

(2003) 05 CAL CK 0023
In the Calcutta High Court
Case No : FMAT No. 1603 of 1998

Mohun Bagan Athletic Club and Others	APPELLANT
Vs	
Deba Prasad Mukherjee and Others	RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

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

Citation : AIR 2003 Cal 298

Hon'ble Judges : M.H.S. Ansari, J;A.K. Mitra, J

Bench : Division Bench

Advocate : S.K. Kapoor, Aninda Mitra, Ranjan Bachayat, P.C. Sen, Abhijit Mitra, Raupen Sinha, Bimal Chatterjee, Ajoy Chatterjee, M.K. Das, Debnath Ghosh and H.R. Basu, for the Appellant;P.K. Roy, Jayanta Mitra, Prodosh Mallick, Amal Kr. Sen, S.P. Mukherjee, Samrat Sen, Sakya Sen, A.C. Kar, G.N. Ghosh, H.K. Mitra, R. Banerjee, T. Aich and S.K. Bhutoria, for the Respondent

Judgement

Arun Kumar Mitra. J.

1. This appeal has been preferred by the defendants challenging the order being order No. 18 dated 8-5-1998 passed by the learned Judge. XII Bench. City Civil Court at Calcutta in Title Suit No. 135/1098.

2. The impugned order has been passed by the learned Judge on an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. The said application for Injunction was filed before the learned trial Judge on 23-1-1998.

3. The plaintiffs/respondents filed T.S. No. 135/98 and in the said T.S. the following prayers were made :

(a) Leave under Order 1 Rule 8 CPC.

(b) Decree for declaration that the Executive Committee including its office bearers are functus officio and the said executive Committee has no authority to amend rules and to hold election of the said club.

(c) A decree for declaration that the defendant No. 4 has right to continue in the office of the defendant No. 1 as Hony, General Secretary thereof.

(d) For a decree for declaration that the notice dated 7-1-1998 issued by the defendant No. 4 convening a Special General Meeting on 28-1-1998 is void, illegal and will have no effect in the eye of law.

(e) For permanent injunction restraining the defendants from holding any meeting scheduled to be held on 28-1-1998 as per publication made in the Ananda Bazar Patrika on 9-1-1998 and from acting any further in pursuance of the alleged notice dated 7-1-1998 or any notices and/or to do anything prejudicial to the interests of the members of the said club including the plaintiffs.

(f) Temporary injunction in terms of prayer (e) above,

(g) Ad-interim injunction.

(h) To appoint a Receiver to take charge of the administration of the club in place and instead of the defendants during the pendency of the suit and for till election of the Executive Committee.

(i) Leave to be granted under Order 1, Rule 8 of the C.P. Code for issuing notice in respect of the Institution of the suit to all members of the Mohun Bagan Athletic Club (defendant No. 1),

(j) Costs of the suit.

(k) Any other relief or reliefs as the plaintiff may (sic) deem fit and proper.

4. In context of the above suit an application under Order XXXIX Rules 1 and 2 read with Section 151 of the CPC was filed by the plaintiffs, In this application for injunction the plaintiffs made the following prayers :

(A) For an order of temporary injunction restraining the defendants from holding any meeting scheduled to be held on 28-1-1998 as per publication made in the Ananda Bazar Patrika on 9-1 -1998 and from acting any further in pursuance of the alleged notice dated 7-1-1998 or any other notices and/or to do anything prejudicial to the interests of the members of the said club including the plaintiffs.

(B) Ad-interim order of injunction in terms of prayer above.

(C) For such other and further order or orders as your Honour may deem fit and proper.

