a memo to treat the same as objections to the I.A. filed by the appellant. Learned Judge after hearing the parties dismissed I.A. No. I filed by the appellant. Appellant in these circumstances is before me.

3. Sri G.S. Vishweshwara, learned Senior Counsel appearing for the appellant took me through the pleadings to say that suspension is unwarranted and illegal. According to him, the learned Judge has committed a serious error in not granting injunction as sought for by the appellant. Learned Counsel would further say that Section 93 of the CPC would provide jurisdiction in the matter.

4. After hearing I have carefully perused the order of the learned Trial Judge. He has noticed the material facts and thereafter has framed a point with regard to suspension. He notices the rules governing suspension and the case-laws and ultimately he has rejected the application of the appellant. Let me see as to whether this order requires my interference or not.

5. Law is fairly well-settled that the Appellate Court is not to interfere unless the order impugned is unreasonable, perverse or violative of principles of natural justice. In the case on hand admitted facts would reveal that the appellant was suspended and a disciplinary committee has been constituted in the matter.

Appellant has filed a suit in O.S. No. 2251 of 2005 and sought for injunction. Injunction has been refused.

In T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, the Supreme Court has ruled in para 9 as under:

"(9) The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules; (2) The lodge is bound to act strictly according to the rules; whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well-settled rules of construction in that regard; (3) The jurisdiction of a Civil Court is rather limited; it cannot obviously sit as a Court of appeal from decisions of such a body; it can set aside the order of such body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra".

The Supreme Court has cautioned that the Civil Court has limited jurisdiction.

In Sadashivanagar Club, Bangalore Vs. Nataraj, a learned Judge of this Court after noticing T.P. Daver's case, in somewhat identical circumstances has chosen to hold in para 19 reading as under:

"19. I hasten to add here that these are only allegations and they are the allegations required to be proved in the inquiry. However, at this stage, it will suffice if it is remembered that it is in the context of the said allegations that the Executive Committee appears to have taken the decision to suspend the instant respondent. It is neither desirable nor proper for this Court to sit in judgment over the wisdom or otherwise of the Executive Committee of defendant-society in taking a decision which it has taken. However, it is necessary to point out here that at present there are no materials to show that the Executive Committee is actuated by any improper motive. At this juncture it is necessary to remember that if the action taken by the Executive Committee is not shown to have been taken with an ulterior motives even if it is possible to say that the action taken is not warranted in the facts and circumstances of the case the same would not be a ground for the Court to interfere".

In para 20 the learned Judge rules that even if the plaintiff has got a prima facie case, it is difficult to say that the balance of convenience lies in favour of the plaintiff. In para 22, the learned Judge, after noticing these facts has refused to grant injunction.

6. The present set of circumstances to a certain extent are same or similar. No ulterior motive is shown to me. In the light the limited jurisdiction and in the light of the law on the subject, I do not think that the learned Judge has committed any error in refusing to grant injunction. No legal error is available in the given circumstances and in the light of the judgments referred to above.

7. No grounds. Appeal stands rejected without being admitted. Liberty is reserved to the appellant to see early conclusion of the departmental proceedings.