5. In the application for injunction the plaintiffs/petitioners founded their case on the pleas which are, Inter alia, as follows :

The defendant No. 1 Mohun Bagan Athletic Club (hereinafter referred to as the said Club) is a reputed Club of India having about 8000 members and innumerable supporters. The said Club is an unregistered club. It has its own Rules and Regulations for the internal management of the affairs of the said

Club. The plaintiffs are the members of the said Club and the plaintiffs have instituted the suit in representative capacity and have prayed for leave for the same. The defendants were elected members of the Executive Committee in the election held in 1988-89 and their term having expired with the expiry of three years, there is at present no Executive Committee of the said Club, The defendant No. 2 Sri Swapan Bose was a member of the Executive Committee in the election held in 1988-89 and he is at present holding his post allegedly as President of the Club. The defendant No. 4 (Sri Anjan Kr. Mitra) is claiming to be the Hony. General Secretary and the defendants cannot claim themselves to be the Executive Committee members and also as the office, bearers of the said club inasmuch as election has not been held after 1988-89 and that body has become defunct after three years.

6. After expiry of the term of the erstwhile Executive Committee of the said Club the defendants are continuing with the activities of the said Club without any authority to do so. The defendant Nos. 2 and 4 are influential and powerful persons and with some ulterior motive did not convene any General Meeting for last nine years although Rule 27 of the said club provides, for Annual General Meeting to be convened every year and in consequence there was no effort to prepare the audit of the said club for about a decade. The plaintiffs' alleged violation of Rules, particularly, Rule 13(3) wherein it has been specifically stated that any casual vacancy should be filled up from the existing executive members. The plaintiffs expressed the violation of Rule in the following manner :

(a) In the last election held on 8-7-1990 Dhiren Dey was elected General Secretary and subsequently he was made President and after his demise the defendant No. 2 Sri Swapan Bose was awarded the post, of the President of the said club without following the norms and/or rules of the said club.

(b) Sri Anjan Mitra, the defendant No. 4 was elected as Accountant being the office bearer of the said Club and subsequently he was awarded the post of the Hony. General Secretary by then Executive Committee without having any power to do so.

(c) Sri Balaram Chowdhury, the defendant No. 6 was elected as Cricket Secretary and subsequently he has been awarded the post of Asstt. General Secretary of the said club.

(d) The erstwhile Executive Committee in its meeting appointed Rule/Revision Committee consisting of three members, namely, Sri A. Dasgupta alias Jhantu, Sajal Bose and Sri Samar Banerjee. On 9-1-1998 a notice was published in the Newspaper Ananda Bazar Patrika in the name of the Hony. General Secretary of the club that the defendant No. 4 is convening a Special General Meeting to be held at Club premises on the 28th January, 1998 at 3-00 p.m. to consider the agenda which includes amendment of Rules of Mohun Bagan Athletic Club introducing of photo identity card for the election of the Club. This notice dated 7-1-1998 for the meeting scheduled to be held on 28-1-1998 published in the

Ananda Bazar Patrtka on 9-1-1998 brought in the cause of action of the suit as well as the injunction application and as quoted above. The same was the subject-matter of challenging the suit and injunction was prayed for on the same.

7. On behalf of the defendants an affidavit-in-opposition to the said injunction application was filed. In the affidavit-in-opposition the defendants stated that the petition is not maintainable. Assuming the petitioners are the members still then the suit is not maintainable inasmuch as there are about 8000 members and the defendant No. 1 club is an unregistered club/association and the defendants stated that no interlocutory order by way of injunction can be issued at the stage. It was also averred in the affidavit-in-opposition that in absence of leave under Order 1, Rule 8 of the C.P. Code and publication of public advertisements in the Newspaper as per order of the learned Court the instant suit shall not be deemed to have been instituted. It is presumed that no such leave has been obtained as no public advertisement has appeared in the Newspaper on the direction of the learned Court. It appears from the Advocate's letter that the suit was filed on 21-1-1998 and application for injunction was moved on 22-1-1998 with full knowledge of the fact that next four days that is 23-1-1998 to 26-1-1998 would be holidays and 28-1-1998 is the date of meeting and the plaintiffs nowhere in the plaint have given explanation of the delay. It was also stated by the defendants that cause of action arose on 9-1-1998 when the impugned notice was published not for any prior action of the defendants. According to the defendants, the grounds of meeting were for introduction of photo identity card for the election of the club so that there cannot be any manipulation and also it was a step towards Annual General Meeting following election. It was also the defence of the defendants that the plaintiffs did not mention the fact that a suit being Suit No. 115/ 1996 is still pending before the Hon'ble High Court over the same subject-matter and on identical averment and in that view the learned Court has no jurisdiction to entertain the instant suit, Further defence that was taken by the defendants was that the learned Court has no jurisdiction to interfere with the Internal management and affairs of the club. The defendants also stated in the affidavit-in-opposition before the trial Court that the allegations relate to post and concluded transactions cannot form the subject-matter for grant of an immediate urgent relief. It has been also stated in the said affidavit in opposition that the club management is taking steps for the next election. This Special General Meeting Is an effective step towards that. According to the defendants, the delay caused by the plaintiffs in filing the suit itself appears to be mala fide. According to the defendants. Rule 13(b) of the club constitution says that the Executive Committee shall hold office until next Annual General Meeting, It was also stated in the Written Statement that Sri A. Dasgupta and Sri Samar Banerjee are still members of the Executive Committee. But Sajal Basu has been placed under suspension. According to the defendants, the plaintiffs have no right to institute the suit, the learned Court has no jurisdiction to entertain the suit and are to pass an order of injunction and the defendants should be allowed to hold the Annual General Meeting, The

defendants also contended that there is no prima facie case for grant of any order of injunction.

8. The plaintiffs' affidavit-in-reply to the said affidavit-in-opposition filed by the defendants, reiterated their stand taken in the injunction petition.

9. On the above pleadings the learned trial Judge allowed the application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. The operative portion of the said Order of injunction passed by the Ld. Trial Judge which is the subject-matter of this appeal is quoted hereinbelow :

"That the plaintiffs' application under Order XXXIX Rules 1 and 2 read with Section 151 of the C.P. Code is hereby allowed on contest with costs against the defendant Nos. 1, 4 and 17 and without costs against the rest. The defendants are hereby restrained from acting further, in pursuance of the resolution made in the Special General Meeting held on 28-1-1998 and they are to maintain status quo ante as on 7-1-1998 till disposal of the suit."

10. At the outset let us deal with the application filed before this Court first.

It appears from the records that one application being CAN 4394/98 has been filed by one Anil Kr. Agarwal praying for leave to intervene pro-interesse-suo and/or alternatively prayed for adding him as defendant in the suit. We propose to dispose of this application along with the main appeal the order in which to be passed hereinbelow.

11. There is another application being CAN 5346/98 filed by some of the respondents of FMAT No. 1603/98. In this application the applicants have prayed for modification/variation of order dated 13-5-1998 and subsequent order dated 30-6-1998 passed in FMAT No. 1603/98. This application also can be disposed of along with the appeal that is by the order to be passed hereinbelow in the appeal.

12. One application being CAN 3318/99 has been filed by Sri Mrityunjoy Das, respondent No. 30 for passing necessary direction upon the respondent Nos. 20 and 23 and appellant Nos. 2 and 3 to place before this Court the total amount receipt from the sponsors and from the organizer of various tournaments played by the Club or before the Supervisory Committee appointed in terms of the order dated 30-5-1998 Including the expenses made thereafter for the year 1998-99. Order to be passed hereinbelow in the main appeal will cover the prayer made out in this application.

13. One application for addition of party being CAN 2170/2000 has been filed by Mc. Dowell & Co. It appears from the document filed in this Court in the application itself that rightly or wrongly this Mc. Dowell & Co. Ltd. has entered into an agreement with Mohun Bagan Athletic Club. An affidavit-in-opposition to this application for addition of party has been filed before this Court and affidavit-in-reply has also been filed. Since as it appears that by now Mc. Dowell & Co, Ltd. has acquired some interest in the suit and defendants therein/appellants herein intend to rely upon the agreement executed by and between the said club

and Mc. Dowell Co. Ltd.. we allow the application for addition of party and direct that this Mc. Dowell & Co. Ltd. being the applicant in CAN 2170/ 2000 be added as party defendant in the suit being T.S. No. 135/1998. This application being CAN 2170/2000 is thus disposed of in the above manner.

14. Now let us deal with the order impugned in the instant appeal. In support of their contentions the learned counsel for the appellants submits that the impugned order of injunction passed in mandatory nature granting status quo ante is illegal and without jurisdiction. According to the learned counsel for the appellant, the notice of this Special General Meeting was published in accordance with the Rules of the said club by the Honorary General Secretary, Sri Anjan Kr, Mitra. It is also submitted by the appellants that the Special General Meeting was held on January 28. 1998 which was attended by Over 800 members who have unanimously passed the resolution. The learned counsel for the appellants submits that the learned Court below went wrong in interfering with the, internal administration of the unregistered club and the learned Trial Judge failed to appreciate that the notice was valid and in accordance with the Club Rules and this was published for the meeting which was to be held for the purpose of discussion of photo identity cards to be used for the purpose of election to be held. The learned counsel also submitted that another suit being T.S. No. 115/1995 being pending in the High Court at Calcutta on identical cause of action, this suit cannot be held to be maintainable. The learned counsel for the appellants as well as the learned Counsel appearing for Mc. Dowell & Co. Ltd. (added respondent herein) submits that the name of the club has not been changed and this is purely a case of sponsoring and nobody can be prejudiced in such sponsoring inasmuch as the said club is in dire necessity of money for running the club property. The three basic contentions which have been urged by the learned counsel for the appellants are (1) the Civil Court cannot interfere with the internal administration of an unregistered club, the defendant No. 1, (2) the Trial Court cannot grant injunction in the mandatory nature directing status quo ante and (3) the Court passed the order without hearing the affected parties like Mc. Dowell & Co. Ltd. with which the said club has entered into an agreement of sponsorship.

15. It is further submitted by the appellants that the Rules of the Club have not been violated by the appellants. It is for the betterment of the Club itself and the respondents herein who are the plaintiff in the suit filed injunction petition with mala fide intention and the learned trial Judge without considering such records/ documents has passed the impugned order of injunction which should be set aside.

16. The learned counsel for the respondents submits that the Civil Court can interfere in such a situation when there is Violation of the principle of natural justice and when the respondents Nos. 2 and 3 acted without jurisdiction. It has been further submitted by the learned counsel; for the respondent that after 1998 there is no election and the Rules of the said Club provide for the election

of the Executive Committee on every three years and the Executive Committee constituted in 1988-89 has become dead and defunct. The appellant No. 2 Sri Anjan Mitra cannot claim himself to be the Honorary General Secretary of the said Club, The learned counsel for the respondents submits that the said body of 1988-89 is continuing then in the said body Sri Anjan Mitra was the Accountant and how and when he converted himself to be the Honorary General Secretary? The learned Counsel for the respondents further submits that under the garb of sponsorship the Football Club which is a very renowned one is being sold to Mc. Dowell & Co. Ltd. and the name of the Club is also going to be changed and renamed as United Mohun Bagan Sporting Club. According to the learned counsel for the respondents, the learned trial Judge rightly passed an order of mandatory Injunction and under Order XXXIX, Rules 1 and 2, The trial Court has power to issue mandatory injunction where there is injustice and in the instant case injustice is apparent on the face of record, The learned counsel for the respondents submit that the appeal should be dismissed with costs.

17. The learned counsel for the appellants also submit that learned trial Judge committed error by going into the question that Annual General Meeting was not held in proper time and the Special General Meeting for which notice was published was going to be conducted in violation of the Rules of the Club. The learned counsel submits that this is not within the jurisdiction of the learned Trial Judge. In support of his contention the learned counsel for the appellants placed reliance on a decision reported in Kailash Chandra Dutt Vs. Jogesh Chandra Majumdar and Others, in which Division Bench of this High Court observed, inter alia, that non-election of Directors for a particular year and the Directors of previous years continue and the suit by a share-holder for declaring the acts of the Director as void cannot lie as no legal right or character of share holder is denied. The learned counsel also relied on a decision of the Division Bench of this High Court reported in 1988 (1) CLT 61 in which the Hon''ble Division Bench, inter alia, observed that default in holding Annual General Meeting of a Company u/s 166 of the Act did not mean that the Directors who were due to retire by rotation u/s 256 of the Act must be deemed to have vacated their office. Such Directors continue to remain Directors and any other Interpretation of the law will lead to disruption in the management of Company which is not the object thereof. The management of companies cannot remain in hiatus.

18. The Hon''ble Court also observed in this case that Courts are very chary of taking over full-time management of a running company which entails supervision of a host of day to day functions and this should not be done except in extraordinary circumstances and more so in inter alia proceedings.

19. The learned counsel submit that in this case also the learned trial Court should not have gone into the question as to why the Executive Committee meeting of the Club was not held, Annual General Meeting was not held and whether the Special General Meeting called upon by the Honorary General Secretary of the Club is valid or not.

20. The learned counsel for the appellants further submit that here Mohun Bagan Athletic Club remains intact but only the Football part of the Mohun Bagan Athletic Club is going to be renamed as United Mohun Bagan Sporting Club and that does not create any difference. In this regard the learned counsel for the appellants referred to and placed reliance upon judgment of this High Court reported in *Rajendra Nath Tikku Vs. The Royal Calcutta Turf Club*, in which it has been observed that the notion of a firm name or a joint family business name ought not to be extended to a Club name. Club name is not regarded as a compendious name in the sense that a firm name or that reading name of a Joint Hindu family business is regarded by lawyers and business people. The learned counsellor the appellants submit that the learned trial Judge misconstrued the Rules of the Club and Ignored Rule 3(b) of the Club Rules.

21. The learned counsel submits that the learned trial Judge *prima facie* should not have come to a final conclusion and should not have granted prayers of main suit at the injunction stage. The learned counsel also submits that mandatory order of Injunction should not have been passed by the learned trial Judge in the instant case Inasmuch as by granting mandatory injunction and by making an order to maintain status quo ante, the learned trial Judge committed grave error of law. The learned counsel refer to the decision reported in *T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum*, and submit that the Civil Court should not have interfered in such a case and the jurisdiction of a Civil Court is limited. The learned counsel submits that in this case the Hon''ble Supreme Court observed, *inter alia*, that the jurisdiction of the Civil Court is limited; it cannot sit as a Court of appeal from decisions of such a body; it can set aside the order of such a 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. The learned counsellor the appellants submit that the learned trial Court committed error of law in Interfering with the Internal administration of the Club by misconstruing the Rules of the Club and also committed error by passing mandatory ad-interim order of injunction granting status quo ante and as such the order of the learned trial Judge should be set aside.

22. The learned counsel appearing for the added respondent M/s. Mc. Dowell & Co. Ltd. submits that his client M/s. Mc. Dowell & Co. Ltd. has entered into an agreement with Mohun Bagan Athletic Club and that was a concluded contract and the defendants when are under contractual obligation the learned trial Judge committed error by passing a mandatory order of injunction without hearing his client M/s. Mc. Dowell & Co. Ltd. and after the contract being executed his client has got a right to be heard before such a mandatory injunction being granted. The learned counsel for the added respondent in support of his contention relied on the decision reported in 1964 (1) AER 630 (*Freeman And Lockyer (a firm) v. Buckhurst Park Properties (Mangal) Ltd.*) and also on a decision reported in 1980 (3) AER 772 (*Films Rover International Ltd. v. Cannon Film Sales Ltd.*). The learned counsel submits that it has been observed in these decisions that in determining whether to grant any interlocutory injunction the question before the

Court was not whether the Injunction sought was mandatory or prohibitory, but whether the injustice that would be caused to the defendant if the plaintiff was granted an injunction and later failed at trial outweighed the injustices that would be caused to the plaintiff if an injunction was refused and he succeeded at trial. The learned counsel for the added respondent also relied on a decision reported in 1956 (1) AER 273 (Amon v. Raphael Tuck and Sons Ltd.). In this decision in its context it has been observed "the test whether under R.S.C.. Order 16, Rule 11, the Court had jurisdiction to add as defendant a person whom the plaintiff did not wish to sue whether the order of which the plaintiff was asking in the action which might directly be affected. The intervener (that is the person proposed to be added as a party) by curtailing the enjoyment of his legal rights for the only reason which might render the presence of a party before the Court "necessary" to enable the Court to adjudicate completely was that he should be bound by the result of the proceedings."

23. The learned Counsel submits that his client M/s. Mc. Dowell entered into a contract to incur expenditure and the said company was not heard by the learned Trial Judge and the mandatory injunction order was passed which ultimately affected the right of the said company M/s. Mc. Dowell Private Ltd. In such circumstances the learned Counsel submits that the impugned order under appeal should be set aside.

24. The learned Counsel for the defendants further submit that the Club has got specific Rules to the extent that the Executive Committee election will be held at the end of every three years but since 1988-89 no election has been held. Assumingly but not admitting that in the said 1988-89 Committee still continues then also in that Committee Anjan Kr. Mitra was the Accountant and it is not known when he converted himself into Honorary General Secretary, the Annual General Meeting was not held and the notice which has been challenged in the suit is ex facie without jurisdiction and bad in law since a person out of the said dead and defunct body has issued that notice of publication. The learned Counsel also submit that agreement executed by and between Mc. Dowell Private Ltd. and Mohun Bagan Athletic Club cannot be a valid agreement inasmuch as on behalf of the Club, no legal representative was there in the agreement. In fact, in the name of Sponsorship the Football Unit of the Club was admitted to be sold and the name of Mohun Bagan Athletic Club which is a very old and reputed name was sought to be changed as United Mohun Bagan Sporting Club. The learned Counsel for the respondents submit that the plaintiffs in the Court below need not feel it necessary to make Mc. Dowell Co. as party defendant since the said Company was nobody and by any means they were not attached to Mohun Bagan Athletic Club. The learned Counsel further submits that since the Executive Committee was functus officio Rule 45 (e) was not attracted. Rule 45 (e) of the Club Rules runs as follows :

"No Act done or proceedings taken pursuant to any resolution passed or declaration made at the Annual General Meeting or Special General Meeting or

Meetings of the Executive Committee or the Board of Trustees and of the Election Board shall be questioned on any ground whatsoever".

25. The learned Counsel submit that since there was no Executive Committee legally valid naturally the Annual General Meeting called by such an illegal body cannot be legal. The learned Counsel further submit that the notice for Special General Meeting is also a bad and illegal notice. That apart the notice contained more than one agenda in violation of Rule 39 (a) of the Club Rules, The learned Counsel also submit that the appellants have submitted that there, is a suit being Title Suit No. 115/95 subsisting in this High Court and naturally the instant suit is not maintainable, is not a correct submission or correct proposition. In the said Title Suit No. 115/95 plaintiffs are different and cause of action was also different inasmuch as in the present suit or petition, the notice and/or publication which has been challenged by the plaintiffs is subsequent to that suit. The learned Counsel for the respondents further submit that the Trial Court has jurisdiction to entertain such a suit inasmuch as in the case of T.P. Davar v. Lodge Victoria (supra) it has been clearly held that in case where domestic body acts without jurisdiction or does not act in good faith or acts in violation of principle of natural Justice the Civil Court is entitled to Interfere. The learned Counsel also submits that the decision of Dawkins v. Antrobus (1881) 17 Ch D 615 cannot be of any help to the appellants inasmuch as in the aforesaid decision it was held that the Court will not interfere against (with) the decision of the members of a Club professing to act under their Rules, unless it can be shown either that the Rules are contrary to natural justice, or that what has been done is contrary to the Rules, or that there has been mala fide or malice in arriving at the decision. The learned Counsel in this regard placed reliance on the decision reported in Kalyan Kumar Dutta Gupta Vs. B.M. Verma and others, . The learned Counsel for the respondents submit that in appropriate case to protect the interest of justice the Court can pass mandatory order of injunction in a petition under Order 39, Rules 1 and 2 read with Section 151 of the C.P. Code. In this context the learned Counsel for the respondents placed reliance on Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others, and submitted that in this decision Hon"ble Division Bench of this High Court observed that injunctions are a form of equitable relief and they have to be adjusted in aid or equity and justice to the facts of each particular case. The learned Counsel also relied on a decision of the Division Bench of this High Court reported in Indian Cable Company Limited Vs. Smt. Sumitra Chakraborty, in which the Division Bench observed that though exercises, of such a discretion should be limited to rare and exceptional cases still at the same time no Court should think that in law there is any absolute bar to the Court granting such a relief. In deserving cases the Court should not hesitate to come any aid of a litigant and upheld the cause of justice by granting such a relief.

26. The learned counsel further submits that the Court can take note of subsequent events and grant relief in the interest of justice and in this regard the learned counsel relied on a decision reported in Rameshwar and Others Vs. Jot

Ram and Another, . The learned counsel also submitted that even if on the pleadings of the defendants the Court can grant relief and in this regard reliance was placed on a decision reported in Srinivas Ram Kumar Vs. Mahabir Prasad and Others, . The learned counsel for the respondents conclusively submitted that not only the Trial Court has jurisdiction to entertain this suit but also the Court has rightly granted mandatory injunction in the nature of status quo ante to render justice. The learned counsel for the respondents, therefore, submits that the appeal should be dismissed with costs.

27. After hearing the learned counsel for the parties and after considering the documents on record we are of opinion that the Trial Court has jurisdiction to entertain such a suit and the Trial, Court has got power to grant mandatory injunction on an application under Order 39, Rules 1 and 2 of the CPC read with Section 151 of the C.P. Code. In addition to the citations made by the learned counsel for the party we are also tempted to rely upon a recent decision of the Hon"ble Apex Court reported in Hindustan Petroleum Corporation Ltd. Vs. Sri Sriman Narayan and Another, in which in Paragraphs 7 & 8 the Hon"ble Court observed in the manner as follows :

"It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court normally applies the following tests :--

- i) whether the plaintiff has a prima facie case;
- ii) whether the balance of convenience is in favour of the plaintiff; and
- iii) whether the plaintiff would suffer an irreparable Injury if his prayer for interlocutory injunction is disallowed.

28. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies. See M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, .

29. Relief of interlocutory mandatory injunction is generally granted to preserve and restore the "status quo" of the last non-contested status which preceded the

pending controversy until the final hearing. Such mandatory injunction can be passed to prevent alteration of the position or when it is found that the defendant is "stealing a march" on the plaintiff.

30. From the submissions made by the learned counsel for the respondents/plaintiffs it would appear that it is the subsequent events that weighed with the learned Court below in passing the order of injunction in a mandatory form. Also, it is apparent from the submission made at the bar that the aforesaid subsequent events had been pleaded and thus brought on record by the defendant in the suit, in his affidavit-in-opposition to the injunction application filed by the plaintiffs. Learned counsel for the appellants with same justification contended that without enlarging the scope of the suit or claiming any relief in relation to the said subsequent events and without affording an opportunity of hearing the party that would be directly affected such exercise of jurisdiction was not warranted.

31. The right to relief must no doubt be judged on the cause pleaded as on the date the proceedings are instituted. However, Court cannot be blind to the subsequent events or facts arising after the lis has come; to Court and such fact has a fundamental impact on the right to relief or the manner of moulding it. Court is required to take cognisance of the same provided it is: diligently brought to the notice of Court. In the case on hand application for injunction was filed restraining the holding of the Special General Meeting scheduled to be held on January 28, 1998 pursuant to the notice dated January 7, 1998. In the said notice item No. 2 of the agenda was with respect to sponsorship money required for formation of football team and incorporation of Joint Venture Football Team Ltd. Company with the sponsors of the football team. The meeting was held as scheduled as no Ad interim order Of injunction was passed. It has been contended on behalf of the respondents that all actions subsequent to the institution of the suit are illegal and incorporation of company should be cancelled, in view of the observations of Court in its order dated January 27, 1998. Thereafter in the affidavit-in-opposition the subsequent events as to the resolution passed and action taken was brought on record as and by way of defence and in support of the plea that no injunction can, therefore, be granted. Certain facts such as execution of two agreements, one dated December 26, 1997 and another dated February 25, 1998 have been stated by Mc. Dowell in the proceedings before this Court. Regarding the legality or validity of such actions several contentions have been raised and urged before this Court by learned counsel for the respective parties. We do not, however, wish to deal with the same for the reasons that will be apparent from what is stated hereinafter.

32. The subsequent facts, it appears to us have a material bearing on the suit and the reliefs prayed for in the injunction application. The said facts could not have been ignored. The same, however, needed to have been diligently brought to the notice of Court by plaintiffs. However, as the same had been pleaded by the defendants the learned Court below could have considered the same in the

presence of the party (added respondent herein) who would be directly affected by the order of status quo ante. As in whose absence such order ought not to have been passed we set aside the order under appeal and remand the matter for hearing afresh in accordance with law, as expeditiously as possible and preferably within six months from date.

33. It is open to the plaintiffs, if so advised, to file appropriate application raising such grounds and praying for such reliefs as they may be advised with respect to the subsequent events.

34. We find that there is an Interim order dated May 13, 1998 staying the operation of the order under appeal subject to certain conditions. Allegations have been made as to non-compliance of the said conditions by the appellant. We have this day disposed of the contempt application. We think it proper; therefore, to modify the interim "order and injunction application a Committee be appointed as Special Officers to manage the affairs of the Football Team. Accordingly we appoint--

(1) Hon'ble Mr. Justice Umesh Chandar Banerjee (Retired)

(2) Hon'ble Mr. Justice Shyamal Kumar Sen (Retired)

(3) Mr. Indrajit Sen, Senior Advocate.

as the Members of the said Committee of Special Officers. All decisions in the matter of the Football Team shall be taken only by the said Committee of Special Officers and by no other Committee.

35. We further direct that these Special Officers named in one and two above will be entitled to honorarium of Rs. 50,000/- each at the initial and the Special Officer named in three above will be entitled to Rs. 30,000/-at the initial. Such honorarium shall be paid out of the Fund of Mohun Bagan Athletic Club. The Special Officers named above will also be entitled to appoint one person to perform their clerical jobs according to their choice and the remuneration of the said person will be as determined or fixed by them.

36. It is, however, clarified that the Company, namely, United Mohun Bagan Football Team Private Limited shall act only as a sponsor upon such terms and conditions as may be approved by the Committee of Special Officers.

37. It is further clarified that with respect to the other affairs of the Club the existing Executive Committee shall continue to manage the affairs of the Club subject to. any directions of the Committee of Special Officers that may be issued by them in the matter of or concerning the affairs of the Football Team or the assets of the Club With respect to the Football Team.

38. The appeal along with all other applications pending before this Court shall accordingly stand disposed of with the above order.

39. There shall be no order as to costs.

M.H.S. ANSARI, J.

40. I agree.